JUDICIAL ACADEMY JHARKHAND



SNIPPETS

OF

SUPREME COURT JUDGMENTS

(August, 2020)

Prepared by :-

ABHIJEET TUSHAR
ISHA ANUPRIYA
Research Scholars,
JUDICIAL ACADEMY JHARKHAND

TABLE OF CONTENTS

1. Gangadhar v. State of Madhya Pradesh, (2020 SCC OnLine SC 623) 1

(Under the NDPS Act, the presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability.) 1

2. EXL Careers and Anr. v. Frankfinn Aviation Services Pvt. Ltd., (2020 SCC OnLine SC 621) 4

(If a plaint is returned under Order VII Rule 10 and 10A of the CPC for presentation in the court in which it should have been instituted, the suit shall proceed de novo.) 4

3. Medipol Pharmaceutical India Pvt. Ltd. v. Post Graduate Institute of Medical Education & Research and Anr., (2020 SCC OnLine SC 638) 7

(A valuable right is granted to a person who is sought to be penalized under these Acts to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. If owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates with time is tested as not containing the requisite standard, any prosecution or penalty inflictable by virtue of such sample being tested, cannot then be sustained.) 7

4. Rama Nand and Ors. v. Chief Secretary, Govt. of NCT of Delhi and Anr., (2020 SCC OnLine SC 630) 10

(Service Law – Principles related to promotions and upgradation) 10

5. Hari Krishna Mandir Trust v. State of Maharashtra and Ors., (2020 SCC OnLine SC 631) 14

(The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. 14

The High Courts, exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.) 14

6. Vineeta Sharma v. Rakesh Sharma, (2020 SCC OnLine SC 641) 18

(Interpretation of section 6 of the Hindu Succession Act, 1956 – Right of a Hindu daughter as a coparcenor is by birth and it is not necessary that the fat5her coparcenor should be alive as on 09.09.2005) 18

7. Union of India and Anr. v. K.C.Sharma & Co. and Ors, (2020 SCC OnLine SC 644) 20
Section 53A of the Transfer of Property Act – Part Performance 20

8. Preet Pal Singh v. State of Uttar Pradesh and Anr., (2020 SCC OnLine SC 645) 24
(In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.).....24

9. Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr., (2020 SCC OnLine SC 647) 28
(Insolvency and Bankruptcy Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation. The intention of the Code is not to give a new lease of life to debts which are time-barred. The period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues. If default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned. An application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application).....28

10. In the matter of : Prashant Bhushan and Anr., (2020 SCC OnLine SC 646).....32
(Power of the Supreme Court with respect to contempt and the legal position).....32

11. Rhea Chakraborty v. State of Bihar and Ors., (2020 SCC OnLine SC 654) 37
(Only cases and appeals and not investigation can be transferred under Section 406 of the CrPC. An investigation under Section 174 of the CrPC is limited for a definite purpose and is not an investigation of a crime under Section 157 of the CrPC. a police officer cannot refrain from investigating a matter on territorial ground and the issue can be decided after conclusion of the investigation.).....37

12. Mohd. Anwar v. State (NCT of Delhi), (2020 SCC OnLine SC 653).....42
(Pleas of unsoundness of mind under Section 84 of IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.) 42

13. Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties and Ors., (2020 SCC OnLine SC 655).....45
(The proceeding under section 31 is with reference to specific persons and not with reference to all who may be concerned with the property underlying the instrument, or "all the world". Clearly, the cancellation of the instrument under section 31 is as between the parties to the action and their

privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgment delivered under section 31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence.).....45

14. V.N. Krishna Murthy and Anr. v. Ravikumar and Ors., (2020 SCC OnLine SC 664) 51

(Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court.).....51

15. Vikrant Singh Malik and Ors. v. Supertech Limited and Ors., (2020 SCC OnLine SC 702).....**56**

(Section 12(1)(c) of the Consumer Protection Act applies to a situation where there are numerous consumers "having the same interest". In that case, a complaint may be filed by one or more consumers with the permission of the District Forum "on behalf of, or for the benefit of, all consumers so interested". The test under Section 12(1)(c) is of the sameness of the interest. The complaint is filed in a representative capacity, on behalf of or for the benefit of all the consumers who are interested.).....56

16. Raj Pal Singh v. CIT, Haryana, Rohtak, (2020 SCC OnLine SC 670).....**60**

(In the matters relating to compulsory acquisition of land under the Act of 1894, completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government. However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before. To be more specific, in such cases, capital gains shall be deemed to have accrued : (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9(1), in the case of urgency acquisition under Section 17.).....60

17. State of M.P. and Ors. v. Rakesh Sethi and Anr., (2020 SCC OnLine SC 673).....**65**

(The assignment of "distinctive marks" i.e. registration numbers to motor vehicles (which includes the power to reserve and allocate them, for a specific fee) is a distinct service for which states or their authorities (such as the registering authorities, in this case) are entitled to charge a prescribed fee as per the provisions and scheme of the Motor Vehicles Act.).....65

18. V.Sukumaran v. State of Kerala and Anr., (2020 SCC OnLine SC 671).....**68**

(Pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. The pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept

in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities.).....68

19. Narasamma and Ors. v. A. Krishnappa (Dead) Through Lrs., (2020 SCC OnLine SC 672).....**73**

(A plea of title and of adverse possession cannot be taken simultaneously).....73

20. State of Punjab and Ors. v. Davinder Singh and Ors., (2020 SCC OnLine SC 677).....**75**

(Issue referred to larger Bench - whether sub-classification for providing benefit to all castes can be said to be tinkering with the list under Articles 341, 342 and 342A, in view of the decisions in Indra Sawhney, permitting sub-classifications of backward classes and in Jarnail Singh, in which, it was opined that 'creamy layer concept' for exclusion of benefit can be applied to the Scheduled Castes and Scheduled Tribes and it does not in any manner tinker with the Presidential list under Article 341 or 342 of the Constitution.).....75

21. Union of India v. Ashok Kr. Sharma and Ors., (2020 SCC OnLine SC 683).....**78**

(With regard to cognizable offences under Chapter IV of the Drugs and Cosmetics Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act.III. A Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC. An arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.).....78

22. Parvinder Kansal v. State of NCT of Delhi and Anr., (2020 SCC OnLine SC 685).....**82**

(So far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation.).....82

23. Mukesh Singh v. State (Narcotic Branch of Delhi), (2020 SCC OnLine SC 700).....**85**

(In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of Mohan Lal v. State of Punjab, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.).....85

24. Tamil Nadu Medical Officers Association and Ors. v. Union of India and Ors., (2020 SCC OnLine SC 699)..... 89

(Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India. The State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper) 89

1. *Gangadhar v. State of Madhya Pradesh, (2020 SCC OnLine SC 623)*

Decided on : -05.08.2020

Bench :- 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice **Navin Sinha**

(Under the NDPS Act, the presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability.)

Facts

In the present case, the appellant assailed his conviction under Section 8C read with Section 20(b)(ii)(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the NDPS Act") for recovery of 48 Kgs 200 gms. cannabis (*ganja*), sentencing him to 10 years of rigorous imprisonment with a default stipulation.

The appellant was held to be the owner of the House in question from which the *ganja* was recovered, relying upon the voters list of 2008 rejecting his defence that he had sold the house to co-accused Gokul Dangi on 12.06.2009. Gokul Dangi had been acquitted in trial.

It was submitted on behalf of the appellant that the conviction based on a mere presumption of ownership of the house, without any finding of conscious possession was unsustainable. Reliance was placed on *Gopal* v. *State of Madhya Pradesh*, (2002) 9 SCC 595. The police had received information that Gokul Dangi had kept contraband in his house. The appellant and Ghasiram, the village chowkidar had identified the house of the accused to the police when it came to the village for search and seizure. Both of them were witness to the *panchnama* for breaking open the lock to the house when the contraband was recovered. It stands to reason why the appellant would take the police to his own house, have the lock broken to recover the contraband and implicate himself. Ghasiram and P.W.11, were both witnesses to the sale agreement dated 12.06.2009, Exhibit P-28 executed by the appellant in favour of Gokul Dangi. It was produced before the police by the appellant the very next day but was never investigated, Ghasiram has not been examined for no explicable reasons. The entries in the village panchayat records with regard to ownership of the house had not been investigated. The appellant was subsequently made an accused during investigation because of the failure of the police to investigate properly.

Observations and Decision

The Hon'ble Court allowed the appeal, set aside the conviction and held as follows :-

> **9.** The presumption against the accused of culpability under Section 35, and under Section 54 of the Act to explain possession satisfactorily, are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. Section 35(2) provides that a fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. That the right of the accused to a fair trial could not be whittled down under the Act was considered in *Noor Aga* v. *State of Punjab*, (2008) 16 SCC 417 observing:
>
> .....
>
> **10.** The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of 10 years, absence of any provision for remission do not dispense with the requirements of prosecution to establish a prima facie case beyond reasonable doubt after investigation, only where after which the burden of proof shall shift to the accused. The gravity of the sentence and the stringency of the provisions will therefore call for a heightened scrutiny of the evidence for establishment of foundational facts by the prosecution.
>
> **11.** It is apparent that the police being in a quandary with regard to the ownership and possession of the house in question due to a flawed, defective and incomplete investigation found it convenient to implicate the appellant also, sanguine that at least one of the two would be convicted. Sri Jain is right in the submission that according to normal human prudence, it stands to reason why the appellant who was residing in his new house for the last 15 years would identify his own erstwhile house as that of the accused Gokul Dangi, be a witness to the breaking of the lock and recovery to implicate himself.
>
> **12.** The appellant had produced the sale agreement, Exhibit P.28 with promptness the very next day. It was never investigated for its genuineness by the police and neither were the panchayat records verified. The panchayat records are public documents and would have been the best evidence to establish the ownership and possession of the house. Despite the best evidence being available the police considered it sufficient to obtain a certificate Exhibit P-37 signed by P.W. 14 who acknowledged her signature but denied knowledge of the contents of the certificate. The voters list entry of 2008 being prior to the sale is of no consequence. It is not without reason that the co-accused had absconded.
>
> **13.** The appellant was held guilty and convicted in view of his name being recorded as the owner of the house in the voters list 2008, ignoring the fact that sale agreement was subsequent to the same on 12.06.2009. The prosecution cannot be held to have proved that Exhibit P-18 was a fabricated and fictitious document. No appeal has been preferred by the prosecution against the acquittal of the co-accused.
>
> **14.** In view of the nature of evidence available it is not possible to hold that the prosecution had established conscious possession of the house with the appellant so as to attribute the presumption under the NDPS Act against him with regard to recovery of the contraband. Conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities, the guilt of the appellant without establishing the same beyond reasonable doubt.

15. The police investigation was very extremely casual, perfunctory and shoddy in nature. The appellant has been denied the right to a fair investigation, which is but a facet of a fair trial guaranteed to every accused under Article 21 of the Constitution. The consideration of evidence by the Trial Court, affirmed by the High Court, borders on perversity to arrive at conclusions for which there was no evidence. Gross misappreciation of evidence by two courts, let alone poor investigation by the police, has resulted in the appellant having to suffer incarceration for an offence he had never committed.

16. Normally this Court in exercise of its jurisdiction under Article 136 of the Constitution does not interfere with concurrent findings of facts delving into appreciation of evidence. But in a given case, concerning the liberty of the individual, if the Court is satisfied that the prosecution had failed to establish a prima facie case, the evidence led was wholly insufficient and there has been gross misappreciation of evidence by the courts below bordering on perversity, this Court shall not be inhibited in protecting the liberty of the individual.

2. *EXL Careers and Anr. v. Frankfinn Aviation Services Pvt. Ltd., (2020 SCC OnLine SC 621)*

Decided on : - 05.08.2020

Bench :- 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice **Navin Sinha**
3. Hon'ble Ms. Justice Indira Banerjee

(If a plaint is returned under Order VII Rule 10 and 10A of the CPC for presentation in the court in which it should have been instituted, the suit shall proceed *de novo.)*

Issue

If a plaint is returned under Order VII Rule 10 and 10A of the Code of Civil Procedure 1908, (hereinafter called as "the Code") for presentation in the court in which it should have been instituted, whether the suit shall proceed *de novo* or will it continue from the stage where it was pending before the court at the time of returning of the plaint?

The present appeal was placed before the Hon'ble Court on a reference by a two Judge Bench opining a perceived conflict between two Division Bench decisions in *Joginder Tuli* v. *S.L. Bhatia*, (1997) 1 SCC 502 and *Oil and Natural Gas Corporation Ltd.* v. *Modern Construction & Co.*, (2014) 1 SCC 648.

Observations and Decision

The Hon'ble Court referred to the provisions of the CPC particularly Sections 24 and 25 and Order VII Rule 10A and also to the judgments of the Supreme Court and held as follows :-

> **13.** It is no more *res-integra* that in a dispute between parties where two or more courts may have jurisdiction, it is always open for them by agreement to confer exclusive jurisdiction by consent on one of the two courts. Clause 16B of the agreement extracted above leaves us in no doubt that the parties clearly indicated that it was only the court at Delhi which shall have exclusive jurisdiction with regard to any dispute concerning the franchise agreement and no other court would have jurisdiction over the same. In that view of the matter, the presentation of the plaint at Gurgaon was certainly not before a court having jurisdiction in the matter. This Court considering a similar clause restricting jurisdiction by consent in *Swastik Gases (P) Ltd.* v. *Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32, observed as follows:
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> .....
>
> **14.** This was reiterated in *State of West Bengal* v. *Associated Contractors*, (2015) 1 SCC 32, holding that presentation of the plaint in a court contrary to the exclusion clause could not be said to be proper presentation before the court having jurisdiction in the matter.
>
> **15.** That brings us to the order of the reference to be answered by us. In *Joginder Tuli* (supra) the original court lost jurisdiction by reason of the amendment of the plaint. The Trial Court directed it to be returned for presentation before the District Court. This Court observed as follows:

> "5. ... Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference."

16. To our mind, the observations are very clear that the suit has to proceed afresh before the proper court. The directions came to be made more in the peculiar facts of the case in exercise of the discretionary jurisdiction under Article 136 of the Constitution. We may also notice that it does not take into consideration any earlier judgments including *Amar Chand Inani* v. *The Union of India* (supra) by a Bench of three Honourable Judges. There is no discussion of the law either and therefore it has no precedential value as laying down any law.

17. *Modern Construction* (supra), referred to the consistent position in law by reference to *Ramdutt Ramkissen Dass* v. *E.D. Sassoon & Co.*, *Amar Chand Inani* v. *The Union of India*, *Hanamanthappa* v. *Chandrashekharappa*, (1997) 9 SCC 688, *Harshad Chimanlal Modi (II)* (supra) and after also noticing *Joginder Tuli* (supra), arrived at the conclusion as follows:

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

18. *Joginder Tuli* (supra) was also noticed in *Harshad Chimanlal Modi (II)* (supra) but distinguished on its own facts.

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

20. We regret our inability to concur with *Oriental Insurance Company Ltd.* (supra), relied upon by Mr. Patwalia, that in pursuance of the amendment dated 01-02-1977 by reason of insertion of Rule 10A to Order VII, it cannot be said that under all circumstances the return of a plaint for presentation before the appropriate court shall be considered as a fresh filing, distinguishing it from *Amar Chand Inani* (supra). The attention of the Court does not appear to have been invited to *Modern Construction* (supra) and the plethora of precedents post the amendment.

21. Order VII Rule 10-A, as the notes on clauses, indicates was inserted by the Code of Civil Procedure (Amendment) Act, 1976 (with effect from 01.02.1977) for the reason:

> "New Rule 10-A is being inserted to obviate the necessity of serving summonses on the defendants where the return of plaint is made after the appearance of the defendant in the suit."

22. Also, under sub-rule (3) all that the Court returning the plaint can do, notwithstanding that it has no jurisdiction to try the suit is:

> "**10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.**
>
> xxx xxx xxx
>
> (*3*) Where an application is made by the plaintiff under sub-rule *(2),* the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit, —
>
> (*a*) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and
>
> (*b*) give to the plaintiff and to the defendant notice of such date for appearance."

23. The language of Order VII Rule 10-A is in marked contrast to the language of Section 24(2) and Section 25(3) of the Code of Civil Procedure which read as under:

> **"24. General power of transfer and withdrawal.**
>
> xxx xxx xxx
>
> (*2*) Where any suit or proceeding has been transferred or withdrawn under sub-section (*1*), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.
>
> **25. Power of Supreme Court to transfer suits, etc.**
>
> xxx xxx xxx
>
> (*3*) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it."

24. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order VII Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.

25. For all these reasons, we hold that *Oriental Insurance Co.* (supra) does not lay down the correct law and over-rule the same. *R.K. Roja* (supra) has no direct relevance to the controversy at hand.

3. *Medipol Pharmaceutical India Pvt. Ltd. v. Post Graduate Institute of Medical Education & Research and Anr., (2020 SCC OnLine SC 638)*

Decided on : - 05.08.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice Navin Sinha

(A valuable right is granted to a person who is sought to be penalized under these Acts[1] to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. If owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates with time is tested as not containing the requisite standard, any prosecution or penalty inflictable by virtue of such sample being tested, cannot then be sustained.)

Facts

i) A notice inviting quotations was issued on 06.07.2015 by the Respondents herein for Clotrimazole Cream 1% 15 gm tube, the quantity being required for the first year and second year.

ii) To this N.I.Q., the Appellant submitted its quotation on 09.07.2015, in which it was specified that the shelf life of the said cream would be only 2 years.

iii) After rates were negotiated and re-negotiated, a supply order was issued on 04.11.2015 in which it was clearly stated:

> "8. Not more than 1/6th of the shelf life should have expired when drug pharmaceuticals are received in medical store PGI, Chandigarh."

iv) In accordance with the supply order, the first instalment of 1700 tubes of Clotrimazole Cream was supplied on 18.01.2016, there being no complaint whatsoever in respect of the said supply. However, when the second instalment of 1700 tubes of the selfsame Cream was supplied to the Respondent on 08.04.2016, various complaints were made. The first Respondent drew samples on 29.11.2017, which samples were sent for testing to the Government Analyst under Section 25(1) of the Drugs & Cosmetics Act, 1940.

v) The first test report dated 27.03.2018 specifically stated that the sample was received on 26.12.2017. This report, which is dated a few days before the shelf life of the Cream expired, found that the sample was 61.96% w/w as against an acceptable standard of 95-105%.

vi) As a result thereof, two show cause notices were issued on 13.04.2018 and 30.5.2018 by the State Drugs Controller and Drug Inspector respectively to the Appellant in which the Appellant was asked to explain why its licence should not be suspended or cancelled under Rule 85(2) of the Drugs and Cosmetics Rules, 1945 made under the Drugs and Cosmetics Act, which relates to licence to manufacture this product.

[1] Drugs and Cosmetics Act, Prevention of Food Adulteration Act and Insecticides Act

vii) The Appellant replied to the show cause notices on 26.04.2018. and 01.06.2018. However, a third show cause notice was issued on 26.09.2018 by the Respondent in which the question as to blacklisting arose for the first time.

viii) The reply of the Appellant to this show cause notice dated 04.10.2018 specifically requested the authorities not to take any action until a final report of the appellate lab, which was pending, was received.

ix) However, without waiting for this report, on 21.01.2019, the Appellant was blacklisted for a period of 2 years. A perusal of this report would show that there are no reasons given for the same. Finally, the appellate lab test report of the Central Drugs Laboratory, Kolkata, dated 19.08.2020 tested a sample that was received on 11.02.2019, that is, long after the expiry date of the Cream, in April, 2018. Even this sample, when tested, yielded a result of 92.01% which is way above the 61.96% that was found in the first test report.

x) A post-decisional hearing, based on this report, was given to the Appellant, and it was then found that the blacklisting order was in order inasmuch as on 18.09.2019 the Drug Committee, which consisted of a Chairman, two Members, two Special Invitees, one Director and one Convenor, then expressed their views on the arguments of the Appellant stating, *inter alia*, that on testing, the subject drug was found to be only 61.96%, which is markedly below the prescribed standard limit of 95-105%.

xi) As against the decision then taken, the Appellant filed a writ petition in the Punjab & Haryana High Court, which was dismissed by the impugned order dated 17.09.2019. After extracting the appellate lab test report, the Court found that being 3% below 95%, which is the prescribed standard, there was no good ground to interfere with the impugned order of blacklisting.

Observations and Decision

Regarding the facts of the case and the decision of the Hon'ble High Court, the hon'ble Supreme Court observed as follows :-

> **3.** What is clear from the narration of the facts stated above is that the Drug Inspector drew samples on 29.11.2017 which was long after supplies had been made to the Respondent on 08.04.2016 and complaints received. From the date of drawal of samples on 29.11.2017 till the date on which the samples were received by the Government Analyst on 26.12.2017, there is yet another delay of almost one month. Also, owing to no fault of the Appellant, the sample that could be sent to the Central Drugs Laboratory, Kolkata, under Section 25(3) of the Drugs and Cosmetics Act, was received by the aforesaid Laboratory only on 11.02.2019, long after the expiry date of the goods in question, which was in April, 2018. Even this sample, when tested, yielded a result of 92.01%, which is only roughly 3% below the required minimum standard. What is important to note is that the Government Analyst's report was shown to be completely wrong. Finally, to cap it all, after a post-decisional hearing given to the Appellant, the seven-member Committee opined that there was no reason to recall the blacklisting order based on the result of the first laboratory test report, completely ignoring the appellate test report.

4. On these facts, we find that the impugned decision reflected in the minutes dated 18.09.2019 is wholly perverse inasmuch as it is based only upon the first laboratory test report.

5. The High Court, instead of striking down this decision in judicial review proceedings, went into the appellate laboratory test report itself and stated that as it was 3% below the prescribed percentage of 95%, the blacklisting order ought not to be interfered with.

6. The High Court ought not to have gone into the appellate laboratory test report by itself. It ought to have struck down the impugned decision on the ground that it relied upon something irrelevant, namely, the first laboratory test report and ignored the appellate report. The High Court ought also to have appreciated that the appellate laboratory report was at complete variance with the first laboratory test report - the variation being a huge figure of 30%. This was despite the fact that the appellate laboratory test report tested a sample of the Appellant's product long after its shelf life had expired.

The Hon'ble Court, then referred to the provisions of Section 25 of the Drugs and Cosmetics Act, Section 24 of the Insecticides Act, 1968, and the decisions of the Supreme Court in ***Medicamen Biotech Ltd.* v. *Rubina Bose, Drug Inspector***, (2008) 7 SCC 196 ***Laborate Pharmaceuticals India Ltd.* v. *State of Tamil Nadu***, (2018) 15 SCC 93 ***Municipal Corporation of Delhi* v. *Ghisa Ram***, (1967) 2 SCR 116, ***State of Haryana* v. *Unique Farmaid (P) Ltd.***, (1999) 8 SCC 190 and held as follows :-

14. Though the aforesaid judgments pertain to criminal prosecutions under the Drugs and Cosmetics Act, Prevention of Food Adulteration Act and Insecticides Act, yet, they lay down that a valuable right is granted to a person who is sought to be penalized under these Acts to have a sample tested by the Government Analyst that is found against such person, to be tested by a superior or appellate authority, namely, the Central Drugs Laboratory. These judgments lay down that if owing to delay which is predominantly attributable to the State or any of its entities, owing to which an article which deteriorates with time is tested as not containing the requisite standard, any prosecution or penalty inflictable by virtue of such sample being tested, cannot then be sustained. We have seen that on the facts of this case, the sample drawn and analyzed by the Government Analyst was delayed for a considerable period resulting in the sample being drawn towards the end of its shelf life. Even insofar as the samples sent to the Central Drugs Laboratory, there was a considerable delay which resulted in the sample being sent and tested 8 months beyond the shelf life of the product in this case. It is thus clear that the valuable right granted by Section 25 of the Drugs and Cosmetics Act kicks in on the facts of this case, which would necessarily render any penalty based upon the said analysis of the sample as void.

Regarding the requirement of a State's action with respect to blacklisting a company as not being unreasonable, illegal, arbitrary and discriminatory, the Hon'ble Court referred to the principles laid down in ***Patel Engineering Ltd.* v. *Union of India***, (2012) 11 SCC 257, ***Kulja Industries Ltd.* v. *Chief General Manager, Western Telecom Project BSNL***, (2014) 14 SCC 731, ***Erusian Equipment & Chemicals Ltd.* v. *State of West Bengal***, (1975) 1 SCC 70.

Applying the aforementioned principles and the provisions of law, the Hon'ble Court allowed the appeal and set-aside the order of blacklisting as being infirm.

4. *Rama Nand and Ors. v. Chief Secretary, Govt. of NCT of Delhi and Anr., (2020 SCC OnLine SC 630)*

Decided on : - 06.08.2020

Bench :- 1. Hon'ble Mr. Justice **S.K.Kaul**
2. Hon'ble Mr. Justice Ajay Rastogi
3. Hon'ble Mr. Justice Aniruddha Bose

(Service Law – Principles related to promotions and upgradation)

Facts

The appellants were all working as Telephone Operators with the Delhi Fire Service ("DFS"). On account of reorganisation of the wireless communication system, ninety-six posts of Radio Telephone Operators were sought to be created. Six Radio Operators were already operating as such, while twenty-seven Telephone Operators, in the pay scale of Rs. 260-400 were sought to be deployed as Radio Telephone Operators ("RTOs") in a higher pay scale. The reorganisation scheme was approved on 10.10.1983 by the Municipal Corporation of Delhi.

The Telephone Operators had to go through a training and to be deployed as RTOs, a further condition was imposed of 5 years regular service. An important development took place on 9.8.1999 whereby the Department of Personnel and Training, Government of India issued an Office Memorandum introducing an Assured Career Progression ("ACP") Scheme, by which a decision was taken to grant two financial upgradations after completion of 12 and 24 years of regular service respectively. It was the case of the appellants that they were entitled to get their first financial upgradation as on 9.8.1999 or on completion of 12 years of service in the DFS as Telephone Operators/RTOs, but that the same were denied to the appellants since the respondents treated their conversion of the aforesaid posts as a promotion. The limited controversy which arose for adjudication in the present case is whether the deployment of the appellants as RTOs would amount to a promotion or whether it was a mere reorganisation and the appellants were entitled to the ACP separately in terms of the ACP Scheme.

The appellants filed OA No. 983/1995 before the Central Administrative Tribunal ("**CAT**"), Principal Bench, New Delhi and succeeded in terms of the judgment granting them the pay scale of RTOs, i.e., Rs. 380-560 on the principle of "equal pay for equal work".

One of the RTOs made a representation on 31.5.2001 on the non-grant of the benefits of the ACP Scheme. Thereafter, the respondents sought a clarification from the Government of India, Department of Personnel and Training as to whether placement/appointment in higher pay scales is a promotion/financial upgradation and is to be offset against the financial upgradations per the ACP Scheme. It was a case of the appellants that the clarification issued in this behalf, through an Office Memorandum dated 18.7.2001, would

have no application to the appellants in view of the statutory recruitment rules (though stated to be not notified as per the appellants and thus inapplicable) and on account of the restructuring/reorganisation which had come to prevail.

OA No. 1224/2003 was filed in May 2003 before the CAT, Principal Bench, New Delhi seeking relief for the first financial upgradation in terms of the ACP Scheme, which was opposed by the respondents. The Tribunal decided the issue vide judgment dated 29.10.2003 opining that promotion and merger of cadres operated in different spheres and the requirement to be categorised as 'promotion' is that it must specify certain basic qualifications. On the other hand, conversion of the posts was in exercise of the powers of the Government in the given exigencies. Hence, what was granted to the appellants was not a promotion and the Tribunal consequently opined that the appellants were entitled to the benefits of the ACP Scheme.

The aforesaid order was assailed by the respondents before the Delhi High Court by filing writ petition being WP (C) No. 8406-07 of 2004. The High Court called for the records and, on the pleadings being completed, passed the impugned judgment dated 8.5.2009 allowing the writ petition filed by the respondents. The gravamen of the reasoning of the High Court is that the conversion of posts of Telephone Operators to RTOs was with a condition of completion of 5 years of regular service, with the benefit of the higher pay scale from Rs. 260-400 to Rs. 380-560 and consequently, was liable to be treated as promotion, thus disentitling the appellants to the benefits of the ACP Scheme.

Observations and Decision

The Hon'ble Court referred to the judgments of the Supreme Court in *Union of India* v. *Pushpa Rani*, (2008) 9 SCC 242 and *Bharat Sanchar Nigam Limited* v. *R. Santhakumari Velusamy*, (2011) 9 SCC 510 wherein it had been held :-

> "**29.** On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:
>
> (*i*) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both—that is, advancement to a higher position and advancement to a higher pay scale—are described by the common term "promotion", does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.
>
> (*ii*) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.
>
> (*iii*) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still

difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.

(*iv*) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(*v*) Where the process is an upgradation simpliciter, there is no need to apply the rules of reservation. But where the upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.

(*vi*) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

Applying the principles to the present case, the Hon'ble Court dismissed the appeals and held as follows :-

16. Learned counsel in the aforesaid context, while turning to the factual matrix of the present case, submitted that there are three aspects which are material in the present case:

(i) prequalification of minimum of 5 years of service;

(ii) higher financial emoluments;

(iii) rigorous of a specialised training

17. These make a candidate eligible. It was, thus, a submission that if all these three are considered together, there can be no doubt that the present case is one which should be considered as the promotion for the purpose of ACP Scheme.

18. We have examined the aforesaid contention and we are of the view that the benefits of ACP Scheme cannot be held applicable to the appellants and consequently the High Court was right in interfering with the order of the CAT.

19. The reasons for coming to this conclusion is based on the principles set out in the *BSNL case* (supra). No doubt, sometimes there is a fine distinction which arises in such cases, but, a holistic view has to be taken considering the factual matrix of each case.

The consequence of reorganisation of the cadre resulted in not only a mere re-description of the post but also a much higher pay scale being granted to the appellants based on an element of selection criteria. We say so as, at the threshold itself, there is a requirement of a minimum 5 years of service. Thus, all Telephone Operators would not automatically be eligible for the new post. Undoubtedly, the financial emoluments, as stated above, are much higher. The third important aspect is that the appellants had to go through the rigorous of a specialised training. All these cannot be stated to be only an exercise of merely re-description or reorganisation of the cadre. On applying the test in *BSNL case* (supra), as per sub-para (i) of para 29, promotion may include an advancement to a higher pay scale without moving to a different post. In the present case, there is a re-description of the post based on higher pay scale and a specialised training. It is not a case covered by sub-para (iii), as canvassed by learned counsel for the appellants, where the higher pay scale is available to everyone who satisfies the eligibility condition without undergoing any process of selection. The training and the benchmark of 5 years of service itself involve an element of selection process. Similarly, it is not as if the requirement is only a minimum of 5 years of service by itself, so as to cover it under sub-para (iv).

20. We have already observed that the complete factual contours of the difference between the two posts would have to be examined in the given factual situation and the triple criteria of minimum 5 years of service, a specialised training and much higher financial emoluments leaves us in no manner of doubt. What was done has to be considered as a promotion disentitling the appellants to the benefits of the ACP Scheme. As the very objective of the ACP Scheme, as set out, is "to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues."

5. *Hari Krishna Mandir Trust v. State of Maharashtra and Ors., (2020 SCC OnLine SC 631)*

Decided on : - 07.08.2020

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Ms. Justice **Indira Banerjee**

(The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law.

The High Courts, exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion *malafide*, or on irrelevant consideration.)

Observations

96. The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300A and a human right as observed by this Court in *Vimlaben Ajitbhai Patel* v. *Vatslaben Ashokbhai Patel*[2]. In view of the mandate of Article 300A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant trust cannot be deprived of its property save in accordance with law.

97. Article 300A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including *State of Bihar* v. *Project Uchcha Vidya, Sikshak Sangh*[3]; *Jelubhai Nanbhai Khachar* v. *State of Gujarat*[4]; *Bishambhar Dayal Chandra Mohan* v. *State of Uttar Pradesh*[5], the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in *Girnar Traders* v. *State of Maharashtra*[6].

.....

99. In case of dispossession except under the authority of law, the owner might obtain restoration of possession by a proceeding for Mandamus against the Government as held by this Court in *Wazir Chand* v. *State of Himachal Pradesh*[7]. Admittedly, no compensation has been offered or paid to the appellant Trust. As observed by this Court in *K.T. Plantation Private Limited* v. *State of Karnataka*[8],

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[2] (2008) 4 SCC 649.
[3] (2006) 2 SCC 545
[4] 1995 Supp (1) SCC 596
[5] (1982) 1 SCC 39
[6] (2007) 7 SCC 555
[7] AIR 1954 SC 415
[8] (2011) 9 SCC 1

even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also does not contemplate deprivation of a land holder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In *Directors of Settlements, Andhra Pradesh* v. *M.R. Apparao*[9]. Pattanaik J. observed:

> *"One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, "Mandamus" means a command. It differs form the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."*

103. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of Mandamus is that Mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through Mandamus. Unless a statutory duty or right can be read in the provision, Mandamus cannot be issued to enforce the same.

104. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. Reference may be made inter alia to the judgments of this Court *Gunwant*

[9] (2002) 4 SCC 638

Kaur v. *Municipal Committee, Bhatinda*[10] and *State of Kerala* v. *M.K. Jose*[11]. In *M.K. Jose* (supra), this Court held:—

> *"16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In* Gunwant Kaur *v.* Municipal Committee, Bhatinda *[(1969) 3 SCC 769], it has been held thus : (SCC p. 774, paras 14-16)*
>
> > *"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine.* ***The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles****. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.*
> >
> > *15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.*
> >
> > ***16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."***
>
> *(emphasis supplied)*

105. In *ABL International Ltd.* v. *Export Credit Guarantee Corporation of India Ltd.*[12], this Court referring to previous judgments of this Court including *Gunwant Kaur* (supra) held:—

> *"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of* Gunwant Kaur *[(1969) 3 SCC 769] this Court even went to the extent*

[10] (1969) 3 SCC 769
[11] (2015) 9 SCC 433
[12] (2004) 3 SCC 553

of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition 2 even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule;

c) A writ petition involving a consequential relief of monetary claim is also maintainable."

6. *Vineeta Sharma v. Rakesh Sharma, (2020 SCC OnLine SC 641)*

Decided on : - 11.08.2020

Bench :- 1. Hon'ble Mr. Justice **Arun Mishra**
2. Hon'ble Mr. Justice S.Abdul Nazeer
3. Hon'ble Mr. Justice M.R. Shah

(Interpretation of section 6 of the Hindu Succession Act, 1956 – Right of a Hindu daughter as a coparcenor is by birth and it is not necessary that the fat5her coparcenor should be alive as on 09.09.2005)

Issue

The question concerning the interpretation of section 6 of the Hindu Succession Act, 1956 (in short, 'the Act of 1956') as amended by Hindu Succession (Amendment) Act, 2005 (in short, 'the Act of 2005') had been referred to a larger Bench in view of the conflicting verdicts rendered in two Division Bench judgments of this Court in *Prakash* v. *Phulavati*, (2016) 2 SCC 36 and *Danamma @ Suman Surpur* v. *Amar*, (2018) 3 SCC 343.

Observations and Decision

After making a detailed analysis of the provisions of Hindu law and the decisions of the Supreme Court on different issues related thereto, the Hon'ble Court held as follows :-

> **143.** Resultantly, we answer the reference as under:
>
> (i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.
>
> (ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.
>
> (iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.
>
> (iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.
>
> (v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or

effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

144. We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.

145. In view of the aforesaid discussion and answer, we overrule the views to the contrary expressed in *Prakash* v. *Phulavati* and *Mangammal* v. *T.B. Raju*. The opinion expressed in *Danamma @ Suman Surpur* v. *Amar* is partly overruled to the extent it is contrary to this decision. Let the matters be placed before appropriate Bench for decision on merits.

7. *Union of India and Anr. v. K.C.Sharma & Co. and Ors, (2020 SCC OnLine SC 644)*

Decided on : - 14.08.2020

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice **R. Subhash Reddy**
3. Hon'ble Mr. Justice M.R. Shah

Section 53A[13] of the Transfer of Property Act – Part Performance

Facts

The land admeasuring 36 bighas 11 biswas comprising in Khasra Nos. 14/9, 12, 17, 18, 19, 20/1, 23 and 24 belonged to Gaon Sabha Luhar Heri, Delhi. The large extent of land in the village, including the aforesaid land, was acquired by the Government by initiating proceedings under Land Acquisition Act, 1894 (for short, 'the Act'). The notification under Section 4(1) of the Act was issued on 27.01.1984 and declaration under Section 6 of the Act came to be published on 20.09.1984. By passing the Award bearing No. 101/86-87 on 19.09.1986, possession of the land was taken by the Government. In the award proceedings, as the respondents have claimed compensation on the ground that the land was given to them on lease by Gaon Sabha, the matter was referred to the Civil Court under Sections 30 and 31 of the Act, for apportionment of the amount of compensation. In the aforesaid reference proceedings, preferred under Sections 30 and 31 of the Act, it was the claim of the respondents that as the land was not fit for cultivation, it was granted on lease to the respondents to remove the "shora" and to make the land fit for cultivation. It is their case that in view of the lease granted by the Gaon Sabha, they have spent huge amount for removal of "shora" and made the land fit for cultivation, and continued in possession by cultivating the same for more than 30 years. In the aforesaid proceedings referred under Sections 30 and 31 of the Act, the Civil Court has passed the judgment and decree on 28.09.1989, declaring that the respondents-claimants are entitled for compensation to the extent of 87% and remaining 13% is to be paid to the panchayat/Gaon Sabha.

[13] **53A. Part performance**.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:
Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Later a suit was filed seeking declaration that the judgment and decree dated 28.09.1989 was obtained by fraud as such they are entitled for recovery of Rs. 11,20,707/- with interest @ 18% p.a. In the aforesaid suit mainly it was the case of the appellants-plaintiffs that the said decree was obtained by fraud in collusion with ex-Pradhan, and created a resolution showing that the said land was leased in their favour for a period of five years from 04.04.1981. It was their specific case that since the ex-Pradhan of the Gaon Sabha was in collusion with the respondents-defendants and due to such fraud committed by them upon the court they could obtain order and decree as such the same was assailed in the suit.

The said suit was decreed by judgment and decree dated 04.01.2006 and aggrieved by the same respondents-defendants have preferred First Appeals in R.F.A. Nos. 204-8/2006 before the High Court of Delhi. The High Court, by appreciating the documentary and oral evidence on record, has come to the conclusion that appellants-plaintiffs have not pleaded necessary particulars so as to show how fraud was committed upon the court which decided the reference under Sections 30 and 31 of the Act. Further by recording a finding that Gram Panchayat wanted to give the said land on lease to make the land fit for cultivation by removing "shora" and the said proposal was signed by all the members of the Gaon Sabha and only after approval from the Dy. Director, Panchayat, it was put to auction. It was further held by the High Court that in the auction proceedings there were as many as six bidders and as the bid of the respondents was highest at Rs. 89/- per acre same was accepted. It is further held by the High Court that the proposal regarding acceptance of the bid was also approved by the Dy. Director vide letter dated 16.04.1981 and only thereafter respondents took possession of the land and paid the money through various receipts which are part of the record. Further the High Court has held that the entries made in the revenue records support the plea of the respondents that they continued in possession by cultivating the land and as, every action of the Gaon Sabha from the stage of proposal to create lease and acceptance of lease was approved by Dy. Director, there is no case made out by the appellants to show that lease was created only with the collusion of the ex-Pradhan of the Gaon Sabha. With the aforesaid findings the appeals filed by the respondents were allowed and judgment and decree of the trial court was set aside. Hence, these civil appeals, by plaintiffs.

Observations and Decision

12. In this case we are not concerned with the correctness of the judgment and decree dated 28.09.1989 passed in the proceedings under Sections 30 and 31 of the Act. In the suit filed in Suit No. 203 of 2005 a declaration is sought to the effect that the judgment and decree dated 28.09.1989 is obtained by playing fraud. In support of their case the only pleading was that there was no lease in fact and same was created by creating resolution in collusion with the ex-Pradhan of Panchayat. From the material and evidence on record we are in agreement with the view taken by the High Court. In view of the rival claims for compensation matter was referred under Sections 30 and 31 of the Act and it was held that respondents are entitled to compensation to the extent of 87% whereas Gaon Sabha was held entitled only to the extent of 13%. The said judgment has become final. Same was not questioned in any

appeal. Without filing any appeal against the judgment and decree dated 28.09.1989, a separate suit is filed mainly on the ground that the said judgment and decree is obtained by fraud. From the material placed and evidence produced, it is clear that the land in question was 'banjar' land having "shora" and Gram Panchayat wanted to give the said land on lease to make the same fit for cultivation by removing "shora". Such proposal was agreed to by all the members of Gaon Sabha and proposal as such was sent to Dy. Director, Panchayat for approval. The Dy. Director of Panchayat has approved the same by deciding that the minimum bid should be for Rs. 75/- per acre. Only after receipt of such approval from the Dy. Director, Panchayat, land was auctioned on 04.04.1981 for grant of leasehold rights. In the auction conducted there were as many as six bidders and bid of the respondent was the highest which was at Rs. 89/- per acre and was accepted. Even such acceptance of proposals was again sent to Dy. Director for approval and the Dy. Director vide letter dated 16.04.1981 approved the acceptance of the bid in favour of the respondent for a period of five years. Thereafter the respondent was put in possession and he continued in possession by paying bid amount to the Gram Panchayat. The revenue records produced also reveal that the name of the respondent was entered as possessor and cultivator. In the light of such documentary evidence it cannot be said that lease was obtained by the respondents in collusion with ex-Pradhan. It is to be noted that it was not an act of ex-Pradhan of the Gaon Sabha and from the stage of proposal same was approved by the Dy. Director, only thereafter by conducting open auction respondents were granted lease.

13. Though the learned Additional Solicitor General appearing for the appellants has relied on several judgments in support of her plea that as the judgment and decree was obtained by fraud same is a nullity and vitiated, but in a given case whether such decree was obtained by fraud or not, is a matter which is to be judged with reference to pleadings and the evidence on record. When the judgment and decree is assailed only on the ground that lease was created in collusion with the ex-Pradhan, as the same is contrary to evidence, the only plea of the respondents was rightly not accepted by the High Court. As at every stage the proceedings for grant of lease were approved by the competent authority/Dy. Director, Panchayat, as such it cannot be said respondents have obtained lease in collusion with ex-Pradhan of the Panchayat. Except such a vague plea, there were no particulars how the fraud was played. It is fairly well settled that fraud has to be pleaded and proved. More so, when a judgment and decree passed earlier by the competent court is questioned, it is necessary to plead alleged fraud by necessary particulars and same has to be proved by cogent evidence. There cannot be any inference contrary to record. As the evidence on record discloses that fraud, as pleaded, was not established, in absence of any necessary pleading giving particulars of fraud, we are of the view that no case is made out to interfere with the well reasoned judgment of the High Court. The case law in this regard submitted by the learned ASG for the appellants would not render any assistance to support their plea. Further cases referred in the case of *Associated Hotels*[7] and *C.M. Beena*[8] also will not come to the rescue of the case of the appellants in any manner. As it is clear from the evidence that the respondents were put in possession and they continued in possession by cultivating the land the said judgments would not render any assistance in support of the case of the appellants. On the other hand in the case of *Maneklal Mansukhbhai*[10] relied on by learned senior counsel for the respondents it is clearly held by this Court that **defence under Section 53A of the Transfer of Property Act, 1882 is available to a person who has agreement of lease in his favour though no lease has been executed and registered. Similar proposition is also approved in the judgment of this Court in the case of *Hamzabi*[11] wherein this Court has held that Section 53A of the**

Transfer of Property Act, 1882 protects the possession of persons who have acted on a contract of sale but in whose favour no valid sale deed is executed or registered. As it is clear that respondents were put in possession and the Panchayat has acted upon their proposal for grant of lease said case law supports the case of the respondents.

14. For the aforesaid reasons, we do not find any merit in these appeals so as to interfere with the impugned judgment. Accordingly, these civil appeals are dismissed with no order as to costs.

(Emphasis supplied)

8. *Preet Pal Singh v. State of Uttar Pradesh and Anr., (2020 SCC OnLine SC 645)*

Decided on : - 14.08.2020

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice **Indira Banerjee**

(In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.)

Facts

This appeal, filed by the father of the deceased victim, is against the order dated 21.01.2019 passed by the Allahabad High Court, Lucknow Bench, whereby the High Court granted bail to the Respondent No. 2, Sandeep Singh Hora, husband of the deceased victim, convicted by a judgment dated 23.7.2018 of the Additional District and Sessions Judge/Special Judge (EC Act), Lucknow, hereinafter referred to as the "Sessions Court", for offences under Sections 304B, 498A and 406 of the Penal Code, 1860 (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 by staying execution of the sentences of imprisonment.

Being aggrieved by the conviction and sentence, the Respondent No. 2 had filed an appeal in the High Court which was numbered Criminal Appeal No. 9514 of 2018. After filing the appeal, the Respondent No. 2 filed Criminal Misc. Application No. 129789 of 2018 inter alia praying that he be enlarged on bail, during the pendency of the aforesaid appeal. The said application had been allowed by the order dated 21.1.2019 which was under appeal in the present case.

Observations and Decision

The Hon'ble Court, without going into the merits of the appeal pending before the High Court, adjudicated the issue whether the High Court was justified in ordering the release of Respondent no. 2 under the given facts and circumstances of the case and the fact that the Sessions Court had passed the judgment of conviction after meticulous examination of the evidences wherein no infirmity could be pointed out before the High Court.

With reference to the principles related to the suspension of sentence and the provisions of the penal provisions involved in the present case, the Hon'ble Court observed as follows :-

> **26.** Section 389 provides that, pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended and, also, if he is in confinement, that he be released on bail. Of course, in view of the mandate of Section 389(3) of the CrPC, the principles are different in the case of sentence not exceeding three years and/or in the case

of bailable offences. In this case, of course, none of the offences for which the Respondent No. 2 has been convicted are bailable. Moreover the Respondent No. 2 has, inter alia, been given life imprisonment for offence under Section 304B of the IPC and imprisonment for five years for offence under Section 3 of the Dowry Prohibition Act.

27. As the discretion under Section 389(1) is to be exercised judicially, the Appellate Court is obliged to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal, as held by this Court in *Kashmira Singh* v. *State of Punjab* and *Babu Singh* v. *State of U.P.*

28. Section 304B was incorporated in the Penal Code, 1860 by the Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). The object of the amendment was to curb dowry death. Section 304B does not categorize death, it covers every kind of death that occurs otherwise than in normal circumstances. Where the other ingredients of Section 304B of the Code are satisfied, the deeming fiction of Section 304B would be attracted and the husband or the relatives shall be deemed to have caused the death of the bride.

29. The essential ingredients for attraction of Section 304B are:

(i) the death of woman must have been caused in unnatural circumstances.

(ii) the death should have occurred within 7 years of marriage

(iii) Soon before her death the woman must have been subjected to cruelty or harassment by her husband or his relatives and such cruelty or harassment must be for or in connection with the demand for dowry, and such cruelty or harassment is shown to have been meted out to the woman soon before her death.

30. As observed by this Court in *State of Punjab* v. *Iqbal Singh*, the legislative intent of incorporating Section 304B was to curb the menace of dowry death with a firm hand. In dealing with cases under Section 304B, this legislative intent has to be kept in mind. Once there is material to show that the victim was subjected to cruelty or harassment before death, there is a presumption of dowry death and the onus is on the accused in-laws to show otherwise. At the cost of repetition, it is reiterated that the death in this case took place within 8½ months of marriage. There is apparently evidence of harassment of the victim for dowry even on the day of her death, and there is also evidence of payment of a sum of Rs. 2,50,000/- to the Respondent-Accused by the victim's brother, two months before her death.

31. In *Kalyan Chadra Sarkar* v. *Rajesh Ranjan*, this Court held:—

> *"11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind."*

32. Even though detailed examination of the merits of the case may not be required by courts while considering an application for bail but, at the same time, exercise of jurisdiction

has to be based on well settled principles and in a judicious manner and not as a matter of course as held by this Court in *Chaman Lal* v. *State of U.P.*.

33. In *Mauji Ram* v. *State of Uttar Pradesh*, this Court referred to *Ajay Kumar Sharma* v. *State of U.P.*, *Lokesh Singh* v. *State of U.P.* and *Dataram Singh* v. *State of U.P.* and stated categorically that this Court had time and again emphasised the need for assigning reasons while granting bail.

34. In *Lokesh Singh* v. *State of U.P.* (supra), this Court referred to *Kalyan Chadra Sarkar* v. *Rajesh Ranjan* (supra) and set aside the impugned order of the High Court granting bail.

35. In *Ajay Kumar Sharma* (supra), a three-Judge Bench of this Court relied on *Chaman Lal* v. *State of U.P.* (supra) and set aside order of bail granted by the High Court holding, that it was well settled that even though detailed examination of the merits of the case may not be required by the courts while considering an application for bail, at the same time exercise of discretion has to be based on well settled principles and in a judicious manner and not as a matter of course.

36. There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh* v. *State of U.P.* (supra). However, in case of post conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C.

37. In *Vinod Singh Negi* v. *State of Uttar Pradesh*, this Court set aside the impugned order of suspension of sentence and grant of appeal as the order was devoid of reasons.

38. It is nobody's case that the death of the victim was accidental or natural. There is evidence of demand of dowry, which the Trial Court has considered. The death took place within 7 or 8 months and there is oral evidence of the parents of cruelty and torture immediately preceding the death. There is also evidence of payment of Rs. 2,50,000/- to the Respondent-Accused by the victim's brother. The Respondent No. 2 has not been able to demonstrate any apparent and/or obvious illegality or error in the judgment of the Sessions Court, to call for suspension of execution of the sentence.

39. In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a

Court considering application under Section 389 to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail.

40. Even though the term 'dowry' is not defined in the Penal Code, 1860, it is defined in the Dowry Prohibition Act, 1961 as any valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other party to the marriage, or by any person at or before or any time after the marriage, in connection with the marriage of the parties.

Regarding the decision of the Hon'ble High Court and the facts of the case, the Hon'ble Supreme Court held as follows :-

41. It is difficult to appreciate how the High Court could casually have suspended the execution of the sentence and granted bail to the Respondent No. 2 without recording any reasons, with the casual observation of force in the argument made on behalf of the Appellant before the High Court, that is, the Respondent No. 2 herein. In effect, at the stage of an application under Section 389 of the CrPC, the High Court found merit in the submission that the brother of the victim not having been examined, the contention of the Respondent No. 2, being the Appellant before the High Court, that the amount of Rs. 2,50,000/- was taken as a loan was not refuted, ignoring the evidence relied upon by the Sessions Court, including the oral evidence of the victim's parents.

42. From the evidence of the Prosecution witnesses, it transpires that the Appellant had spent money beyond his financial capacity, at the wedding of the victim and had even gifted an I-10 car. The hapless parents were hoping against hope that there would be an amicable settlement. Even as late as on 17.6.2010 the brother of the victim paid Rs. 2,50,000/- to the Respondent No. 2. The failure to lodge an FIR complaining of dowry and harassment before the death of the victim, is in our considered view, inconsequential. The parents and other family members of the victim obviously would not want to precipitate a complete break down of the marriage by lodging an FIR against the Respondent No. 2 and his parents, while the victim was alive.

43. For the reasons discussed above, the appeal is allowed. The impugned order of the High Court is set aside and the Respondent No. 2 is directed to surrender for being taken into custody. The bail bonds shall stand cancelled.

Based on the observations and discussions made hereinabove, the Hon'ble Court allowed the appeal and set-aside the order of the High Court.

9. *Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr., (2020 SCC OnLine SC 647)*

Decided on : - 14.08.2020

Bench :- 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice **Dinesh Maheshwari**

(Insolvency and Bankruptcy Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation. The intention of the Code is not to give a new lease of life to debts which are time-barred. The period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues. If default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned. An application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application)

Facts

The appellant Shri Babulal Vardhaji Gurjar has been the director of the respondent No. 1 company viz., Veer Gurjar Aluminium Industries Pvt. Ltd.[5] On or about 21.03.2018, the respondent No. 2 JM Financial Assets Reconstruction Company Pvt. Ltd.[6], while stating its capacity as the financial creditor, for being the assignee of the loans and advances disbursed by creditor bank to the corporate debtor, filed the said application under Section 7 of the Code before the Adjudicating Authority and sought initiation of CIRP in respect of the respondent No. 1.

After having considered the submissions on behalf of the financial creditor and the corporate debtor, the Adjudicating Authority, by its order dated 09.08.2018, admitted the application so made by the financial creditor and appointed an interim resolution professional[7]. Consequent to this order dated 09.08.2018, the corporate debtor (respondent No. 1) is now represented by the interim resolution professional.

Being aggrieved by the aforesaid order dated 09.08.2018, the appellant preferred an appeal before NCLAT and contended against maintainability of the application moved by the respondent No. 2. The appeal so filed by the appellant was summarily dismissed by the Appellate Tribunal by its order dated 17.09.2018. However, the order so passed by the Appellate Tribunal was not approved by this Court in the judgment dated 26.02.2019, passed in Civil Appeal No. 10710 of 2018, after finding that the issue relating to limitation, though raised, was not decided by the Appellate Tribunal. Hence, the matter was remanded to NCLAT for specifically dealing with the issue of limitation. After such remand, the Appellate Tribunal, by its impugned order dated 14.05.2019, has held that neither the application under Section 7 as made in this case is barred by limitation nor the claim of the respondent No. 2 is

so barred and has, therefore, again dismissed the appeal. Being aggrieved, the appellant has approached this Court over again by way of the instant appeal.

Observations and Decision

Operation of law of limitation over IBC proceedings

90. When Section 238-A of the Code is read with the above-noted consistent decisions of this Court in *Innoventive Industries, B.K. Educational Services, Swiss Ribbons, K. Sashidhar, Jignesh Shah, Vashdeo R. Bhojwani, Gaurav Hargovindbhai Dave* and *Sagar Sharma* respectively, the following basics undoubtedly come to the fore : (a) that the Code is a beneficial legislation intended to put the corporate debtor back on its feet and is not a mere money recovery legislation; (b) that CIRP is not intended to be adversarial to the corporate debtor but is aimed at protecting the interests of the corporate debtor; (c) that intention of the Code is not to give a new lease of life to debts which are time-barred; (d) that the period of limitation for an application seeking initiation of CIRP under Section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) that the trigger for initiation of CIRP by a financial creditor is default on the part of the corporate debtor, that is to say, that the right to apply under the Code accrues on the date when default occurs; (f) that default referred to in the Code is that of actual non-payment by the corporate debtor when a debt has become due and payable; and (g) that if default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under Section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application.

Whether Section 18 Limitation Act could be applied to the present case

91. While the aforesaid principles remain crystal clear with the consistent decisions of this Court, the only area of dispute, around which the contentions of learned counsel for the parties have revolved in the present case, is about applicability of Section 18 of the Limitation Act and effect of the observations occurring in paragraph 21 of the decision in *Jignesh Shah* (supra).

92. We have noticed all the relevant and material observations and enunciations in the case of *Jignesh Shah* hereinbefore. *Prima facie*, it appears that illustrative reference to Section 18 of the Limitation Act, in paragraph 21 of the decision in *Jignesh Shah*, had only been in relation to the suit or other proceedings, wherever it could apply and where the period of limitation could get extended because of acknowledgment of liability. Noticeably, in contradistinction to the proceeding of a suit, this Court observed that a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation within which the winding up proceeding is to be filed[35]. It is difficult to read the observations in the aforesaid paragraph 21 of *Jignesh Shah* to mean that the ratio of *B.K. Educational Services* has, in any manner, been altered by this Court. As noticed, in *B.K. Educational Services*, it has clearly been held that the limitation period for application under Section 7 of the Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of Limitation Act, if any case for condonation of delay is made out. The findings in paragraph 12 in *Jignesh Shah* makes it clear that the Court indeed applied the principles so stated in *B.K. Educational Services*, and held that the winding up petition filed beyond three years from the date of default was barred by time.

93. Even in the later decisions, this Court has consistently applied the declaration of law in *B.K. Educational Services* (supra). As noticed, in the case of *Vashdeo R. Bhojwani* (supra), this Court rejected the contention suggesting continuing cause of action for the purpose of application under Section 7 of the Code while holding that the limitation started ticking from the date of issuance of recovery certificate dated 24.12.2001. Again, in the case of *Gaurav Hargovindbhai Dave* (supra), where the date of default was stated in the application under Section 7 of the Code to be the date of NPA i.e., 21.07.2011, this Court held that the limitation began to run from the date of NPA and hence, the application filed under Section 7 of the Code on 03.10.2017 was barred by limitation.

94. In view of the above, we are not inclined to accept the arguments built up by the respondents with reference to one part of observations occurring in paragraph 21 of the decision in *Jignesh Shah* (supra).

95. Apart from the above and even if it be assumed that the principles relating to acknowledgement as per Section 18 of the Limitation Act are applicable for extension of time for the purpose of the application under Section 7 of the Code, in our view, neither the said provision and principles come in operation in the present case nor they enure to the benefit of respondent No. 2 for the fundamental reason that in the application made before NCLT, the respondent No. 2 specifically stated the date of default as '*8.7.2011 being the date of NPA*'. It remains indisputable that neither any other date of default has been stated in the application nor any suggestion about any acknowledgement has been made. As noticed, even in Part-V of the application, the respondent No. 2 was required to state the particulars of financial debt with documents and evidence on record. In the variety of descriptions which could have been given by the applicant in the said Part-V of the application and even in residuary Point No. 8 therein, nothing was at all stated at any place about the so called acknowledgment or any other date of default.

96. Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on behalf of the respondent No. 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in *Mahaveer Cold Storage Pvt. Ltd.* does not advance the cause of the respondent No. 2.

97. The submissions made on behalf of respondents that the rules of limitation are not meant to destroy the rights of the parties and reference to the decision in *N. Balakrishnan* (supra) are also misplaced. Application of the rules of limitation to CIRP (by virtue of Section 238-A of the Code read with the above-referred consistent decisions of this Court) does not, in any manner, deal with any of the rights of respondent No. 2; it only bars

recourse to the particular remedy of initiation of CIRP under the Code. Equally, the other submissions made on behalf of the respondents about any stringent application of the law of limitation which was introduced to the Code only after filing of the application by respondent No. 2; or about the so called prejudice likely to be caused to other banks and financial institutions are also of no substance, particularly in the light of the principles laid down and consistently followed by this Court right from the decision in *B.K. Educational Services* (supra). These contentions have only been noted to be rejected. Needless to add that when the application made by the respondent No. 2 for CIRP is barred by limitation, no proceedings undertaken therein after the order of admission could be of any effect. All such proceedings remain *non-est* and could only be annulled.

The Hon'ble Court allowed the appeal and held as follows :-

106. The discussion foregoing leads to the inescapable conclusion that the application made by the respondent No. 2 under Section 7 of the Code in the month of March 2018, seeking initiation of CIRP in respect of the corporate debtor with specific assertion of the date of default as 08.07.2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The NCLT having not examined the question of limitation; the NCLAT having decided the question of limitation on entirely irrelevant considerations; and the attempt on the part of the respondents to save the limitation with reference to the principles of acknowledgment having been found unsustainable, the impugned orders deserve to be set aside and the application filed by the respondent No. 2 deserves to be rejected as being barred by limitation.

108. In view of the above, this appeal is allowed to the extent indicated and with the observations foregoing. The impugned orders dated 14.05.2019 as passed by the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) Insolvency No. 549 of 2018 and dated 09.08.2018 as passed by the National Company Law Tribunal, Mumbai Bench in CP(IB)-488/I&BP/MB/2018 are set aside; and the application made by the respondent No. 2 under Section 7 of the Code, seeking initiation of Corporate Insolvency Resolution Process in respect of respondent No. 1 is rejected for being barred by limitation. Consequently, all the proceedings undertaken in the said application under Section 7 of the Code, including appointment of IRP, stand annulled. No costs.

10. In the matter of : Prashant Bhushan and Anr., (2020 SCC OnLine SC 646)

Decided on : - 14.08.2020

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice B.R. Gavai
3. Hon'ble Mr. Justice Krishna Murari

(Power of the Supreme Court with respect to contempt and the legal position)

Observations and Decision

18. From the perusal of various judgments of this Court, including those of the Constitution Benches, it could be seen, that the source of power of this Court for proceeding for an action of contempt is under Article 129. It has further been held, that power of this Court to initiate contempt is not in any manner limited by the provisions of the Contempt of Courts Act, 1971. It has been held, that the Court is vested with the constitutional powers to deal with the contempt and Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated. It has been held, that insofar as suo motu petitions are concerned, the Court can very well initiate the proceedings suo motu on the basis of information received by it. The only requirement is that the procedure as prescribed in the judgment of *P.N. Duda* (supra) has to be followed. In the present case, the same has undoubtedly been followed. It is also equally settled, that as far as the suo motu petitions are concerned, there is no requirement for taking consent of anybody, including the learned Attorney General because the Court is exercising its inherent powers to issue notice for contempt. It is equally well settled, that once the Court takes cognizance, the matter is purely between the Court and the contemnor. The only requirement is that, the procedure followed is required to be just and fair and in accordance with the principles of natural justice. In the present case, the notice issued to the alleged contemnors clearly mentions the tweets on the basis of which the Court is proceeding suo motu.....

20. In the case of *Brahma Prakash Sharma* (supra), the Constitution Bench observed thus:.....

21. It could thus be seen, that the Constitution Bench has held, that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts; that the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals. It has been held, that it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. The Constitution Bench further observed

.....

27. A perusal of the aforesaid paragraph would show, that this Court reiterating the law as laid down in *Brahma Prakash Sharma* (supra) held, that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and

are calculated to undermine the confidence of the people in the integrity of the Judges. It is further held, that whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately, it is equally contemptuous of the Court inasmuch as, the object of writing it and the time and place of its publication were calculated to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State.

31. It could thus be seen, that it has been clearly held by the Constitution Bench, that a scurrilous attack on a judge in respect of a judgment or past conduct has an adverse effect on the due administration of justice. The Constitution Bench has unambiguously held, that this sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary and if the confidence in the Judiciary goes, the due administration of justice definitely suffers. In the said case, after holding the contemnor O.P. Gupta guilty for contempt, this Court refused to accept the apology tendered by him finding that the apology coupled with fresh abuses can hardly be taken note of. However, taking a lenient view, this Court sentenced him to suffer simple imprisonment for two months.

32. In the case of *Baradakanta Mishra* (supra), a disgruntled judicial officer aggrieved by the adverse orders of the High Court on the administrative side made vilificatory allegations in a purported appeal to the Governor. Considering the contention of the appellant, that the allegations made against the judges pertained to the acts of the judge in administrative capacity and not acting in judicial capacity, the Constitution Bench observed thus.....

38. The Constitution Bench came to the conclusion, that a vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to 'criminal contempt'.

46. It could thus be seen, that Justice Krishna Iyer, in his inimitable style, has observed, that a wise economy of use of the contempt power by the Court is the first rule. The Court should act with seriousness and severity, where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the Court should ignore, by a majestic liberalism, trifling and venial offences. He says the dogs may bark, the caravan will pass. He further opines, that the constitutional values of free criticism, including the fourth estate and the need for a fearless curial process and its presiding functionary, the judge must be harmonised and a happy balance has to be struck between the two. He opined, that confusion between personal protection of a libeled judge and prevention of obstruction of public justice and the community's confidence in that great process is to be avoided. It must be clearly kept in mind because the former is not contempt, the latter is. He further observed, that the Fourth Estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest Court. He opined, that the judges should not be hypersensitive even where distortions and criticisms overstep the limits, but they should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

50. This court held, that the welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained. It has been held, that to punish an Advocate for Contempt of court must be regarded as an extreme measure, but to preserve the proceedings of the Courts from being deflected or interfered with, and to keep the

streams of justice pure, serene and undefiled, it becomes the duty of the Court to punish the contemnor in order to preserve its dignity.

56. It could thus be seen, that it has been held by this Court, that hostile criticism of judges as judges or judiciary would amount to scandalizing the Court. It has been held, that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed, that any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. It has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(c) of the Act defines 'criminal contempt' in wider articulation. It has been held, that a tendency to scandalise the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt.

61. It could thus be seen, that it is well settled that a citizen while exercising right under Article 19(1) is entitled to make a fair criticism of a judge, judiciary and its functioning. However, the right under Article 19(1) is subject to restriction under clause (2) of Article 19. An attempt has to be made to properly balance the right under Article 19(1) and the reasonable restriction under clause (2) of Article 19. If a citizen while exercising his right under Article 19(1) exceeds the limits and makes a statement, which tends to scandalize the judges and institution of administration of justice, such an action would come in the ambit of contempt of court. If a citizen makes a statement which tends to undermine the dignity and authority of this Court, the same would come in the ambit of 'criminal contempt'. When such a statement tends to shake the public confidence in the judicial institutions, the same would also come within the ambit of 'criminal contempt'.

62. No doubt, that when a statement is made against a judge as an individual, the contempt jurisdiction would not be available. However, when the statement is made against a judge as a judge and which has an adverse effect in the administration of justice, the Court would certainly be entitled to invoke the contempt jurisdiction. No doubt, that while exercising the right of fair criticism under Article 19(1), if a citizen bonafidely exceeds the right in the public interest, this Court would be slow in exercising the contempt jurisdiction and show magnanimity. However, when such a statement is calculated in order to malign the image of judiciary, the Court would not remain a silent spectator. When the authority of this Court is itself under attack, the Court would not be a onlooker. The word 'authority' as explained by *Wilmot, C.J.* and approved by the Constitution Bench of this Court in *Baradakanta Mishra* (supra) does not mean the coercive power of the judges, but a deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.

76. As held by this Court in earlier judgments, to which we have referred herein above, the Indian judiciary is not only one of pillars on which the Indian democracy stands but is the central pillar. The Indian Constitutional democracy stands on the bedrock of rule of law. The trust, faith and confidence of the citizens of the country in the judicial system is *sine qua non* for existence of rule of law. An attempt to shake the very foundation of constitutional democracy has to be dealt with an iron hand. The tweet has the effect of destabilising the very foundation of this important pillar of the Indian democracy. The tweet clearly tends to give an impression, that the Supreme Court, which is a highest constitutional court in the country, has in the last six years played a vital role in destruction of the Indian democracy. There is no manner of doubt, that the tweet tends to shake the public confidence in

the institution of judiciary. We do not want to go into the truthfulness or otherwise of the first part of the tweet, inasmuch as we do not want to convert this proceeding into a platform for political debate. We are only concerned with the damage that is sought to be done to the institution of administration of justice. In our considered view, the said tweet undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law.

77. Indian judiciary is considered by the citizens in the country with the highest esteem. The judiciary is considered as a last hope when a citizen fails to get justice anywhere. The Supreme Court is the epitome of the Indian judiciary. An attack on the Supreme Court does not only have the effect of tending an ordinary litigant of losing the confidence in the Supreme Court but also may tend to lose the confidence in the mind of other judges in the country in its highest court. A possibility of the other judges getting an impression that they may not stand protected from malicious attacks, when the Supreme Court has failed to protect itself from malicious insinuations, cannot be ruled out. As such, in order to protect the larger public interest, such attempts of attack on the highest judiciary of the country should be dealt with firmly. No doubt, that the Court is required to be magnanimous, when criticism is made of the judges or of the institution of administration of justice. However, such magnanimity cannot be stretched to such an extent, which may amount to weakness in dealing with a malicious, scurrilous, calculated attack on the very foundation of the institution of the judiciary and thereby damaging the very foundation of the democracy.

78. The Indian Constitution has given a special role to the constitutional courts of this country. The Supreme Court is a protector of the fundamental rights of the citizens, as also is endowed with a duty to keep the other pillars of democracy i.e. the Executive and the Legislature, within the constitutional bounds. If an attack is made to shake the confidence that the public at large has in the institution of judiciary, such an attack has to be dealt with firmly. No doubt, that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which have the tendency of damaging the confidence in our judicial system and demoralize the Judges of the highest court by making malicious attacks, those interested in maintaining high standards of fearless, impartial and unbending justice will have to stand firmly. If such an attack is not dealt with, with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations. Fearless and impartial courts of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by malicious attacks upon them. As observed by Justice Krishna Iyer in the case of *Re : S. Mulgaokar* (supra), on which judgment, Shri Dave has strongly relied on, if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

79. The summary jurisdiction of this Court is required to be exercised not to vindicate the dignity and honour of the individual judge, who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is sought to be shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. The scurrilous/malicious attacks by the alleged contemnor No. 1 are not only against one or two judges but the entire Supreme Court in its functioning of the last six years. Such an attack which tends to create disaffection and disrespect for the authority of this Court cannot be ignored. Recently, the Supreme Court in the cases of *National Lawyers Campaign for Judical Transparency and*

Reforms v. *Union of India*[15] and *Re : Vijay Kurle* (supra) has suo motu taken action against Advocates who had made scandalous allegations against the individual judge/judges. Here the alleged contemnor has attempted to scandalise the entire institution of the Supreme Court. We may gainfully refer to the observations of Justice Wilmot in *R*. v. *Almon*[16] made as early as in 1765:

> "…. And whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people."

11. Rhea Chakraborty v. State of Bihar and Ors., (2020 SCC OnLine SC 654)

Decided on : - 19.08.2020

Bench :- 1. Hon'ble Mr. Justice Hrishikesh Roy

(Only cases and appeals and not investigation can be transferred under Section 406 of the CrPC. An investigation under Section 174 of the CrPC is limited for a definite purpose and is not an investigation of a crime under Section 157 of the CrPC. a police officer cannot refrain from investigating a matter on territorial ground and the issue can be decided after conclusion of the investigation.)

Observations and Decision

Issue 1 : Whether the Supreme Court has power to transfer investigation (not case or appeal) under Section 406 of the CrPC?

15. Section 406 CrPC empowers the Supreme Court to transfer cases and appeals. The scope of exercise of this power is for securing the ends of justice. The precedents suggest that transfer plea under Section 406 CrPC were granted in cases where the Court believed that the trial may be prejudiced and fair and impartial proceedings cannot be carried on, if the trial continues. However, transfer of investigation on the other hand was negated by this Court in the case of *Ram Chander Singh Sagar* v. *State of Tamil Nadu*, (1978) 2 SCC 35. Writing the judgment Justice V R Krishna Iyer, declared that:—

> *"The Code of Criminal Procedure clothes this Court with power under Section 406 to transfer a case or appeal from one High Court or a Court subordinate to one High Court to another High Court or to a Court subordinate thereto. But, it does not clothe this Court with the power to transfer investigations from one police station to another in the country simply because the first information or a remand report is for warded to a Court. The application before us stems from a misconception about the scope of Section 406. There is as yet no case pending before any Court as has been made clear in the counter affidavit of the State of Tamil Nadu. In the light of this counter affidavit, nothing can be done except to dismiss this petition.*
>
> *"2. If the petitioners are being directed to appear in a far-off court during investigatory stage it is for them to move that court for appropriate orders so that they may not be tormented by long travel or otherwise teased by judicial process. If justice is denied there are other redresses, not under Section 406, though it is unfortunate that the petitioners have not chosen to move that court to be absolved from appearance until necessitated by the circumstances or the progress of the investigation. To come to this Court directly seeking an order of transfer is travelling along the wrong street. We are sure that if the second petitioner is ailing, as is represented, and this fact is brought to the notice of the Court which has directed her appearance, just orders will be passed in case there is veracity behind the representation. We need hardly say courts should use their processes to the purpose of advancing justice, not to harass parties. Anyway, so far as the petition for transfer is concerned. there is no merit we can see and so we dismiss it."*

16. The contrary references cited by the Petitioner where transfer of investigation was allowed, do not in any manner, refer to a determination on the question of competence to

transfer investigation under Section 406. In the cited cases, relief was granted without any discussion of the law, ignoring the long standing ratio laid down in *Ram Chander Singh Sagar* (Supra).

17. Having considered the contour of the power under section 406 CrPC, it must be concluded that only cases and appeals (not investigation) can be transferred. The ratio in *Ram Chander Singh Sagar* (Supra) in my view, is clearly applicable in the present matter.

Issue 2 : Whether the proceeding under Section 174 CrPC conducted by the Mumbai Police to inquire into the unnatural death, can be termed as an investigation?

18. The proceeding under Section 174 CrPC is limited to the inquiry carried out by the police to find out the apparent cause of unnatural death. These are not in the nature of investigation, undertaken after filing of FIR under Section 154 CrPC. In the instant case, in Mumbai, no FIR has been registered as yet. The Mumbai Police has neither considered the matter under Section 175(2) CrPC, suspecting commission of a cognizable offence nor proceeded for registration of FIR under Section 154 or referred the matter under Section 157 CrPC, to the nearest magistrate having jurisdiction.

19. On the above aspect, the ratio in *Manoj K Sharma* v. *State of Chhatisgarh*, (2016) 9 SCC 1 will bear scrutiny. This was a case of suicide by hanging and Justice M B Lokur, speaking for the Bench held as follows:—

> *"19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short.....*
>
> *20. ..... Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of "inquiries" in cases of accidental or suspicious deaths and are entirely distinct from the "investigation" under Section 157 of the Code.....*
>
> **********
>
> *22. In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence....."*

20. In the present case, the Mumbai Police has attempted to stretch the purview of Section 174 without drawing up any FIR and therefore, as it appears, no investigation pursuant to commission of a cognizable offence is being carried out by the Mumbai police. They are yet to register a FIR. Nor they have made a suitable determination, in terms of Section 175(2) CrPC. Therefore, it is pre-emptive and premature to hold that a parallel investigation is being carried out by the Mumbai Police. In case of a future possibility of cognizance being taken by two courts in different jurisdictions, the issue could be resolved under Section 186 CrPC and other applicable laws. No opinion is therefore expressed on a future contingency and the issue is left open to be decided, if needed, in accordance with law.

21. Following the above, it is declared that the inquiry conducted under Section 174 CrPC by the Mumbai police is limited for a definite purpose but is not an investigation of a crime under Section 157 of the CrPC.

Issue 3 : Whether it was within the jurisdiction of the Patna Police to register the FIR and commence investigation of the alleged incidents which took place in Mumbai? As a corollary, what is the status of the investigation by the CBI on the consent given by the Bihar government?

22. The Respondent no 2 in his Complaint alleged commission of a cognizable offence and therefore, it was incumbent for the police to register the FIR and commence the investigation. According to the Complainant, his attempt from Patna to talk to his son on telephone was thwarted by the accused persons and the possibility of saving the life of his son through father son engagement, was missed out. In consequence, the Complainant lost his only son who at the appropriate time, as the learned counsel has vividly submitted, was expected to light the funeral pyre of the father.

23. Registration of FIR is mandated when information on cognizable offence is received by the police. Precedents suggest that at the stage of investigation, it cannot be said that the concerned police station does not have territorial jurisdiction to investigate the case. On this aspect the ratio in *Lalita Kumari* v. *Govt. of UP*, (2014) 2 SCC 1 is relevant where on behalf of the Constitution Bench, Chief Justice P Sathasivam, pronounced as under:—

.....

24. The interpretation of Sections 177 and 178 of the CrPC would be relevant on the issue. In *Satvinder Kaur* v. *State (Govt of NCT of Delhi)*, (1999) 8 SCC 728 for the Division Bench, Justice M B Shah wrote as under:—

> *"12. A reading of the aforesaid sections would make it clear that Section 177 provides for "ordinary" place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime."*

25. Likewise, Justice Arijit Pasayat, in *Y Abraham Ajith* v. *Inspector of Police, Chennai*, (2004) 8 SCC 100, writing for the Division Bench pronounced as follows:—

> *"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.*
>
> *13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.*

14. It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise."

26. When allegation of Criminal Breach of Trust and Misappropriation is made, on the jurisdictional aspect, this Court in *Asit Bhattacharjee* v. *Hanuman Prasad Ojha*, (2007) 5 SCC 786, in the judgment written by Justice S B Sinha, observed as under:—

.....

27. In the later judgment of *Naresh Kavarchand Khatri* v. *State of Gujarat*, (2008) 8 SCC 300, this Court reiterated the ratio in *Satvinder Kaur* (supra) and *Asit Bhattacharjee* (Supra).

28. Once again, in *Rasiklala Dalpatram Thakkar* v. *State of Gujarat*, (2010) 1 SCC 1, while approving the earlier decisions in *Satvinder Kaur* (supra) in the judgment rendered by Justice Altamas Kabir as he was then, the Supreme Court made it very clear that a police officer cannot refrain from investigating a matter on territorial ground and the issue can be decided after conclusion of the investigation. It was thus held:—

"27. In our view, both the trial court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 CrPC to hold that it was not within the jurisdiction of the investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction."

29. Moreover, the allegation relating to criminal breach of trust and misappropriation of money which were to be eventually accounted for in Patna (where the Complainant resides), could prima facie indicate the lawful jurisdiction of the Patna police. This aspect was dealt succinctly by Justice J S Khehar, as a member of the Division Bench in *Lee Kun Hee, President, Samsung Corporation, South Korea* v. *State of Uttar Pradesh*, (2012) 3 SCC 132 and it was held as under:—

.....

30. Having regard to the law enunciated by this Court as noted above, it must be held that the Patna police committed no illegality in registering the Complaint. Looking at the nature of the allegations in the Complaint which also relate to misappropriation and breach of trust, the exercise of jurisdiction by the Bihar Police appears to be in order. At the stage of investigation, they were not required to transfer the FIR to Mumbai police. For the same reason, the Bihar government was competent to give consent for entrustment of investigation to the CBI and as such the ongoing investigation by the CBI is held to be lawful.

Investigation entrustment to CBI by Constitutional Courts

32. While the CBI cannot conduct any investigation without the consent of the concerned state as mandated under section 6, the powers of the Constitutional Courts are not fettered by the statutory restriction of the DSPE Act. For this proposition, one can usefully refer to *State of West Bengal* v. *Sampat Lal*, (1985) 1 SCC 317 where Justice Ranganath Mishra in his judgment for the 3 judges Bench, held that:—

"13. .....It is certainly not for this Court at the present stage to examine and come to a conclusion as to whether this was a case of suicide or murder. If as a result of investigation, evidence is gathered and a trial takes place the Sessions Judge will decide that controversy and it may be that in due course such controversy may be canvassed before this Court in some form or the other. It would, therefore, be wholly inappropriate at this stage to enter into such a question.....In our considered opinion, Section 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position....."

33. Similarly, the Constitution Bench in the judgment authored by Justice D K Jain in *State of W B* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 pronounced as follows:—

"68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure."

12. Mohd. Anwar v. State (NCT of Delhi), (2020 SCC OnLine SC 653)

Decided on : - 19.08.2020

Bench :- 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice S. Abdul Nazeer
3. Hon'ble Mr. Justice **Surya Kant**

(Pleas of unsoundness of mind under Section 84 of IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.)

Facts

The case of the prosecution is that the victim-complainant, Tabban Khan (PW-1), was riding his motorcycle on the main road near Shahdara around 11 : 30PM on 17.05.2001, when he stopped to ease himself near a fishpond. Suddenly, three boys (including the appellant) caught hold of him and started assaulting him. They were armed with a knife and revolver. Upon extortion, the complainant handed over a bundle of five-hundred-rupees notes totalling around thirty thousand (Rs 30,000) to the boys, who then contemplated murdering him by stabbing, so that he would not report the matter to the police. Hearing commotion of passers-by, the three boys left the complainant and ran towards a warehouse. The complainant then returned to his home and reported the matter to the jurisdictional police the following evening. This complaint was subsequently converted into an FIR on 20.05.2001 at 7 : 45PM.

A police party, on 20.05.2001 at about 8 : 30PM, during routine checking of buses near GT Road, noticed three boys surreptitiously deboarding a bus through the rear door. On suspicion, Constable Vinod Kumar (PW-4) and Constable Prakash Chand (PW-7) chased and apprehended them, and recovered a prohibited *buttondar* knife from the appellant and his co-accused. They also confessed to having robbed the present complainant. All three were arrested and produced before the Metropolitan Magistrate for a Test Identification Parade ("TIP") the following day, which they refused to undergo.

The prosecution examined twelve witnesses during trial which included the victim-complainant (PW-1), the Metropolitan Magistrate who sought to conduct the TIP proceedings (PW-10) and a total of ten policemen. Sketches of the knife, arrest memos, site plans, and recovered money and weapons were admitted in evidence. The appellant and his co-accused plainly denied the allegations and claimed that the case was planted by the police upon their failure to pay a bribe of rupees twenty-five thousand. They, however, led no evidence in defence.

The trial Court held all three accused guilty of robbery with attempt to cause grievous hurt and sentenced them to seven years rigorous imprisonment under Section 397/34 of IPC, five years rigorous imprisonment under Section 392/34 of IPC, two years rigorous imprisonment

under Section 25 of the Arms Act and fine of rupees five thousand (or imprisonment of six months in lieu thereof).

The appellant approached the High Court which dismissed the charge under Section 397 of IPC, and instead convicted him under Section 394 with a reduced sentence of only two years rigorous imprisonment. Another co-accused, Mohd Aslam, was acquitted on charges of robbery as the version of the complainant qua him was found doubtful. The High Court noted that although as per the FIR three 'unidentified' persons had robbed the victim but PW-1 admitted during his cross-examination that he previously knew Mohd Aslam who was a friend of his children.

Learned counsel for the appellant raised new arguments of juvenility and insanity before the High Court. It was claimed that Mohd Anwar was merely 15 years at the time of occurence and was undergoing treatment for a mental disorder at a government hospital. This was supported through a copy of an OPD card and the testimony of the appellant's mother who stated that he sometimes had to be kept chained at home to prevent harm to himself and others. The High Court took notice of the appellant's age being 21 years at the time of recording of his Section 313 Cr.P.C. statement in March 2004 and concluded that the appellant would therefore have been an able-minded major at the time of incident in May, 2001.

Observations and Decision

The Hon'ble Court dismissed the appeal given the inability of the appellant to establish juvenility or insanity, raise any doubt regarding guilt; and considering the detailed reasons accorded by the High Court, the reliable testimony of twelve witnesses as well as the leniency shown in sentencing. The Hon'ble Court observed as follows :-

> **12.** At the outset, it must be highlighted that appellate Courts ought not to routinely re-appreciate the evidence in a criminal case. This is not only for reasons of procedure, expediency, or finality; but because the trial Court is best placed to holistically appreciate the demeanour of a witness and other evidence on record. Given the concurrent finding of the Courts below on key aspects of the robbery, we do not find it a fit case for such re-appraisal of evidence.
>
> **13.** Further, the testimonies of the witnesses are indeed impeccable and corroborative of each other. The crime of robbery with hurt has been established by the testimony of PW-1 and the other evidence on record. The complainant (PW-1) had no motive to falsely implicate the appellate and/or to allow the real culprits to go scot-free. The refusal to participate in the TIP proceedings and the lack of any reasons on the spot, undoubtedly establish the appellant's guilty conscience and ought to be given substantial weight.[1] The three-day delay in registration of FIR, as projected by the appellant, is devoid of factual basis. The original record shows that the complaint was, in fact, registered within a few hours of the incident on 18.05.2001. It was because of preliminary police enquiry that another two days passed between reporting and subsequent lodging of FIR on 20.05.2001.
>
> **14.** Pleas of unsoundness of mind under Section 84 of IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only

prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.

15. As noted by the High Court, no evidence in the form of a birth certificate, school record or medical test was brought forth; nor any expert examination has been sought by the appellant. Instead, the statement recorded under Section 313 CrPC shows that the appellant was above 18 years around the time of the incident, which is a far departure from the claimed age of 15 years.

16. The plea of mental disorder too remains unsubstantiated. No deposition was made by any witness, nor did the appellant himself claim any such impairment during his Section 313 CrPC statement. On the contrary, his conduct of running away from the spot of the crime on 17.05.2001 as well as the attempt to escape from the bus on 20.05.2001 evidence an elevated level of mental intellect. The answers recorded in response to the questions put forth by the Additional Sessions Judge at the Sec 313 CrPC stage are also not mechanical or laconic. For example, the appellant explains his refusal to participate in the TIP proceedings by alleging that his face had already been shown by the police to the complainant.

17. Mere production of photocopy of an OPD card and statement of mother on affidavit have little, if any, evidentiary value. In order to successfully claim defence of mental unsoundness under Section 84 of IPC, the accused must show by preponderance of probabilities that he/she suffered from a serious-enough mental disease or infirmity which would affect the individual's ability to distinguish right from wrong. Further, it must be established that the accused was afflicted by such disability particularly at the time of the crime and that but for such impairment, the crime would not have been committed. The reasons given by the High Court for disbelieving these defences are thus well reasoned and unimpeachable.

18. Regardless thereto and given the ingrained principles of our criminal law jurisprudence which mandates that substantive justice triumph limitations of procedure, this Court on 22.07.2020 tried to enquire into the mental health of the appellant, by requesting the learned Additional Solicitor General to get the appellant mentally examined. However, notwithstanding such efforts, the appellant who had been granted bail by this Court earlier, is untraceable. The government counsel submits that the appellant is not residing at his claimed address since the past eight years, and even the appellant's own counsel fairly admitted to not having received any instructions from his client since the past ten years. We are thus left with no option but to hold that the plea of mental illness is nothing but a made-up story, and is far from genuine.

13. Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties and Ors., (2020 SCC OnLine SC 655)

Decided on : - 19.08.2020

Bench :- 1. Hon'ble Mr. Justice **R.F. Nariman**
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(The proceeding under section 31 is with reference to specific persons and not with reference to all who may be concerned with the property underlying the instrument, or "all the world". Clearly, the cancellation of the instrument under section 31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgment delivered under section 31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence.)

Facts

By an agreement dated 22.07.2004 between the Appellant, Deccan Paper Mills Co. Ltd. [hereinafter referred to as "**Deccan**"] and the Respondent No. 2 company, M/s Ashray Premises Pvt. Ltd. [hereinafter referred to as "**Ashray**"], Deccan, being the owner of approximately 80,200 sq. meters of land bearing Survey Nos. 96B, 96C, and 96D at village Mundhwa, District Pune, decided to develop a portion of the said land, i.e., 32,659 sq. meters. This agreement did not contain any arbitration clause. Pursuant to clause 7(m), on 20.05.2006, an agreement was entered into between Respondent No. 2 - Ashray, and Respondent No. 1 - Regency Mahavir Properties, a partnership firm [hereinafter referred to as "**Regency**"], by which Ashray assigned the execution of the agreement dated 22.07.2004 to Regency. The aforesaid agreement contained an arbitration clause.

A deed of confirmation dated 13.07.2006 followed, by which it was stated that this deed was to be treated as part of the 20.05.2006 agreement, in which the assignment by Ashray to Regency was reaffirmed. According to Deccan, a fraud had been played by one Mr. Atul Chordia, Respondent No. 3 herein (Defendant No. 3 in the suit filed by Deccan), which is pleaded in Special Civil Suit No. 1400 of 2010, which was filed on 13.07.2010. Almost immediately thereafter, by an application dated 19.07.2010 under section 8 of the Arbitration and Concilliation Act, 1996 [hereinafter referred to as the "**1996 Act**"] on behalf of Regency, the arbitration clause in the agreement dated 20.05.2006 was set out and the Civil Judge (Senior Division), Pune was asked to refer the parties to arbitration. By a judgment dated 19.07.2011, the Additional Judge, Small Causes Court, Pune, after hearing both sides, allowed and the disputes have to be referred for arbitration.

A writ petition filed by Deccan in the Bombay High Court was then disposed of by the impugned judgment dated 18.03.2015, in which it was held, following the judgment of the

Single Judge in *Swiss Timing Ltd.* v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677 [hereinafter referred to as "*Swiss Timing*"] that the decision in *N. Radhakrishnan* v. *Maestro Engineers*, **(2010) 1 SCC 72** [hereinafter referred to as "*N. Radhakrishnan*"] being *per incuriam*, it would not be possible to follow the same, as a result of which the "fraud exception" was rejected. It was then held that there is no conflict between the Division Bench judgment in *Avitel Post Studioz Limited* v. *HSBC PI Holding (Mauritius) Ltd.*, **Appeal No. 196 of 2014 in Arbitration Petition No. 1062 of 2012** (which is the judgment under appeal in Civil Appeal Nos. 5145 and 5158 of 2016) and another judgment in *Satish Sood* v. *Gujarat Tele Links Pvt. Ltd.*, **(2014) 1 AIR Bom R 27** [hereinafter referred to as "*Satish Sood*"]. The Court felt that it would not be possible to follow the decision of the Division Bench in the case of *Satish Sood* (supra) as it was rendered prior to the judgment of the learned Single Judge of the Supreme Court in *Swiss Timing* (supra). This being so, the writ petition was then dismissed, with the result that the parties stood referred to arbitration.

Observations and Decision

The Hon'ble Court after making a detailed discussion on the provisions of the Specific Relief Act and the applicability thereon of the provisions of the Arbitration and Conciliation Act, dismissed the appeal and held as follows :-

> **14.** A perusal of section 26(1) of the Specific Relief Act, 1963 would show that when, through fraud or mutual mistake of parties, a contract or other instrument in writing does not express the real intent of the parties, then either party or his representative in interest may either institute a suit to have the instrument rectified or as defendant, may, in addition to any defence open to him, ask for rectification of the instrument. Importantly, under section 26(3), a party may pray in a rectification suit for specific performance - and if the Court thinks fit, may after rectifying the contract, grant specific performance of the contract. Thus, what is made clear by this section is that the rectification of a contract can be the subject matter of a suit for specific performance, which, as we have already seen, can be the subject matter of an arbitral proceeding.
>
> **15.** Under section 27(1) of the Specific Relief Act, 1963, "any party interested" in a contract may sue to have it rescinded and such rescission may be adjudged by the Court in the cases mentioned in clauses (a) and (b) of sub-section (1). Sub-section (2) of section 27 refers to four exceptions to this rule. In *Shravan Goba Mahajan* v. *Kashiram Devji*, ILR (1927) 51 Bom 133, a Division Bench of the Bombay High Court, with regard to section 35 of the Specific Relief Act, 1877 (which is the *pari materia* provision to section 27 of the 1963 Act) held that an heir is a person interested in the contract which is sought to be set aside, thus, making it clear that the expression "any person interested" would include not just a party to the contract, but persons who may be heirs of one of the parties to the contract. A reading of this section would also show that all such actions in which a contract or instrument may be rectified or rescinded, no judgment *in rem* follows, as what is sought to be rectified or rescinded is by the parties to the contract or persons who may be their heirs or legal representatives. Third parties to the contract are not persons who can be said to be "any person interested", particularly when section 27(2)(c), which refers to third parties, is seen and contrasted with the expression "any person interested" in section 27(1) - under section 27(2)(c), third parties come in as an

exception to the rule only when they have acquired rights in good faith, without notice and for value, during the subsistence of the contract between the parties to that contract.

16. Sections 29 and 30 are also important, in that a plaintiff instituting a suit for specific performance may pray in the alternative that if the contract cannot be specifically enforced, it may be rescinded and be delivered up to be cancelled. In addition, on adjudging the rescission of the contract, the Court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require. These two sections would also show that following rescission of a contract, it has to be delivered up to the plaintiff to be cancelled - and all of this can be done in a suit for specific performance. Thus far, therefore, it is clear that an action for rescission of a contract and delivering up of that contract to be cancelled is an action *in personam* which can be the subject matter of a suit for specific performance, making such rescission and delivering up the contract to be cancelled, the subject matter of arbitration.

17. When it comes to section 31(1), the important expression used by the legislature is "any person against whom a written instrument is void or voidable…". An instructive judgment of the Full Bench of the Madras High Court reported as *Muppudathi Pillai* v. *Krishnaswami Pillai*, AIR 1960 Mad 1 involved the determination of the scope of section 41 of the Specific Relief Act, 1877 (section 33(1) of the 1963 Act is the *pari materia* provision). This judgment, after referring to section 41, then referred to section 39 of the Specific Relief Act, 1877 (which is the *pari materia* provision to section 31 of the 1963 Act). The Court then went on to notice the distinction between section 35 (which is the *pari materia* provision to section 27 of the 1963 Act) and section 39 of the Specific Relief Act, 1877 as follows:

"**11.** … It may be noticed that the above section applies not merely to the case of an instrument which is voidable but also one that is void. S. 35 provides for the case of rescission of voidable contracts. It is evident that S. 39 covers not only a case contemplated under S. 35, but also a wider field, that is, a case of a void document, which under the law need not be set aside."

18. In an extremely important paragraph, the Full Bench then set out the principle behind section 39(1) of the Specific Relief Act, 1877 as follows:

> "**12.** The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under S. 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions."
>
> (emphasis added)

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20. The Court then concluded:

> "**18.** In our opinion, Sec. 39 will not apply to a case like the present where the sale was executed by a person claiming title adverse to that of Vinayagam Pillai, and therefore, the court would have no jurisdiction under S. 41 to direct payment of compensation by the plaintiff to the appellant before obtaining relief as to possession. To hold otherwise would mean that a mere volunteer who paid the debt of the plaintiff would be able to recover the same."

21. A reading of the aforesaid judgment of the Full Bench would make the position in law crystal clear. The expression "any person" does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. Importantly, relief under section 39 of the Specific Relief Act, 1877 would be granted only in respect of an instrument likely to affect the title of the plaintiff, and not of an instrument executed by a stranger to that title. The expression "any person" in this section has been held by this Court to include a person seeking derivative title from his seller (see *Mohd. Noorul Hoda* v. *Bibi Raifunnisa* (1996) 7 SCC 767, at p. 771). The principle behind the section is to protect a party or a person having a derivative title to property from such party from a prospective misuse of an instrument against him. A reading of section 31(1) then shows that when a written instrument is adjudged void or voidable, the Court may then order it to be delivered up to the plaintiff and cancelled - in exactly the same way as a suit for rescission of a contract under section 29. Thus far, it is clear that the action under section 31(1) is strictly an action inter parties or by persons who obtained derivative title from the parties, and is thus *in personam*.

22. Let us see whether section 31(2) makes any difference to this position in law. According to the judgment in *Aliens Developers* (supra), the moment a registered instrument is cancelled, the effect being to remove it from a public register, the adjudicatory effect of the Court would make it a judgment *in rem*. Further, only a competent court is empowered to send the cancellation decree to the officer concerned, to effect such cancellation and "note on the copy of the instrument contained in his books the fact of its cancellation". Both reasons are incorrect. An action that is started under section 31(1) cannot be said to be *in personam* when an unregistered instrument is cancelled and *in rem* when a registered instrument is cancelled. The suit that is filed for cancellation cannot be *in personam* only for unregistered instruments by virtue of the fact that the decree for cancellation does not involve its being sent to the registration office - a ministerial action which is subsequent to the decree being passed. In fact, in *Gopal Das* v. *Sri Thakurji*, AIR 1943 PC 83, a certified copy of a registered instrument, being a receipt dated 29.03.1881 signed by the owner, was held not to be a public record of a private document under section 74(2) of the Indian Evidence Act, 1872 for the reason that the original has to be returned to the party under section 61(2) of the Registration Act, 1908 (*see* p. 87). This judgment has been followed in *Rekha* v. *Ratnashree*, (2006) 1 MP LJ 103 by a Division Bench of the Madhya Pradesh High Court, in which it was held:

.....

23. Thus, the factum of registration of what is otherwise a private document inter parties does not clothe the document with any higher legal status by virtue of its registration.

24. Also, it must be remembered that the Delhi High Court's reasoning in *Sulochana Uppal* (supra) that it is the Court alone that can, under the Specific Relief Act, enforce specific performance of an agreement, is *contra* to the reasoning in *Olympus* (supra) which overruled it, stating that "the dispute or difference which parties to an arbitration agreement agree to refer must consist of justiciable issues triable civilly". Since specific performance is a justiciable issue triable civilly, obviously, the expression "court" occurring throughout the

Specific Relief Act will have to be substituted by "arbitrator" or "arbitral tribunal". This part of the reasoning in *Aliens Developers* (supra), in following the same reasoning as an overruled Delhi High Court judgment, would fly in the face of *Olympus* (supra) and would, therefore, not be good law. We, therefore, overrule the same.

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26. In *R. Viswanathan* v. *Rukn-ul-Mulk Syed Abdul Wajid*, (1963) 3 SCR 22, this Court set out the Roman law concept of *jus in rem* as follows:

.....

28. Judged by these authorities, it is clear that the proceeding under section 31 is with reference to specific persons and not with reference to all who may be concerned with the property underlying the instrument, or "all the world". Clearly, the cancellation of the instrument under section 31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgment delivered under section 31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence.

29. A reading of sections 32 and 33 of the Specific Relief Act, 1963 would also show that the reasoning of the High Court in *Aliens Developers* (supra) is flawed. Where, for example, under section 32, an instrument is cancelled in part, the instrument which is otherwise only an instrument inter parties, cannot be said to be an instrument which remains inter parties, the cancelled portion being a cancellation to the world at large, i.e., *in rem*. Equally, under section 33, when compensation is required to be paid or restoration of benefit which has been received from the other party is required to be made, it is exactly the same as that which is required to be done under a contract which is rescinded and cancelled (*see* section 30) : and it is clear that both sections 30 and 33 would apply only to contracts or instruments which are rescinded/cancelled *in personam*.

30. When sections 34 and 35 are seen, the position becomes even clearer. Unlike section 31, under section 34, any person entitled to any legal character may institute a suit for a declaration that he is so entitled. Considering that it is possible to argue on a reading of this provision that the legal character so declared may be against the entire world, section 35 follows, making it clear that such declaration is binding only on the parties to the suit and persons claiming through them, respectively. This is for the reason that under section 4 of the Specific Relief Act, specific relief is granted only for the purpose of enforcing individual civil rights. The principle contained in section 4 permeates the entire Act, and it would be most incongruous to say that every other provision of the Specific Relief Act refers to *in personam* actions, section 31 alone being out of step, i.e., referring to *in rem* actions.

31. As a matter of fact, this Court in *Razia Begum* v. *Sahebzadi Anwar Begum*, **1959 SCR 1111** clarified that the predecessor to section 35 of the 1963 Act, namely, section 43 of the Specific Relief Act, 1877, made it clear that both sections 42 and 43 of the Specific Relief Act, 1877 go together and refer only to an action that is *in personam*. This was felicitously stated by this Court as follows:

.....

33. The reasoning in the aforesaid judgment would again expose the incongruous result of section 31 of the Specific Relief Act being held to be an *in rem* provision. When it comes to

cancellation of a deed by an executant to the document, such person can approach the Court under section 31, but when it comes to cancellation of a deed by a non-executant, the non-executant must approach the Court under section 34 of the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action *in personam* since a suit has to be filed under section 34. However, cancellation of the same deed by an executant of the deed, being under section 31, would somehow convert the suit into a suit being *in rem*. All these anomalies only highlight the impossibility of holding that an action instituted under section 31 of the Specific Relief Act, 1963 is an action *in rem*.

14. V.N. Krishna Murthy and Anr. v. Ravikumar and Ors., (2020 SCC OnLine SC 664)

Decided on : - 21.08.2020

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice **Krishna Murari**
3. Hon'ble Ms. Justice S. Ravindra Bhat

(Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court.)

Facts

Disputes relates to land comprised in Survey No. 105/3 measuring 37 guntas, Survey No. 105/9 measuring 34 guntas and Survey No. 105/4B measuring 20 guntas, situate at Village Jakkur, Bengaluru, North Taluk. Respondent Nos. 5 and 6 herein who were recorded owner of the land in dispute executed a registered agreement of sale of the land in dispute in favour of Respondent, Karnataka State Khadi and Village Industries Worker's House Building Co-operative Society Ltd. Besides executing registered agreement to sale dated 31.10.1989 and 05.08.1992 side by side they also executed a General Power of Attorney in favour of office bearers of the respondent society authorizing them to enter into sale transaction of the suit property on their behalf. It is to be taken note of that General Power of Attorney was executed giving absolute rights to the Attorney to do all such acts which are necessary for sale of the property. On the strength of General Power of Attorney, sale deeds in respect of land in dispute was executed by the Attorneys in favour of appellants on various dates.

Respondents-Plaintiffs filed four Original Suits being O.S. Nos. 1529 of 2014, 1532 of 2014, 1534 of 2014 and 7758 of 2016 seeking the following reliefs:—

a) To declare that the registered agreement to sell dated 05.08.1992, as barred by limitation in view of time being the essence of contract, and beyond the period of limitation, be declared as null and void, illegal unenforceable and inoperative and not binding on the plaintiffs.

b) To declare and cancel the registered further agreement for sell dated 31.10.1989 executed by Defendant Nos. 1 and 2 in favour of defendant society which is registered as document bearing no. 1194/92-93, in book no. I, stored in vol no. 27 at pages 86-88 in the office of the Sub Registrar Yelahanka Bangalore as well as unregistered agreement to sell dated 23.05.1988 as barred by time, alternatively in case of default by the 3rd defendant, this Hon'ble Court be pleased to execute cancellation agreement to sell through court commissioner.

c) The 3rd defendant be directed to execute a registered cancellation deed before the jurisdictional Sub Registrar.

d) To award and issue a judgment and decree of permanent injunction restraining the Defendant/s, their agents or anybody acting on their behalf from interfering with the possession suit schedule property.

e) Injunction restraining the defendants their agents, servants, officials, assigns or anyone acting or claiming on their behalf from demolishing or in any way entering upon or in any way interfering property.

f) The defendants be directed to pay the cost of the proceedings.

g) And further the Hon'ble Court be pleased to award pass such other just and equitable relief/s as this Hon'ble Court deems fit in the circumstances of the suit and award costs in the interest of justice and equity.

Suits were filed on the allegations that suit property is ancestral property and the plaintiffs were co-owner and thus defendant had no right to execute the agreement of sale ignoring the interest of the plaintiff. It was also pleaded that since the agreement of sale did not culminate into a sale transaction, the same are barred by law of limitation and are thus unenforceable. It may be relevant to mention at this stage that the sale deeds executed in favour of appellants by the attorneys of the recorded land holder were not questioned in the suit and were neither subject matter of dispute therein nor any relief was claimed in their respect.

The Trial Court vide its judgment dated 27.07.2016, decreed the suit by passing the following decree:—

"It is ordered and decreed that the suit of the plaintiffs is decreed.

It is further ordered and decreed that the registered agreement of sale dated 30.10.1989 and 05.08.1992 is barred by limitation and not binding on the plaintiffs.

It is further ordered and decreed that the defendant-society or anybody on their behalf permanently restrained from interfering with the plaintiff's peacefully possession and enjoyment of the suit schedule property.

It is further ordered and decreed that the parties are directed to bear their own costs."

During the pendency of the suit proceedings, the appellants made an application under Order 1 Rule 10(2) CPC for impleadment which was dismissed by the Trial Court. The order was challenged by filing a Writ Petition before the High Court which came to be dismissed as infructuous as the suit itself came to be decided, in the meantime.

Aggrieved by the judgment and decree of the Trial Court, the appellants preferred R.F.A. Nos. 1434 of 2017, 1435 of 2017, 1436 of 2017 and 1775 of 2017. The appeals were duly accompanied by an application seeking leave to appeal against the judgment and decree.

High Court vide a common judgment and order impugned in these appeals while declining to grant leave to file an appeal rejected the application on the ground *that the applicants/appellants do have an independent right which they appear to have derived on the basis of the sale deeds executed by the owners of the land. It may be a fact that the sale deeds were executed by the Power of Attorney holders of the owner, but in reality those sale deeds were executed by the owners of the land and, therefore, it can be said that the nature of declaratory relief granted by the Trial Court in the suit does not affect the interest of the applicants/appellants.*

Arguments

Learned Counsel for the appellants argued before the Supreme Court that the interest of the appellants is directly involved in the subject matter of the suit. They have become absolute owners of the sites in question on the basis of sale deeds. The judgment of the Trial Court holding the sale agreements time barred and granting a decree of permanent injunction actually affects their interests as they are in possession of the suit property.

On the other hand, learned counsel for the respondents vehemently contended that the claim of the appellants herein is based on the sale deeds executed on the strength of the General Power of Attorney executed by the recorded owners of the suit property. There is neither any reference of the sale deeds in the suit nor the sale deeds refer to any agreement to sell. Therefore, the relief claimed, if any, by the appellants based on sale deeds in their favour is entirely different, and there is no locus to challenge the decree passed by the Trial Court and their application for leave to appeal has rightly been dismissed.

Decision and Observations

The Hon'ble Court dismissed the appeal and held as follows :-

15. In the backdrop of above facts, the question which arises for our consideration is as to whether the appellants held the locus to question the judgment and decree passed by the Trial Court and whether the High Court was justified in rejecting their leave to appeal.

16. Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls with the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in *Smt. Jatan Kumar Golcha* v. *Golcha Properties Private Ltd.*[1]:—

> *"It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment."*

17. This Court in *State of Punjab* v. *Amar Singh*[2] while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus:—

"Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co., [[1894] 2 Ch. 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."

18. In *Baldev Singh* v. *Surinder Mohan Sharma*[3]., this Court held that an appeal under Section 96 of the Civil Procedure Code, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:—

"A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

19. In *A. Subash Babu* v. *State of A.P.*[4], this Court held as under:—

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."

20. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized (vide *Shanti Kumar R. Canji* v. *Home Insurance Co. of New York*[5] and *State of Rajasthan* v. *Union of India*[6]).

21. In *Srimathi K. Ponnalagu Ammani* v. *The State Of Madras represented by the Secretary to the Revenue Department, Madras*[7], this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:—

"Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

22. Applying the above tests, we are of the considered opinion that appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the Trial Court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of General Power of Attorney, and had nothing to do with the agreement to sell which was subject matter of suit. The judgment and decree of the Trial Court is in no sense a judgment in rem and it is binding only as between the plaintiffs and defendants of the suit, and not upon the appellants.

23. Though it has been vehemently contended before us and also pleaded before the High Court that the judgment and decree of the Trial Court affects the appellants adversely. The appellants have failed to place any material or demonstrate as to how the judgment and decree passed by the Trial Court adversely or prejudicially affects them. Mere saying that the appellants are

prejudicially affected by the decree is not sufficient. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out. Facts of the case clearly demonstrate that suit which has been decreed is confined only to a declaration sought in respect of an agreement to sell. Injunction was also sought only against the defendant-society or its officers or assigns. There is not even a whisper in the entire plaint or in suit proceedings about the sale deed executed in favour of the appellants by the General Power of Attorney holders or even for that matter in the judgment and decree of the Trial Court.

24. The appellants have thus failed to demonstrate that they are prejudicially or adversely affected by the decree in question or any of their legal rights stands jeopardized so as to bring them within the ambit of the expression 'person aggrieved' entitling them to maintain appeal against the decree.

15. Vikrant Singh Malik and Ors. v. Supertech Limited and Ors., (2020 SCC OnLine SC 702)

Decided on : - 24.08.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y.Chandrachud**
2. Hon'ble Mr. Justice K.M. Joseph

(Section 12(1)(c) of the Consumer Protection Act applies to a situation where there are numerous consumers "having the same interest". In that case, a complaint may be filed by one or more consumers with the permission of the District Forum "on behalf of, or for the benefit of, all consumers so interested". The test under Section 12(1)(c) is of the sameness of the interest. The complaint is filed in a representative capacity, on behalf of or for the benefit of all the consumers who are interested.)

Facts

This appeal arises from a judgment and order of the National Consumer Disputes Redressal Commission dated 19 February 2016. Declining permission to the complainants to file a composite complaint under the provisions of Section 12(1)(c) of the Consumer Protection Act, 1986, the NCDRC dismissed the consumer complaint[3] which was filed before it by twenty-six flat buyers, on the ground that:

> *"13. …there is nothing common between the aforesaid complainants, so no permission can be granted to the above complainants to file one complaint in view of Section 12(1)(c) of the Act."*

However, the complainants were granted the liberty to institute individual complaints before the appropriate forum.

The complaint before the NCDRC was instituted by twenty-six flat buyers, who had booked flats in a residential project (named 'Oxford Square') of the first respondent at Sector GH-06, 16B, Greater Noida, Uttar Pradesh (also known as "Noida Extension"). **4.** An application[4] under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act was filed on behalf of the complainants to enable them to pursue the complaint jointly.

The NCDRC came to the conclusion that the application was not maintainable under Section 12(1)(c) of the Act on the grounds that:

(i) The agreements under which flats were booked by each of the complainants were separate;
(ii) The agreements were executed between the first respondent and the complainants on different dates, between August 2010 to January 2014;
(iii) The flats booked by the complainants were of different sizes;
(iv) The total cost of each flat was different;
(v) The offers of possession to the complainants by the first respondent were made on different dates, between January 2015 to April 2015; and
(vi) Each of the complainants claimed a different amount in compensation, ranging between Rs. 7.31 lakhs and Rs. 26.70 lakhs.

Noting these differences, the NCDRC held that there was nothing common between the complainants in terms of the date of the agreement, cost and size of the flats, and the compensation claimed. It was on this basis that the consumer complaint was held not to be maintainable. While dismissing the complaint, liberty was granted to each of the complainants to file individual complaints before the consumer forum having jurisdiction to entertain the complaint. The judgment of the NCDRC has given rise to the present appeal.

Observations and Decision

The Hon'ble Court held as follows :-

> **17.** We must note, at the outset, that the NCDRC, while rejecting the complaint, has found that the provisions of Section 12(1)(c) were not attracted on the grounds that there were separate agreements with the flat buyers, each agreement was entered into on a different date, the flat sizes and costs were different and the amount of compensation claimed by each buyer was different. In forming this view, the NCDRC did not have the benefit of the adjudication rendered subsequently by the Full Bench in *Ambrish Kumar Shukla* (supra). The decision of the Full Bench has been cited with approval in the decision of a two-judge Bench of this Court in *Anjum Hussain* (supra). At this stage, the basic issue which falls for consideration in the present appeal is whether the application that was filed on behalf of the appellants fulfils the requirements of Section 12(1)(c). .....
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> **18.** Under clause (a) of Section 12(1), a complaint can be filed by "a consumer" to whom goods are sold or agreed to be sold or delivered or a service is provided or agreed to be provided. Under clause (b), any recognised consumer association can institute a complaint. Under clause (d), the Central or the State Government can also institute complaints in their individual capacity or as representatives of the consumers in general. However, under clause (c), a complaint can only be filed with the permission of the District Forum by one or more consumers on behalf of or for the benefit of all consumers so interested, where there are numerous consumers having the same interest. Hence, the requirements for a complaint under Section 12(1)(c) are that : (i) it can be filed by one or more consumers; (ii) it is filed for or on behalf of numerous consumers who have the same interest; and (iii) it requires the permission of the District Forum.
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> *********
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> **20.** Clause (iv) of Section 2(1)(b) contemplates that the expression 'complainant' means *inter alia*, one or more consumers, where there are numerous consumers having the same interest.
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> **21.** Under Section 13(6) of the Act, the provisions of Order I Rule 8 of the Code of Civil Procedure, 1908 are made applicable where a complainant is a consumer referred to in Section 2(1)(b)(iv). Section 13(6) provides as follows:
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> > "(6) Where the complainant is a consumer referred to in sub-clause (*iv*) of clause (*b*) of sub-section (1) of Section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon."
>
> **22.** Order I Rule 8 of the CPC deals with a situation where there are numerous persons having the same interest in one suit. Order I Rule 8(1) provides as follows:

"8. One person may sue or defend on behalf of all in same interest.—

(1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested."

23. Under sub-rule (3) of Order I Rule 8, any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit. Further, sub-rule (6) of Order 1 Rule 8 stipulates that a decree passed in a suit under the Rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted or defended, as the case may be. The Explanation to the provision (which was introduced by the Amending Act of 1976) reads as follows:

"*Explanation*.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

24. In *Rameshwar Prasad Shrivastava* v. *Dwarkadhis Projects Private Limited*, a two judge Bench of this Court described the relationship between Section 2(1)(b)(iv), Section 12(1)(c) and Section 13(6) of the Act in the following terms:

"14. The language used and the text in Section 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in Section 2(1)(b)(iv), the provisions of Order 1 Rule 8 CPC *shall apply* with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum. The expression "with the permission of the District Forum" as appearing in Section 12(1)(c) must be read along with Section 13(6) which provides the context and effect to said expression. In our view Sections 12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery."

25. Therefore, a complaint under Section 12(1)(c) can be filed only with the permission of the District Forum. The procedural requirements under Order I Rule 8 of the CPC are attracted as a consequence of the provisions of Section 13(6) of the Act.

26. Section 12(1)(c) of the Act applies to a situation where there are numerous consumers "having the same interest". In that case, a complaint may be filed by one or more consumers with the permission of the District Forum "on behalf of, or for the benefit of, all consumers so interested". The test under Section 12(1)(c) is of the sameness of the interest. The complaint is filed in a representative capacity, on behalf of or for the benefit of all the consumers who are interested. Similarly, under Section 2(1)(b)(iv), in defining the expression "complainant", the statute incorporates the identical test of the sameness of interest, where there are numerous consumers. In such a situation, the expression "complainant" has been defined, *inter alia*, to include one or more consumers, each of whom has the same interest where there are numerous consumers involved in the dispute.

27. The Full Bench of the NCDRC dealt with the provisions of Section 12(1)(c) in its decision in *Ambrish Kumar Shukla* (supra). Adverting to the judgment of this Court in *T N Housing Board* v. *T N Ganapathy*, the Full Bench held:

> "11. ...The primary object behind permitting a class action such as a complaint under Section 12(1)(*c*) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse to each of them filing an individual complaint, it is necessary that such a complaint is filed on behalf of or for the benefit of all the persons having such a community of interest. A complaint on behalf of only some of them therefore will not be maintainable. If for instance, 100 flat buyers/plot buyers in a project have a common grievance against the Builder/Developer and a complaint under Section 12(1)(*c*) of the Consumer Protection Act is filed on behalf of or for the benefit of say 10 of them, the primary purpose behind permitting a class action will not be achieved, since the remaining 90 aggrieved persons will be compelled either to file individual complaints or to file complaints on behalf of or for the benefit of the different group of purchasers in the same project. This, in our view, could not have been the Legislative intent. The term 'persons so interested' and 'persons having the same interest' used in Section 12(1)(*c*) mean, the persons having a common grievance against the same service provider. The use of the words "all consumers so interested" and "on behalf of or for the benefit of all consumers so interested", in Section 12(1)(*c*) leaves no doubt that such a complaint must necessarily be filed on behalf of or for the benefit of all the persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider."

28. This judgment of the Full Bench of the NCDRC was cited by the two-judge Bench of this Court in *Anjum Hussain* (supra). This Court also cited its earlier decision in *T N Housing Board* (supra), noting that the provisions of Order I Rule 8 have to be interpreted in a manner which would subserve the object of the enactment. This Court held that:

> "14. ...it is in this light that the Full Bench of the National Commission held that oneness of the interest is akin to a common grievance against the same person."

Applying the aforesaid principles of law to the facts of the present case, the Hon'ble Court disposed of the case in following terms :-

35. For the above reasons, we hold and conclude that:

(i) The application filed by the appellants, styled as one under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act, was not maintainable;

(ii) The above application was liable to be rejected and would stand rejected;

(iii) The order of the NCDRC rejecting the consumer complaint shall be set aside and the consumer complaint shall stand restored before the NCDRC; and

(iv) All objections in regard to the maintainability of the complaint are kept open to be addressed before and decided by the NCDRC.

16. Raj Pal Singh v. CIT, Haryana, Rohtak, (2020 SCC OnLine SC 670)

Decided on : - 25.08.2020

Bench :- 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Hemant Gupta
3. Hon'ble Mr. Justice **Dinesh Maheshwari**

(In the matters relating to compulsory acquisition of land under the Act of 1894, completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government. However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before. To be more specific, in such cases, capital gains shall be deemed to have accrued : (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9(1), in the case of urgency acquisition under Section 17.)

Facts

The ITAT made a reference to the Hon'ble High Court of Punjab and Haryana under Section 256(1) of the Income Tax Act concerning the following issue :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in Law in holding that the capital gains are not assessable in the year under consideration as the transaction did take place on the date of notification i.e. 15.05.1968 and not on the date of award on 29.09.1970?"

After taking into consideration the rival submissions, the facts of this case and the scheme of the Act of 1894, particularly Sections 16 and 17 thereof, the High Court answered the reference in favour of the revenue while holding that the Collector had not taken possession of the land under Section 17 of the Act of 1894 and that the said provision was not invoked by the State Government. The High Court further held that for the purpose of assessment of capital gains, the date of award (i.e., 29.09.1970) was required to be taken as the date of taking over possession because, on that date, the land in question vested in the Government under Section 16 of the Act of 1894.

The High Court further examined the ambit and scope of Section 45 of the Act of 1961 and on its conjoint reading with Section 16 of the Act of 1894, came to the conclusion that the transfer of capital asset (the land in question) and its vesting in the Government took place on 29.09.1970, the date of award. The High Court further held that under the Income-tax Act, 1961, an income was chargeable to tax only when it had accrued or was deemed to have accrued in the year of assessment; and in the present case, if any income on account of capital gains was chargeable to tax, it would be chargeable on the date when the Collector determined the compensation because, the income accrued to the appellant only upon such determination. The High Court, therefore, held that the capital gains arising out of acquisition of land were chargeable to tax in the previous year relevant to assessment year

under consideration because the date of award i.e., 29.09.1970 fell within the relevant previous year.

Accordingly, the High Court disapproved the ITAT's order dated 29.06.1990 and answered the reference in favour of the revenue while holding, *inter alia*, as under:—

> "13…..It is clear from Section 45(1) of the Income Tax Act that the capital gains are chargeable to income-tax arising from the transfer of capital assets effected in the previous year in which the transfer took place. On a conjoint reading of Section 16 of the Land Acquisition Act and Section 45(1) of the Act, it is clear that the transfer of the capital asset (land of the assessee) has to be taken as 29.09.1970 i.e. the date of award on which date the land vested in State.
>
> 14. **Under the Income Tax Act, an income is chargeable to tax only when it accrues or is deemed to accrue or arise in the year of assessment**. The deeming provision can have no relevance unless the income is receivable and if it is receivable, then the determination of the question whether it is actually received or is deemed to have been receive depends upon the method of accounting. **If the actual amount of compensation has not been fixed by the Land Acquisition Collector, no income could be said to have accrued to the appellant. It cannot be contended that the mere claim by the assessee after taking of possession by the Govt. at a particular rate is the compensation. It is the amount actually awarded by the Collector accrues on the date on which the award is passed. Income tax is not levied on a mere right to receive compensation**. There must be something tangible, something in the nature of debt, something in the nature of an obligation to pay an ascertained amount. Till such time no income can be said to have accrued. On the date when the Collector awarded the compensation, it is only that amount which had accrued. This amount of compensation was determined only on passing of the award date 29.09.70. Therefore, if any income on account of capital gain is chargeable to tax, it will be chargeable on the date of award. It is held accordingly that the capital gain arising out of acquisition of land is chargeable to tax in the previous year relevant to assessment year under consideration because the date of award i.e. 29.09.70 is within the relevant previous year."

(emphasis in bold supplied)

Being aggrieved by the judgment and order dated 23.4.2008 so passed by the High Court, holding that the capital gains arising out of the acquisition in question were chargeable to tax in the assessment year 1971-1972, the assessee-appellant has preferred this appeal by special leave.

Observations and Decision

The Hon'ble Supreme Court framed the following points for determination in the present case :-

> **48.** We have heard learned counsel for the parties at length and have scanned through the material on record. Having regard to the submissions made and the contents of judgment/orders under consideration, the following principal points arise for determination in this appeal:—
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> 1. As to whether, on the facts and in the circumstances of the present case, transfer of the capital asset (land in question), resulting in capital gains for the purposes of Section 45 of the Act of 1961, was complete on 15.05.1968, the date of notification for acquisition under Section 4 of the Act of 1894; and hence, capital gains arising out of such acquisition and interest accrued could not have been charged to tax with reference to the date of award i.e., 29.09.1970?
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> 2. As to whether the fact situation of the present case is similar to that of the other case of the appellant in relation to the assessment year 1975-1976 where the same issue relating to the date of accrual of capital gains was decided by the ITAT in favour of the appellant with reference to the date of taking possession by the Government; and having not challenged the same, it is not open for the revenue to question the similar decision of ITAT in the present case pertaining to the assessment year 1971-1972?

The Hon'ble Court after a detailed discussion on the statutory provision in the Income Tax Act, with respect to the issues in the case, dismissed the appeal and held as follows:-

> **91.** For what has been discussed hereinabove, in our view, in the matters relating to compulsory acquisition of land under the Act of 1894, completion of transfer with vesting of land in the Government essentially correlates with taking over of possession of the land under acquisition by the Government. However, where possession is taken over before arriving of the relevant stage for such taking over, capital gains shall be deemed to have accrued upon arrival of the relevant stage and not before. To be more specific, in such cases, capital gains shall be deemed to have accrued : (a) upon making of the award, in the case of ordinary acquisition referable to Section 16; and (b) after expiration of fifteen days from the publication of the notice mentioned in Section 9(1), in the case of urgency acquisition under Section 17.
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> **108.** For what has been discussed hereinabove, the answer to Point No. 1 is clearly in the negative i.e., against the assessee-appellant and in favour of the revenue that on the facts and in the circumstances of the present case, transfer of the capital asset (land in question), for the purposes of Section 45 of the Act of 1961, was complete only on 29.09.1970, the date of award and not on 15.05.1968, the date of notification for acquisition under Section 4 of the Act of 1894; and hence, capital gains arising out of such acquisition have rightly been charged to tax with reference to the date of award i.e., 29.09.1970.

Point No. 2

111. Learned counsel for the appellant has strenuously argued that the revenue is not entitled to take a different stand in the present case pertaining to the assessment year 1971-1972, after having accepted the said decision pertaining to the assessment year 1975-1976 where it was held that capital gains accrued on the date of taking over possession of the land under acquisition by the Government. The learned counsel has relied upon the following observations in *Berger Paints India Ltd.* (supra):—

> "In view of the judgments of this court in *Union of India* v. *Kaumudini Narayan Dalal*, (2001) 249 ITR 219; *CIT* v. *Narendra Doshi*, (2002) 254 ITR 606 and *CIT* v. *Shivsagar Estate*, (2002) 257 ITR 59, the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause."

112. The question is whether the above-noted observations apply to the present case? In our view, the answer to this question is clearly in the negative for more than one reason.

113. In the first place, it is *ex facie* evident that the matter involved in the said case pertaining to the assessment year 1975-1976 was taken to be an acquisition under the urgency provision contained in Section 17 of the Act of 1894 whereas, the acquisition proceedings in the present case had not been of urgency acquisition but had been of ordinary process where possession could have been taken only under Section 16 after making of the award. As noticed, the very structure of the ordinary process leading to possession under Section 16 of the Act of 1894 has been different than that of the urgency process under Section 17; and the said decision pertaining to the proceedings under Section 17 of the Act of 1894 cannot be directly applied to the present case.

114. Secondly, the fact that the said case relating to the assessment year 1975-1976 was not akin to the present case was indicated by the ITAT itself. As noticed, both the cases, i.e., the present one relating to the assessment year 1971-1972 (in ITA No. 634/Chandi/84) and that relating to the assessment year 1975-1976 (in ITA No. 635/Chandi/84) were decided by ITAT on the same date i.e., 19.12.1985. While the answer in relation to the assessment year 1975-1976 was given by the ITAT in favour of assessee-appellant to the effect that possession having been taken on the specified date i.e., 04.09.1972, capital gains were not assessable for the assessment year 1975-1976 but, while deciding the appeal relating to the present case for the assessment year 1971-1972, the ITAT found that the date of taking over possession was not available and hence, the matter was restored to the file of the ITO to find out the actual date of possession.[17]

115. Thirdly, even if we assume that the stand of revenue in the present case is not in conformity with the decision of ITAT in relation to the assessment year 1975-1976, it cannot be said that revenue has no just cause to take such a stand. As noticed, while rendering the decision in relation to the assessment year 1975-1976, the ITAT did not notice the principles available in various decisions including that of this Court in *Avinash Sharma* (supra) that even in the case of urgency acquisition under Section 17 of the Act of 1894, land was to vest in Government not on the date of taking over possession but, only on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1). Looking to the facts of the present case and the law applicable, in our view, the revenue had every reason to question the correctness of the

later decision of ITAT dated 29.06.1990 in the second round of proceedings pertaining to the assessment year 1971-1972.

116. Fourthly, the ITAT itself on being satisfied about the question of law involved in this case, made a reference by its order dated 15.07.1991 to the High Court. The High Court having dealt with the matter in the reference proceedings and having answered the reference in conformity with the applicable principles, the assessee cannot be heard to question the stand of the revenue with reference to the other order for the assessment year 1975-1976. In any case, it cannot be said that the decision in relation to the assessment year 1975-1976 had been of any such nature which would preclude the revenue from raising the issues which are germane to the present case.

117. Hence, the answer to Point No. 2 is also clearly in the negative i.e., against the assessee-appellant and in favour of the revenue that the fact situation of the present case relating to the assessment year 1971-1972 is not similar to that of the other case of the appellant relating to the assessment year 1975-1976 and the revenue is not precluded from taking the stand that the transfer of capital asset in the present case was complete only on the date of award i.e., on 29.09.1970.

17. State of M.P. and Ors. v. Rakesh Sethi and Anr., (2020 SCC OnLine SC 673)

Decided on : - 26.08.2020

Bench :- 1. Hon'ble Mr. Justice L.Nageswara Rao
2. Hon'ble Mr. Justice **S. Ravindra Bhat**

(The assignment of "distinctive marks" i.e. registration numbers to motor vehicles (which includes the power to reserve and allocate them, for a specific fee) is a distinct service for which states or their authorities (such as the registering authorities, in this case) are entitled to charge a prescribed fee as per the provisions and scheme of the Motor Vehicles Act.)

Facts

This appeal challenges a judgment of the Madhya Pradesh High Court which quashed Rule 55A of the Motor Vehicles Rules, 1994 (hereafter "the State Rules") framed by the Madhya Pradesh State (hereafter "the state") and published by it. The respondent (hereafter "the vehicle owner") had approached the High Court, contending that the said rule was *ultra vires* the state's power under the Motor Vehicles Act, 1988 (hereafter "the Act"), and the Central Motor Vehicle Rules, 1989 (hereafter "the Central Rules"). The High Court accepted his contentions.

The vehicle owner purchased the motorcycle in May, 2004 and applied for its registration on 25-05-2004 before the concerned registering authority, through the prescribed application in Form No. 20. By an order (of 27-05-2004), the registering authority rejected the application, stating that the vehicle owner's claim for allotment of registration number 'MP-KL-4646' could not be accepted, as the petitioner had not paid the required fee prescribed for allotment of that number. The motorcycle was allotted another number (MP20-KL-5100) which the petitioner did not want. He therefore, approached the High Court in writ proceedings, contending that allotment of a particular number on payment of a fee (provided in Rule 55A) was contrary to and inconsistent with the provisions of Section 41 and the powers conferred on the State Government to frame rules under Section 65 of the Act of 1988. He challenged the amendment incorporated in the State Rules of 1994 by a notification dated 15.02.2001. He also sought a direction to the registration authority that he should be assigned the number 4646 for his motorcycle. Under Rule 55A, this number was reserved by the State to be assigned by a separate procedure. The Rules, particularly Rule 55A prescribed not only the procedure but also a special fee for assigning such reserved numbers (which included 4646, which the vehicle owner insisted should be allotted to him). He contended that Rule 55A, was *ultra vires* the provisions of the Act.

Observations and Decision

After a discussion on the provisions of the Motor Vehicles Act and the scheme thereof, the Hon'ble Court allowed the appeal, set-aside the impugned order and held as follows :-

30. This Court is of the opinion that the High Court, in its impugned judgement, lost sight of the true import of Section 211. The existence of specific provisions empowering the State (such as Sections 41(13), 47(7), 49(4) and 50(5)), means that the power of the State to claim or charge amounts is specifically recognized by express provisions. Further, there are certain services and functions for which the State is empowered to levy fees. It is precisely to cover these contingencies, i.e. where the service is rendered or some function performed, that the State is empowered by a residual provision (much like the Central Government with which it shares the power concurrently) to levy fees. In this respect, it would be useful to note that Section 211 is cast in wide terms and that any rule which the Central Government or the State Government is empowered to make under this Act may, *notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service*. Clearly, therefore, the Parliament intended that contingencies not covered by a specific power to levy fees or amounts, which entailed some activity on the part of the State, including rendering of any service could be legitimately charged or subjected to the levy of fee or amounts.

31. The assignment of numbers by the registering authority, as seen earlier, through an official/agency or department notified by the State Government, cannot be seen as a mere step - albeit at the fag-end of the registration allotment process. In fact, though it is the culmination of the allotment process, it is nevertheless an important step. The state, in the opinion of this Court, is entitled to indicate its choice or manner of assigning by prescribing a particular set of procedures for the assignment of numbers. Thus, for instance, the assignment of the concerned "code" - to the individual registering authorities followed by the assignment of numerics may follow a predetermined pattern which may be district wise, state government department wise (in the case of publicly owned vehicles), different sequences for buses and heavy vehicles and so on. If such a predetermined choice can be made by prescribing the mode of assignment, it is both regulatory and at the same time indicative of State policy. *Per se*, the Court cannot brush aside the element of service which may be involved - especially if the general public or a sub-section of it, wishes to choose particular numbers for various considerations. Such "fancy" numbers or "auspicious" numbers may well therefore have to be set apart having regard to the peculiar socio-cultural needs of the people of the state. It is in such an event that the availability of such numbers and their reservation as a choice and the power of their assignment assumes importance. In the impugned Rule 55A[14] in the present instance, introduced in 2001 through amendment by the State of M.P., prescribes four different fees - Rs. 15000/- for the registration marks 1 to 9 in any series prevalent within the jurisdiction of the registering authority; and Rs. 12000/- for reservation of marks from 10 to 100 in any series within the jurisdiction of the registering authority. For reservation of large series of numbers indicated in Rule 55A(c), Rs. 10000/- and Rs. 2000/- for reservation of any other number or numbers within 1000 from the last number assigned in the serial order.

32. In addition to charging such fees, the registering authority is enjoined by Rule 55A(2) to follow the principle of first-come-first-serve in reserving particular numbers; and to allot the registration mark reserved upon production of the vehicle along with the application in Form-20 (of the Central Rules), provided the vehicle is compliant with the provisions of the Act and Rules. By Rule 55A(d), the reservation of the mark would be cancelled if the vehicle is not produced for allotment within three months from the date of allotment. Obviously, this is

meant to avoid abuse of the reservation process by trafficking in numbers, by providing finite time within which such numbers can be used.

33. Quite like in the case of fees for assignment of particular numbers, certain other services too are contemplated under the Act. Section 56(1)[15] directs that no transport vehicle would be deemed to be validly registered unless it carries a certificate of fitness. Such fitness certificate is to be issued by authorized testing stations [by Section 56(2)]. Section 43 enables the owner of a motor vehicle to apply to any registering authority or other authority which may be prescribed by the State Government to have the vehicle temporarily registered. This provision contains a *non-obstante* clause. Various provisions of the Act deal with orders of higher authorities and appellate authorities. Implicit with this is the power to issue copies of such decisions. Further, in cases where individuals or parties interested seek to duplicate or acquire extra copies of such orders, a separate category of service is provided. Likewise, wherever duplicates of documents such as Registration Certificates etc. are issued, necessarily, a service is performed. Rule 62 of the M.P. Rules of 1994 provided for fees to be charged in respect of various such services (temporary registration or extension thereof in different classes of vehicles); copies of miscellaneous applications, duplicate certificate of fitness for different classes of vehicles and so on. An overall reading of the M.P. Rules and the Act therefore clearly establishes that besides the express authorization to levy fees or collect amounts, both the Central Government and the State Government are empowered - in fact duty bound to extend certain services in the performance of such duties. Both these bodies, i.e. the Central and State Governments would therefore, be acting within their authority to charge or levy fees.

34. If there are any further doubts on this issue, the generality of the power under Section 65(1) to frame rules, in the opinion of this Court is sufficient along with Section 211, to conclude that the State Government has the authority to prescribe a fee for reserving certain numbers or distinguishing marks to be assigned as registration numbers. It has not been shown how the setting apart of or reservation of some numbers - here, a fraction of the large potential batch of numbers which the registering authority can otherwise assign to vehicles, is *per se* arbitrary or unreasonable. Neither were any such arguments urged before this Court.

41. This court notices that the impugned judgment proceeded on the assumption that the state was not *competent* to make the legislation. The use of that expression, at best can be characterized as misconceived. In the present case, the state of M.P. derived its powers to frame the concerned rules, through the provisions of the Motor Vehicles Act itself. The question, therefore, of *repugnance* as properly understood, did not arise; rather it was a case whether the state government, as one of the delegated authorities, was empowered through Parliamentary law to frame the rule that it did. At best, the issue that arose was whether the offending rule (Rule 55A) was *ultra vires* the Act or the Central Rules. In the opinion of this court, the impugned rule was within the ambit of the powers delegated to the state, and directly related to performance of its functions under Section 41(6), for which it could legitimately claim a fee, as was done through Rule 55A.

18. V.Sukumaran v. State of Kerala and Anr., (2020 SCC OnLine SC 671)

Decided on : - 26.08.2020

Bench :- 1. Hon'ble Mr. Justice **S.K. Kaul**
2. Hon'ble Mr. Justice Ajay Rastogi
3. Hon'ble Mr. Justice Aniruddha Bose

(Pension is succour for post-retirement period. It is not a bounty payable at will, but a social welfare measure as a post-retirement entitlement to maintain the dignity of the employee. The pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities.)

Facts

The controversy emanates from the appellant having worked in these different capacities with two different departments from time to time, albeit continuously. The appellant joined respondent No. 2, Department of Fisheries of the State Government of Kerala as a Casual Labour Roll (for short 'CLR') worker on 7.7.1976 in a then pilot project on Pearl Culture, at Vizhinjam, Thiruvananthapuram. He worked upto 29.11.1983 rendering 7 years, 4 months and 23 days of service as a CLR worker whereupon the District Officer, Kerala Public Service Commission (for short 'KPSC') advised him to join the Revenue Department, Kannur District as Lower Division Clerk (for short 'LDC') on his participation in a direct recruitment process. He accordingly reported for duty on 30.11.1983. On having rendered a few years of service, the appellant sought an inter-departmental transfer from the Revenue Department back to the Fisheries Department and returned to Thiruvananthapuram and joined on 18.9.1987 on probation of two years with the service being subsequently regularised on 18.9.1989. The appellant earned his promotion as Upper Division Clerk (Higher Grade) (for short 'UDC') from which post he retired on attaining the age of superannuation on 31.12.2008. The total service rendered by the appellant was about 25 years, but excluding the service as CLR.

In order to ameliorate the financial remuneration for CLR and Seasonal Labour Roll (for short 'SLR') posts, the State Government passed a slew of Government Orders (for short 'G.O.') from time to time and that is what gave hope and cause of action to the appellant as he sought the benefits under the same.

Some CLR workers were aggrieved by their non-regularisation of service, despite a G.O. dated 4.11.1989, which had provided for their absorption as SLR workers if they had rendered 240 days a year of service in the Fisheries Department prior to 16.9.1985. On these persons approaching the High Court, the State Government was asked to address the issue and on such examination G.O. dated 20.8.1993 was issued creating 29 SLR posts in the

Fisheries Department for absorption of the existing CLR workers. A G.O. was also issued on 31.3.2001 subsequently noting that these 29 SLR posts were created for such of the CLR workers who had completed 500 days of work before 1.4.1987, and simultaneously 27 employees in the Fisheries Department, who had worked for the past 20 years and had also completed 8 years as SLR workers were ordered to be permanently absorbed with consequent pensionary and provident fund benefits. Subsequently, the service and wage conditions of the SLR workers of the Fisheries Department were brought at par with those in the Agriculture and Animal Husbandry Department with effect from 31.3.2001 in pursuance of the G.O. dated 13.7.2006. It was, however, also stipulated that no new appointments would be made in the Fisheries Department in the CLR/SLR/HR categories.

Another significant development was the issuance of G.O. dated 21.8.2006 to the effect that the Pension (Gratuity) Rules of the SLR Workers/Permanent Labourers of Fisheries Department (hereinafter referred to as the 'Pension Rules') were framed to grant pension to these workers and bringing them at par with those working in the Agriculture and Animal Husbandry Department. The Pension Rules were brought with retrospective effect from 31.3.2001. These Pension Rules were to apply to all those SLR workers/Permanent Labourers of Departmental Hatcheries/Farms in the Fisheries Department, who were still in service as well as who had not completed 60 years of age as on that date. Significantly, Rule 4(f)(iii) of the Pension Rules, *inter alia*, defined that 200 days or more work in a calendar year during the period of service spent as casual labourer in the departmental farms prior to permanency would be treated as one year qualifying for pension. The legal significance was that service rendered as a casual labourer of a certain number of days was equated with one year of permanent service for purposes of pension qualification.

The Cause of the Appellant:

In view of the aforesaid developments, the appellant made a representation dated 27.11.2006 to the Assistant Director of the Fisheries Department for passing orders to treat his period of CLR service of more than 7 years as qualifying service for pension. In effect what the appellant claimed was that he should be treated at par with the other CLR service workers having worked in the Department for the requisite period of time. A plea of parity was, thus, raised.

The appellant, in this representation also made a request to be provided with service details of other such workers, and obtained requisite information which showed that the appellant's name featured at the 2nd place out of 6 persons in order of starting of the casual service on the aforementioned pilot project. Thus, he was very senior. This representation received favourable consideration by respondent No. 2, Department of Fisheries with a recommendation being made by the Director. In the meantime, another G.O. dated 19.1.2007 was also issued clarifying that the casual service period of farm labourers would be counted for calculating qualifying service for pension and requiring all pension claims to be settled accordingly with prospective effect. However, the State Government/respondent No. 1

finally did not accept the recommendation of the Fisheries Department and rejected the representation of the appellant vide letter dated 16.5.2007 as according to the State Government the benefit could not be extended to the appellant since he was appointed by the KPSC and had not been absorbed in the Fisheries Department from the CLR service. If one may say, the other CLR employees who went through the process of regularisation, thus, gained the benefit which was sought to be denied to the appellant who came through a regular employment process through the KPSC.

The aforesaid, thus, gave rise to the cause for the appellant to file writ petition, being WP(C) No. 22931/2007, against the respondents pertaining to the quantum of pensionary benefits he was to receive at the time of retirement with the prayer that his service as a CLR worker from 7.7.1976 to 29.11.1983 be counted as 8 years of[1] qualifying service for pension.

The learned Single Judge dismissed the writ petition by the order dated 16.1.2009 primarily on the ground that the appointment of the appellant to the Revenue Department was in pursuance of his selection by the KPSC and, thus, he could not compare himself with the CLR workers, who had obtained regularisation as SLR workers and were governed by various G.O.s. The appellant had not been absorbed in the Fisheries Department from the category of CLR workers. There was no G.O. or provision under the relevant rules for counting the period of service as CLR worker of persons like the appellant who secured appointment through the KPSC as an LDC. No declaration had been made under Rule 11 of the Service Rules in Part III and in the absence of such declaration the appellant could not take the benefit of the G.O.s.

Against the order of the High Court, the present appeal has been filed.

Observations and Decision

The Hon'ble Court allowed the appeal and held as follows :-

> **17.** We have given our thoughtful consideration to the controversy before us, albeit in a limited contour. Leave was granted in this matter on 23.4.2010 but the matter has seen its fate of hearing only after a decade despite hearing being expedited when leave was granted!
>
> **18.** We are unable to accept the rationale and reasoning of the learned Single Judge and the Division Bench of the High Court in the given facts and circumstances of the case.
>
> **19.** We begin by, once again, emphasising that the pensionary provisions must be given a liberal construction as a social welfare measure. This does not imply that something can be given contrary to rules, but the very basis for grant of such pension must be kept in mind, i.e., to facilitate a retired Government employee to live with dignity in his winter of life and, thus, such benefit should not be unreasonably denied to an employee, more so on technicalities.

20. While looking into the facts and circumstances of the case, there is no dispute about the time period spent by the appellant as a CLR worker and his being at serial No. 2 for grant of pensionary benefits in the list of details of CLR workers had he continued as one. The appellant was able to advance his career by going through a process of direct recruitment by the KPSC successfully. It is not a case of some unreasonable or improper benefit being extended to the appellant but that he competed against others and was successfully recruited.

21. It is also not in dispute that he was transferred to the Fisheries Department albeit at his own request and demitted office from there after earning promotion. To say that the appellant would be denied the benefit of the period spent as CLR worker for his pensionary benefit would be to treat his case as inferior one to the case of other CLR workers, who never went through a system of recruitment for regularisation but were regularised in the Fisheries Department to provide better working conditions and monetary benefits to the employees. Can it really be said that a regularly recruited person like the appellant should not get the benefit which the other people who were CLR workers would get, having spent more than 7 years in that capacity? The answer, in our view, is in the negative, as it would amount to whittling away long years of service as a CLR worker of 1678 days (7 years 4 months and 23 days).

22. Had the respondents not issued the G.O.s, no doubt the appellant would have no claim. The claim of the appellant arises from the G.O.s, which are beneficial efforts for the CLR workers to improve the conditions of working along with monetary benefits. The appellant did work for the aforesaid long period of time as a CLR worker and should, thus, be entitled to the same on parity vis-à-vis other CLR workers. The appellant was at serial No. 2 in the aforementioned list and would have been so absorbed when 29 posts were created. In fact, only 27 posts out of these were filled in. It is thus not even a case where no post existed or that it would affect anybody else, or that the Government would be compelled to create a post for the appellant. In fact, in terms of the G.O. dated 21.8.2006 an equalisation has been given of 200 days of work as a CLR worker to one year's regular service for the purposes of pension. While one would commend such effort by the State Government, it would be very unreasonable to deny this to the appellant in view of the aforesaid facts.

23. What also weighs with us is that the appellant is being deprived of the maximum pensionable service which would be permissible to him if his period of CLR service is recognised as qualifying service and there is no reason to deny the same to him when other CLR workers have got this benefit at the time of their absorption and subsequent regularisation as SLR workers and who would have, by virtue of joining at a later point of time, rendered less service. We also feel that Rule 13 of the Service Rules would possibly come to the aid of the rationale we seek to adopt as on absorption in the establishment, such

persons are given the benefit of counting 50 per cent of their earlier work service prior to absorption for the purposes of pension.

24. We are, thus, of the view that for all the aforesaid reasons, the appellant is entitled to succeed in the present appeal and the impugned orders are liable to be set aside. We also find that the rejection of the recommendation of the Fisheries Department, respondent No. 2, by respondent No. 1 was consequently improper and unsustainable. The benefit of the service rendered as a CLR worker would, thus, be liable to be counted for determining the pensionary benefits of the appellant at par with other CLR workers and the pension be accordingly calculated. The arrears of pension be remitted to the appellant within a maximum period of eight (8) weeks from today with admissible interest as applicable to outstanding pension amounts.

19. Narasamma and Ors. v. A. Krishnappa (Dead) Through Lrs., (2020 SCC OnLine SC 672)

Decided on : - 26.08.2020

Bench :- 1. Hon'ble Mr. Justice **S.K. Kaul**
2. Hon'ble Mr. Justice Ajay Rastogi
3. Hon'ble Mr. Justice Aniruddha Bose

(A plea of title and of adverse possession cannot be taken simultaneously)

Issue

Whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas?

Observations and Decision

32. In *Karnataka Board of Wakf* case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "....the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced...."

33. The aforesaid judgment in turn relied upon the judgment in *Mohan Lal (Deceased) Thr. LRs.*, which observed in para 4 as under:

> "4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription *nec vi, nec clam, nec precario*. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

34. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.

35. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

36. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out.

37. We may also note another judicial pronouncement in *Ram Nagina Rai* v. *Deo Kumar Rai (Deceased) by LRs* dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it

has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time.

38. The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date.

20. State of Punjab and Ors. v. Davinder Singh and Ors., (2020 SCC OnLine SC 677)

Decided on : - 27.08.2020

Bench :- 1. Hon'ble Mr. Justice **Arun Mishra**
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice M.R. Shah
5. Hon'ble Mr. Justice Aniruddha Bose

(Issue referred to larger Bench - whether sub-classification for providing benefit to all castes can be said to be tinkering with the list under Articles 341, 342 and 342A, in view of the decisions in *Indra Sawhney*, permitting sub-classifications of backward classes and in *Jarnail Singh*, in which, it was opined that 'creamy layer concept' for exclusion of benefit can be applied to the Scheduled Castes and Scheduled Tribes and it does not in any manner tinker with the Presidential list under Article 341 or 342 of the Constitution.)

Observations and Decision

50. The question arises whether sub-classification for providing benefit to all castes can be said to be tinkering with the list under Articles 341, 342 and 342A, in view of the decisions in *Indra Sawhney*, permitting sub-classifications of backward classes and in *Jarnail Singh*, in which, it was opined that 'creamy layer concept' for exclusion of benefit can be applied to the Scheduled Castes and Scheduled Tribes and it does not in any manner tinker with the Presidential list under Article 341 or 342 of the Constitution. The caste or group or sub-group continued exactly as before in the list. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. The million dollar question is how to trickle down the benefit to the bottom rung; reports indicate that benefit is being usurped by those castes (class) who have come up and adequately represented. It is clear that caste, occupation, and poverty are interwoven. The State cannot be deprived of the power to take care of the qualitative and quantitative difference between different classes to take ameliorative measures.

51. Reservation was not contemplated for all the time by the framers of the Constitution. On the one hand, there is no exclusion of those who have come up, on the other hand, if sub-classification is denied, it would defeat right to equality by treating unequal as equal. In *Chebrolu Leela Prasad Rao* v. *State of A.P.*, 2020 SCC OnLine SC 383, the necessity of revising lists was pointed out relying on *Indra Sawney and Union of India* v. *Rakesh Kumar*, (2010) 4 SCC 50.

52. There is cry, and caste struggle within the reserved class as benefit of reservation in services and education is being enjoyed, who are doing better hereditary occupation. The scavenger class given the name of *Balmikis* remains more or less where it was, and so on, disparity within Scheduled Caste is writ large from various reports. The sub-classification was made under Section 4(5) of the Punjab Act to ensure that the benefit of the reservation percolate down to the deprived section and do not remain on paper and to provide benefit to all and give them equal treatment, whether it is violative of Article 14? In our opinion, it would be permissible on rationale basis to make such sub-classification to provide benefit to all to bring equality, and it would not amount to exclusion from the list as no class (caste) is deprived of reservation in totality. In case benefit which is meant for the emancipation of all the castes, included in the list of Scheduled Castes, is permitted to be usurped by few castes those who are adequately represented, have advanced and belonged to the creamy layer, then it would

tantamount to creating inequality whereas in case of hunger every person is required to be fed and provided bread. The entire basket of fruits cannot be given to mighty at the cost of others under the guise of forming a homogenous class.

53. The Constitution is an effective tool of social transformation; removal of inequalities intends to wipe off tears from every eye. The social realities cannot be ignored and overlooked while the Constitution aims at the comprehensive removal of the disparities. The very purpose of providing reservation is to take care of disparities. The Constitution takes care of inequalities. There are unequals within the list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes. Various reports indicate that Scheduled Castes and Scheduled Tribes do not constitute a homogenous group. The aspiration of equal treatment of the lowest strata, to whom the fruits of the reservation have not effectively reached, remains a dream. At the same time, various castes by and large remain where they were, and they remain unequals, are they destined to carry their backwardness till eternity?

54. The State's obligation is to undertake the emancipation of the deprived section of the community and eradicate inequalities. When the reservation creates inequalities within the reserved castes itself, it is required to be taken care of by the State making sub-classification and adopting a distributive justice method so that State largesse does not concentrate in few hands and equal justice to all is provided. It involves redistribution and reallocation of resources and opportunities and equitable access to all public and social goods to fulfil the very purpose of the constitutional mandate of equal justice to all.

55. Providing a percentage of the reservation within permissible limit is within the powers of the State legislatures. It cannot be deprived of its concomitant power to make reasonable classification within the particular classes of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes without depriving others in the list. To achieve the real purpose of reservation, within constitutional dynamics, needy can always be given benefit; otherwise, it would mean that inequality being perpetuated within the class if preferential classification is not made ensuring benefit to all.

56. The sub-classification is to achieve the very purpose, as envisaged in the original classification itself and based thereupon evolved the very concept of reservation. Whether the sub-classification would be a further extension of the principle of said dynamics is the question to be considered authoritatively by the Court.

57. The Scheduled Castes as per Presidential List are not frozen for all the time, and neither they are a homogenous group as evident from the vast anthropological and statistical data collected by various Commissions. The State law of preferential treatment to a limited extent, does not amend the list. It adopts the list as it is. The State law intends to provide reservation for all Scheduled Castes in a pragmatic manner based on statistical data. It distributes the benefits of reservations based on the needs of each Scheduled Caste.

58. The State has the competence to grant reservation benefit to the Scheduled Castes and Scheduled Tribes in terms of Articles 15(4) and 16(4) and also Articles 341(1) and 342(1). It prescribes the extent/percentage of reservation to different classes. The State Government can decide the manner and quantum of reservation. As such, the State can also make sub-classification when providing reservation to all Scheduled Castes in the list based on the rationale that would conform with the very spirit of Articles 14, 15, and 16 of the Constitution providing reservation. The State Government cannot temper with the list; it can neither include nor exclude any caste in the list or make enquiry whether any synonym exists as held in *Milind*.

59. The State Government is conferred with the power to provide reservation and to distribute it equitably. The State Government is the best judge as to the disparities in different areas. In our opinion, it is for the State Government to judge the equitable manner in which reservation has to be distributed. It can work out its methodology and give the preferential treatment to a particular class more backward out of Scheduled Castes without depriving others of benefit.

60. Apart from that, the other class out of Scheduled Castes/Scheduled Tribes/socially and educationally backward classes, who is not denied the benefit of reservation, cannot claim that whole or a particular percentage of reservation should have been made available to them. The State can provide such preference on rational criteria to the class within lists requiring upliftment. There is no vested right to claim that reservation should be at a particular percentage. It has to accord with ground reality as no one can claim the right to enjoy the whole reservation, it can be proportionate one as per requirement. The State cannot be deprived of measures for upliftment of various classes, at the same time, which is the very purpose of providing such measure. The spirit of the reservation is the upliftment of all the classes essential for the nation's progress.

61. In the federal structure, the State, as well as the Parliament, have a constitutional directive for the upliftment of Scheduled Castes, Scheduled Tribes, and socially and backward classes. Only inclusion or exclusion in the Presidential notification is by the Parliament. The State Government has the right to provide reservation in the fields of employment and education. There is no constitutional bar to take further affirmative action as taken by the State Government in the cases to achieve the goal. By allotting a specific percentage out of reserved seats and to provide preferential treatment to a particular class, cannot be said to be violative of the list under Articles 341, 342, and 342A as no enlisted caste is denied the benefit of reservation.

62. The “inadequate representation” is the fulcrum of the provisions of Article 16(4). In our opinion, it would be open to the State to provide on a rational basis the preferential treatment by fixing reasonable quota out of reserved seats to ensure adequate representation in services. Reservation is a very effective tool for emancipation of the oppressed class. The benefit by and large is not percolating down to the neediest and poorest of the poor.

63. The interpretation of Articles 14, 15, 16, 338, 341, 342, and 342A is a matter of immense public importance, and correct interpretation of binding precedents in *Indra Sawhney* and other decisions. Though we have full respect for the principle of *stare decisis*, at the same time, the Court cannot be a silent spectator and shut eyes to stark realities. The constitutional goal of social transformation cannot be achieved without taking into account changing social realities.

64. We endorse the opinion of a Bench of 3 Judges that *E.V. Chinnaiah* is required to be revisited by a larger Bench; more so, in view of further development and the amendment of the Constitution, which have taken place.

65. We cannot revisit *E.V. Chinnaiah* being Bench of coordinate strength. We request the Hon'ble Chief Justice to place the matters before a Bench comprising of 7 Judges or more as considered appropriate.

21. Union of India v. Ashok Kr. Sharma and Ors., (2020 SCC OnLine SC 683)

Decided on : - 28.08.2020

Bench :- 1. Hon'ble Mr. Justice S.K. Kaul
2. Hon'ble Mr. Justice **K.M. Joseph**

(With regard to cognizable offences under Chapter IV of the Drugs and Cosmetics Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act.III. A Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC. An arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu* (supra) and to follow the provisions of CrPC.)

Issues

What is the interplay between the provisions of the Code of Criminal Procedure (hereinafter referred to as "CrPC" for short) and the Drugs and Cosmetics Act, 1940 (hereinafter referred to as "the Act" for short)? Whether in respect of offences falling under chapter IV of the Act, a FIR can be registered under Section 154 of the CrPC and the case investigated or whether Section 32 of the Act supplants the procedure for investigation of offences under CrPC and the taking of cognizance of an offence under Section 190 of the CrPC? Still further, can the Inspector under the Act, arrest a person in connection with an offence under Chapter IV of the Act?

Observations and Decision

After referring to the provisions of the CrPC and of different special Acts and the caselaws on different issues involved in the present case, the Hon'ble Court observed and held as follows :-

> **105.** The arrest of a person involves an encroachment on his personal liberty. Article 21 of the Constitution of India declares that no person shall be deprived of his personal liberty and life except in accordance with procedure established by law. There can be no doubt that the power to arrest any person therefore must be premised on a law which authorizes the same.
>
> **106.** Under the Act, as noted by us, and bearing in mind the law laid down in connection with similar Statutes, we have no hesitation in rejecting the argument of the petitioner that after the amendment of Section 36AC of the Act, making the offences cognizable and non-bailable, it is open to the Police Officer to prosecute the person for the offences set-out in Section 36AC of the Act. Having regard to the express provisions of Section 32 of the Act,

insofar as the prosecution is to be launched *qua* offences falling within the four walls of Chapter IV of the Act, and which are also the subject matter of Section 36AC of the Act, there cannot be any doubt that prosecution of the offender, for such offences, can be done only in the manner provided in Section 32 of the Act. The prosecution can be launched only by the persons mentioned in Section 32 of the Act. A Police Officer, as such, does not figure as one of the persons who may prefer a report under Section 173(2) of the CrPC, on which, cognizance could be taken by the Special Court. Undoubtedly, as we have already clarified in respect of an offence under Chapter IV, if the acts or omission also constitutes an offence under any other law, under Section 32(3) of the Act, it may be open to the Police Officer, if he is otherwise empowered under the said law, to prosecute the person for the same offence, to act as such.

107. Consequently, the registration of an FIR, which under the scheme of the CrPC, sets the ball rolling, empowering the Police Officer to investigate under Section 157 of the CrPC, and gather material and finally file a Report, would all appear to us to be inapplicable to an offence under Chapter IV of the Act.

108. The conundrum, however, is posed by the aspect relating to arrest. Undoubtedly, there is no express power on the Inspector to arrest under the Act. The argument of the learned Additional Solicitor General, Ms. Pinky Anand that the Drugs Inspector could not be a Police Officer as he is not a person who can file a Report under Section 173 of the CrPC and, therefore, he cannot arrest, does not appeal to us. The decisions relied upon by the learned Counsel, referred to by us in paragraph-91 hereinbefore, only declare that the Customs Officer under the Customs Act and the other officers in the enactments, which we have referred to, are not Police Officers in the context of Section 25 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act', for short). Section 25 of the Evidence Act renders inadmissible a confession made to a Police Officer. The question here is not whether the Drugs Inspector is a Police Officer and the question here is whether he is empowered to carry out arrest of a person under the Act. Still further, the question to be answered is, whether a Police officer under the CrPC is deprived of his power, under the CrPC, to arrest. These are the questions to be answered by us.

109. The Court must start with the presumption that Parliament, which is author of the CrPC and also the Act in question, was aware of the provisions of the CrPC, as it existed at the time when the Act was enacted in 1940. This is following the principle that the Legislature must be assumed to know the law which exists on the Statute Book when it makes a new law. It must, therefore, be assumed to know that the power of arrest is expressly conferred on the Police Officer in the manner which we have referred to. The Legislature has not, in the Act, yet conferred express power on the Drugs inspector, to arrest. However, Section 22(1)(d) of the Act, which deals with the powers of the Inspector, *inter alia*, enables the Inspector to exercise such other powers as may be necessary for carrying out the purpose of Chapter IV or any Rules made thereunder. The sanction, which is contemplated under Chapter IV, is the criminal sanction by way of prosecuting a person for contravening the provisions of Chapter IV of the Act. In other words, the Legislature has given teeth to the law by providing for prosecuting offenders. The Inspector is at the center stage. In every other aspect, as can be seen from the Act, the implementation of its provisions is vitally dependent upon the powers and functions assigned to the Inspector. The very qualifications, which are provided in the Rules, as indispensable for being appointed as an Inspector, represents a carefully chosen value judgment by the Legislature to assign the implementation of the Act through the competent hands of qualified persons. The Act is

enacted to achieve the highest public interest in as much as what is at stake is the health of the members of the public, which again is recognized as one of the aspects covered by the Fundamental Right protected under Article 21 of the Constitution of India. Keeping the Police Officer out from the categories of persons, who could prosecute offenders for offences under Chapter IV of the Act, is also a carefully thought out ideal.

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116. In fact, as laid down in *Deepak Mahajan* (supra), the power of arrest can be conferred on persons other than a Police Officer. We are, for the moment, excluding the position under the CrPC that even a private person can arrest as provided in Section 43 of the CrPC. The Foreign Exchange Regulation Act, 1973 (hence repealed); the Customs Act, 1962; the Gold (Control) Act, 1968 (repealed); the Prevention of Food Adulteration Act, 1954 (hence repealed) and the Railway Property (Unlawful Possession) Act, 1966, in Sections 35, 104, 68, 10B and Section 6, respectively, conferred power of arrest on the Officers under these Acts. Therefore, if we interpret Section 22(1)(d) of the Act, as comprehending the power of arrest with the Drugs Inspector, then, his competency to arrest, a requirement in law, as laid down again in *Deepak Mahajan* (supra) (See paragraph-54), would stand satisfied. However, the further question is, what is the procedure to be followed by the Inspector, and still finally, whether the Police Officer, under the CrPC, will stand deprived of the power to arrest. The argument of the learned Amicus Curiae appears to be that since a Police Officer, once he registers an FIR under Section 154 of the CrPC, is duty-bound to carry the matter to its logical conclusion, *viz*., to investigate the matter as provided in the CrPC, and finally, file a Report under Section 173(2) of the CrPC, to persuade the Court to take cognizance in an appropriate case, all of which powers are not available to a Police Officer in regard to offences under Chapter IV of the Act, the interpretation that avoids such a futile exercise, which also is unauthorized and illegal in law, should be adopted.

117. We do agree with the learned Amicus Curie that the Police Officer, for instance, cannot be approached by any person with a complaint that a cognizable offence under Chapter IV of the Act has been committed and he is not bound to register the FIR in terms of the law which is being held down by this court in *Lalita Kumari* (supra). This is for the reason that if he were to register an FIR, then, he would have to pass on to the stage of Section 157 of the CrPC and, furthermore, carry out investigation, as understood in law, for which neither is he deemed qualified or empowered by the Law Giver nor is he entitled to file a Report under Section 173 of the CrPC.

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159. It has been brought to our notice that FIRs have been filed in regard to offences under Chapter IV of the Act. In the view we have taken, no further investigation can be done by the Police Officer. However, it is in the interest of justice that the FIRs are made over by the Police Officers to the concerned Drugs Inspector at the earliest. We are persuaded to issue such directions in the exercise of our powers under Article 142 of the Constitution of India.

160. It would appear that on an understanding of the provisions, arrests would have been effected by Police Officers in regard to the cognizable offences under Chapter IV of the Act. Having regard to the fact that we are resolving this controversy on a conspectus of the various provisions of the Act and the CrPC, we are inclined to direct that this Judgment, holding that Police Officers do not have power to arrest in regard to cognizable offences under Chapter IV of the Act, is to operate from the date of this Judgment.

161. Before we proceed to the operative portion of our Judgment, we must express the hope that the vexed issues which we have resolved through this Judgment, in regard to the power of arrest, may engage the competent Legislative Body.

THE CONCLUSIONS/DIRECTIONS

162. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu* (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers.

22. *Parvinder Kansal v. State of NCT of Delhi and Anr., (2020 SCC OnLine SC 685)*

Decided on : - 28.08.2020

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy

(So far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation.)

Facts

This criminal appeal is filed by the appellant in Criminal Appeal No. 1284 of 2019, aggrieved by the order dated 27th November 2019 passed by the High Court of Delhi at New Delhi. By the aforesaid order, High Court has dismissed the appeal filed by the appellant herein under Section 372 of the Code of Criminal Procedure seeking enhancement of sentence imposed in Sessions Case No. 742 of 2007 by the Special Judge (NDPS), North District, Rohini District Courts, Delhi vide order dated 17.08.2020.

The appellant herein was the complainant in FIR No. 742 of 2007 registered on 15.10.2007 for the offence under Section 364A read with Section 34, IPC and the second respondent herein was the accused. After investigation of the crime, chargesheet dated 11.01.2008 was filed against the second respondent-accused under Sections 364A/302/201, IPC. On committal, case was referred to the court of Special Judge (NDPS), North District, Rohini Courts, Delhi and the second respondent was tried in Sessions Case No. 58259 of 2016. By judgment dated 30th July 2019 in the above said Sessions Case No. 742 of 2007 the second respondent was convicted for offence punishable under Sections 364A, 302 and 201, IPC. By subsequent order dated 17th August 2019 he was sentenced for offence under Sections 302, 364A and 201, IPC

The complainant, who is the father of the deceased boy, has filed appeal challenging the order of sentence dated 17th August 2019 passed by ASJ/Special Judge (NDPS), North District, Rohini Courts, Delhi in Sessions Case No. 58259 of 2016 seeking enhancement of sentence to death penalty. In the appeal filed before the High Court under Section 372, Code of Criminal Procedure, 1973 (for short, 'Cr.PC'), it was his case that the sentence of life imprisonment imposed on the second respondent-convict is inadequate and needs to be enhanced to death penalty. Vide impugned judgment dated 27th November 2019 the High Court of Delhi dismissed the appeal as not maintainable.

Observations and Order

The Hon'ble Court dismissed the appeal and observed as follows :-

6. It is contended by learned counsel for the appellant, though the respondent no. 2 had committed murder of an innocent child, the Sessions Court, instead to award punishment of death penalty, has awarded only imprisonment for life. It is contended that in view of proviso to Section 372, Cr.PC which gives right to prefer appeal to the victim, when the accused is convicted for lesser offence, there is no reason to restrict the scope of appeal only for a lesser offence but not for lesser sentence. It is submitted that on 15.10.2007 when the son of the appellant was kidnapped and demand of ransom was made which was also paid to the second respondent but after kidnap his son was brutally murdered. As such, it is submitted that it is a fit case for enhancement of sentence from life imprisonment to death penalty, for the second respondent. The learned counsel has submitted that the High Court has not considered the provision under Section 372, Cr.PC properly vis-a-vis the judgments referred to and dismissed the appeal, contrary to plain meaning of Section 372, Cr.PC.

7. On the other hand it is submitted by learned counsel for the State of NCT of Delhi that a reading of provision under Section 372 and Section 377 of Cr.PC makes it clear that the appeal under Section 372 Cr.PC by the victim is a qualified one which is maintainable in the event of acquittal of the accused or convicting for lesser offence or for imposing inadequate compensation only, whereas under Section 377 Cr.PC State Government is empowered to prefer appeal to the High Court in the event of inadequate sentence by the Sessions Court. It is stated by learned counsel that for enhancement of sentence, victim cannot maintain appeal under Section 372 of Cr.PC.

8. Having heard learned counsel on both sides, we have perused the material on record and the relevant provisions of the Code of Criminal Procedure, 1973.

9. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, Cr.PC. The proviso is inserted to Section 372, Cr.PC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:

> "**372. No appeal to lie unless otherwise provided.** - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:
>
> Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

10. A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any

other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of *National Commission for Women* v. *State of Delhi* (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable.

11. For the aforesaid reasons, we do not find any merit in this appeal, so as to interfere with the impugned order passed by the High Court. The appeal is accordingly dismissed.

23. Mukesh Singh v. State (Narcotic Branch of Delhi), (2020 SCC OnLine SC 700)

Decided on : - 31.08.2020

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice **M.R. Shah**
5. Hon'ble Mr. Justice S. Ravindra Bhat

(In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of *Mohan Lal* v. *State of Punjab*, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.)

Issues

"Having doubted the correctness of the decision of this Court in the case of Mohan Lal v. State of Punjab reported in (2018) 17 SCC 627 taking the view that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal, initially by order dated 17.01.2019 the matter was referred to a larger Bench consisting of three Judges. A three Judge Bench vide order dated 12.09.2019 has referred to a larger Bench of five Judges to consider the matter. That is why, the present matter is placed before the Bench consisting of five Judges."

Observations and Decision

The Hon'ble Court observed:-

4. The decision in *Mohan Lal* (supra) rests and is based upon substantive constitutional foundation and principles of criminal jurisprudence. In the said decision in para 5, this Court specifically dealt with and considered the question whether in a criminal prosecution, it will be in consonance with the principles of justice, fair play and a fair investigation, if the informant and the investigating officer were to be the same person and in such a case, is it necessary for the accused to demonstrate prejudice, especially under laws such as the NDPS Act, carrying a reverse burden of proof. In the said decision, this Court considered in detail the reverse burden of proof under Sections 35 and 54 of the NDPS Act. That thereafter, this Court had considered in detail the constitutional guarantee of fair trial to an accused under Article 21 which takes within its fold "Fair Investigation". Thereafter it is observed by this Court that in the nature of the reverse burden of proof, the onus will lie on the prosecution to demonstrate

on the face of it that the investigation was fair, judicious with no circumstances that may raise doubts about its veracity. It is further observed that if the investigation itself is unfair, to require the accused to demonstrate prejudice will be fraught with danger vesting arbitrary powers in the police which may well lead to false implication also. Thereafter this Court considered in paragraphs 17 and 29 the role and obligations of the investigator and the investigation itself. Thereafter after having placed reliance on the decisions of this Court in the cases of *Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15; *Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709; and *State by Inspector of Police, NIB, Tamil Nadu* v. *Rajangam*, (2010) 15 SCC 369, this Court specifically observed and held that in case the investigation is conducted by the police officer who himself is the complainant, the trial is vitiated and the accused is entitled to acquittal. In the said decision, it is specifically observed that to leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. Thereafter it is held that a fair investigation which is but the very foundation of a fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a pre-determined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof;

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96. Therefore, as such, the NDPS Act does not specifically bar the informant/complainant to be an investigator and officer in charge of a police station for the investigation of the offences under the NDPS Act. On the contrary, it permits, as observed hereinabove. To take a contrary view would be amending Section 53 and the relevant provisions of the NDPS Act and/or adding something which is not there, which is not permissible.

97. Now so far as the submission on behalf of the accused that so far as the NDPS Act is concerned, it carries a reverse burden of proof under Sections 35 and 54 and therefore if the informant who himself has seized the offending material from the accused and he himself thereafter investigates the case, there shall be all possibilities of apprehension in the mind of he accused that there shall not be fair investigation and that the concerned officer shall try to prove his own version/seizure and therefore there shall be denial of the "fair investigation" enshrined under Article 21 of the Constitution of India is concerned, it is required to be noted that whether the investigation conducted by the concerned informant was fair investigation or not is always to be decided at the time of trial. The concerned informant/investigator will be cited as a witness and he is always subject to cross-examination. There may be cases in which even the case of the prosecution is not solely based upon the deposition of the informant/informant-cum-investigator but there may be some independent witnesses and/or even the other police witnesses. As held by this Court in catena of decisions, the testimony of police personnel will be treated in the same manner as testimony of any other witness and there is no principal of law that without corroboration by independent witnesses his testimony cannot be relied upon. [See *Karamjit Singh* v. *State (Delhi Administration)*, (2003) 5 SCC 291]. As observed and held by this Court in the case of *Devender Pal Singh* v. *State (NCT of Delhi)*, (2002) 5 SCC 234, the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefor.

98. At this stage, reference may be made to illustration (e) to Section 114 of the Indian Evidence Act. As per the said provision, in law if an official act has been proved to have been

done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority. Therefore, merely because the complainant conducted the investigation that would not be sufficient to cast doubt on the entire prosecution version and to hold that the same makes the prosecution version vulnerable. The matter has to be left to be decided on a case to case basis without any universal generalisation.

99. At this stage, it is required to be noted that in cases where any person empowered under Sections 42, 43 or 44 of the NDPS Act acts vexatiously or maliciously, the statute itself has provided the punishment as per section 58 and it is an offence under section 58 which is a cognizable offence and such an offence is required to be investigated by the "officer in charge of a police station" other than the officer who exercised the power of entry, search, seizure or arrest under Sections 42, 43, or 44 as naturally in such a case he would be a proposed accused and therefore he cannot be permitted to investigate and to be a judge in his own cause. However, so far as the investigation against the accused for the offence under the NDPS Act is concerned, the same analogy may not apply for the reasons stated hereinabove.

100. Now so far as the observations made by this Court in para 13 in *Mohan Lal* (supra) that in the nature of reverse burden of proof, the onus will lie on the prosecution to demonstrate on the face of it that the investigation was fair, judicious with no circumstance that may raise doubt about its veracity, it is to be noted that the presumption under the Act is against the accused as per Sections 35 and 54 of the NDPS Act. Thus, in the cases of reverse burden of proof, the presumption can operate only after the initial burden which exists on the prosecution is satisfied. At this stage, it is required to be noted that the reverse burden does not merely exist in special enactments like the NDPS Act and the Prevention of Corruption Act, but is also a part of the IPC - Section 304B and all such offences under the Penal Code are to be investigated in accordance with the provisions of the Cr.P.C. and consequently the informant can himself investigate the said offences under Section 157 Cr.P.C.

101. Therefore, as such, there is no reason to doubt the credibility of the informant and doubt the entire case of the prosecution solely on the ground that the informant has investigated the case. Solely on the basis of some apprehension or the doubts, the entire prosecution version cannot be discarded and the accused is not to be straightway acquitted unless and until the accused is able to establish and prove the bias and the prejudice. As held by this Court in the case of *Ram Chandra* (supra) the question of prejudice or bias has to be established and not inferred. The question of bias will have to be decided on the facts of each case [See *Vipan Kumar Jain* (supra)]. At this stage, it is required to be noted and as observed hereinabove, NDPS Act is a Special Act with the special purpose and with special provisions including Section 68 which provides that no officer acting in exercise of powers vested in him under any provision of the NDPS Act or any rule or order made thereunder shall be compelled to say from where he got any information as to the commission of any offence. Therefore, considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, we are of the opinion that there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the case of the

prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. Therefore, as rightly observed by this Court in the case of *Bhaskar Ramappa Madar* (supra), the matter has to be decided on a case to case basis without any universal generalisation. As rightly held by this Court in the case of *V. Jayapaul* (supra), there is no bar against the informant police officer to investigate the case. As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer the question of bias would depend on the facts and circumstances of each case and therefore it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal.

102. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:

I. That the observations of this Court in the cases of *Bhagwan Singh* v. *State of Rajasthan*, (1976) 1 SCC 15; *Megha Singh* v. *State of Haryana*, (1996) 11 SCC 709; and *State by Inspector of Police, NIB, Tamil Nadu* v. *Rajangam*, (2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of *Mohan Lal* v. *State of Punjab*, (2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled.

103. The Reference is answered accordingly.

24. Tamil Nadu Medical Officers Association and Ors. v. Union of India and Ors., (2020 SCC OnLine SC 699)

Decided on : - 31.08.2020

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Ms. Justice Indira Banerjee
3. Hon'ble Mr. Justice Vineet Saran
4. Hon'ble Mr. Justice **M.R. Shah**
5. Hon'ble Mr. Justice **Aniruddha Bose**

(Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India. The State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper)

Issue

Whether under the scheme of our Constitution and the provisions of the Postgraduate Medical Education Regulations, 2000 (Regulations, 2000) made by the Medical Council of India (Council) under Section 33 of the Indian Medical Council Act, 1956, a State has any power to reserve seats for admission in postgraduate medical degree courses for the medical professionals working in governmental organisations within that State?

Observations and Decision

Hon'ble Mr. Justice M.R. Shah

Conclusions:

145. The sum and substance of the above discussion and conjoint reading of the decisions referred to and discussed hereinabove, our conclusions are as under:

1) that Entry 66 List I is a specific entry having a very limited scope;

2) it deals with "coordination and determination of standards" in higher education;

3) the words "coordination and determination of standards would mean laying down the said standards;

4) the Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under Entry 66

List I and has no power to make any provision for reservation, more particularly, for in-service candidates by the concerned States, in exercise of powers under Entry 25 List III;

5) that Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the concerned States to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under Entry 25 of List III;

6) if it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List I.;

7) Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India;

8) that the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper; and

9) it is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment.

146. In view of our above discussions and conclusions, the Civil Appeals are allowed in the aforesaid terms and the impugned judgment of the High Court at Calcutta dated 01.10.2019 passed in MAT No. 1222 of 2019, connected with, MAT No. 1223 of 2019, MAT 1224 of 2019, MAT 1239/2019, MAT 1245/2019, MAT 1267 of 2019 and MAT 1333 of 2019 is hereby set aside. Writ Petition Nos. 196/2018 connected with Writ Petition No. 252/2018, Writ Petition No. 295/2018 and Writ Petition No. 293/2018 stand allowed in the aforesaid terms. All connected interlocutory applications stand disposed of.

Hon'ble Mr. Justice Aniruddha Bose

192. Because of these reasons, we hold that there is no bar in Clause 9 of the Postgraduate Medical Education Regulations, 2000 as it prevailed on 15th February 2012 and subsequently amended on 5th April, 2018 on individual States in providing for reservation of in-service doctors for admission into postgraduate medical degree courses. But to take benefit of such separate entry channel, the aspiring in-service doctors must clear the NEET Examination with the minimum prescribed marks as stipulated in the 2000 Regulations. We respectfully differ from the views expressed by the Bench of three Hon'ble Judges of this Court in the case of the *State of Uttar Pradesh* v. *Dinesh Singh Chauhan* [(2016) 9 SCC 749] to the extent it has been held in the said decision that reservation for the said category of in-service doctors by the State would be contrary to the provisions of 2000 Regulations. In our opinion, that is not the correct view under the Constitution. The reference is answered accordingly.

193. We also expect that the statutory instruments of the respective State Governments providing for such separate channel of entry should make a minimum service in rural or remote or difficult areas for a specified period mandatory before a candidate could seek admission through such separate channel and also subsequent to obtaining the degree. On completion of the course, to ensure the successful candidates serve in such areas, the State shall formulate a policy of making the in-service doctors who obtain entry in postgraduate medical degree courses through independent in-service channel execute bonds for such sum the respective States may consider fit and proper.

194. So far as the appeals against the judgment of the Calcutta High Court are concerned, we are of the opinion that the judgment and order of the High Court at Calcutta in MAT No. 1222 of 2019 (*Dr. Md. Babul Akhtar* v. *Dr. Md. Nazir Hossain*) along with the allied appeals were not founded on proper interpretation of law for the reasons we have already discussed. We accordingly set aside the judgment under appeal, delivered on 1st October, 2019. All the appeals are accordingly allowed. The memorandum dated 18th April, 2013 is restored and the writ petition filed in the High Court at Calcutta (W.P. No. 8990(W) of 2019) shall stand dismissed. The writ petitions filed before this Court being W.P. (Civil) No. 196 of 2018, W.P. (C) No. 252 of 2018, W.P.(C) No. 295 of 2018 and W.P.(C) No. 293 of 2018 shall stand allowed in the above terms.

195. We, however, direct that the doctors who are already undergoing the postgraduate degree courses on the basis of being successful in the original writ petition filed in the High Court at Calcutta shall not be disturbed from pursuing the said course. The same direction shall also cover successful medical students who have already undertaken admission in postgraduate medical degree courses following the applicable admission process and are pursuing their postgraduate studies in the States of Gujarat, Haryana, Kerala, Maharashtra and Tamil Nadu.