JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(April, 2019)

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1. ***Raj Narain v. Union of India and Ors. (Civil Appeal No. 3339/2019) – 2019 SCC OnLine SC 452***

   Decided on – 01.04.2019

   Bench – 1. Hon'ble Mr. Justice L.Nageshwar Rao
   2. Hon'ble Mr. Justice M.R. Shah

(The department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.)

FACTS

The Appellant was placed under suspension on 23.10.1979 while he was working as Sorting Assistant in Railway Mail Service (RMS) at Mughalsarai, in contemplation of disciplinary proceedings on the allegations of involvement in forged payments of high value money orders. An FIR was lodged against the Appellant at Mughalsarai Police Station and the case was registered as Crime No. 358 of 1979 under Section 409/420 IPC. The order of suspension was revoked on 21.10.1987 pursuant to which he joined duty and worked till 28.02.1997, when he was dismissed from service in view of his conviction under Section 409, 467 and 420 IPC. He was sentenced to imprisonment for three years. The Appellant, thereafter, filed an appeal against his conviction. The Criminal Appeal filed by the Appellant was allowed and he was acquitted of the charges for offences under Section 409, 420 and 467 IPC.

The request of the Appellant for reinstatement after acquittal was refused on 13.06.2002. It was mentioned in the Memo dated 13.06.2002 that the Appellant could be reinstated as he was already dismissed from service more than six years ago. The order of dismissal dated 28.02.1997 and the order of refusal to reinstate in service dated 13.06.2002 were challenged by the Appellant before the Tribunal. The Tribunal allowed the original application and directed the reinstatement of the Appellant by holding that he shall be entitled for seniority and notional fixation of pay with increments from the date of his dismissal till his reinstatement. However, the Tribunal held that the Appellant shall not be entitled for any back wages for the period during which he was not in service. Pursuant to the order of the Tribunal, the Appellant was reinstated on 20.01.2003. By an order dated 01.05.2003, the Senior Superintendent of RMS, Allahabad rejected the representation of the Appellant for full pay and allowances for the period of the suspension i.e. 23.10.1979 to 11.11.1987. The Writ Petition filed by the Appellant against the order of the Tribunal by which he was not granted back wages was partly allowed by

the High Court. The High Court held that the Appellant shall be entitled to full back wages from the date of the order of his acquittal i.e. 31.08.2001 till the date of his reinstatement i.e. 20.01.2003. The Appellant approached the Hon'ble Supreme Court assailing the legality and validity of the judgment of the High Court by which the payment of back wages was restricted only to the period between the date of his acquittal and the date of his reinstatement.

DECISION AND OBSERVATIONS

The Hon'ble Court referred to and relied upon the judgment of the Court in ***Ranchhodji Chaturji Thakore* v. *Superintendent Engineer, Gujarat Electricity Board***[1] wherein the Hon'ble Court had considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under Section 302, IPC. The claim of the Petitioner therein was that he was entitled to full wages on his acquittal by the Criminal Court. This Court rejected the said submission by holding that the question of payment of back wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry. In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. Subsequent acquittal by an Appellate Court would not entitle him to claim back wages.

The Hon'ble Court also relied on ***Union of India v. Jaipal Singh***[2] wherein the Court was pleased to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, the Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise.

In the present case, the learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer. The Hon'ble Court, however, held that the observation made in the judgment in ***Union of India* v. *Jaipal Singh*** (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal

[1] (1996) 11 SCC 603.

[2] (2004) 1 SCC 121.

proceedings was mala fide or with vexatious intent. In all other cases, there is no difference between initiation of the criminal proceedings by the department *vis-a-vis* a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

Relying on these judgments, the Hon'ble Court held that the Appellant, in the present case, the Appellant shall be entitled to back wages only from the date of acquittal on 31.08.2001, till the date of his reinstatement on 20.01.2003 and to full salary from 23.10.1979 to 21.10.1987.

2. ***Kerala State Road Transport Corporation and Another v. Akhilesh V.S. and Others (Civil Appeal No. 3346/2019) – 2019 SCC Online SC 450***

Decided on – 01.04.2019

Bench – 1. Hon'ble Mr. Justice Navin Sinha
2. Hon'ble Mr. Justice Arun Mishra

(Mere existence of vacancies or empanelment does not create any indefeasible right to appointment.)

FACTS

The appellant was aggrieved by the direction to make appointments against 97 vacancies on the post of Blacksmith Grade II. The sanctioned cadre strength of the post was 800, of which 395 vacancies were already filled by substantive appointments. The appellant made a requisition for 405 vacancies to the Kerala Public Service Commission (hereinafter referred to as 'the Commission'), which forwarded a recommendation with regard to 351 vacancies initially, and later for another six posts followed by twenty-three more against non- joining vacancies. Respondent Nos. 1 and 2, being applicants, were empanelled at serial nos. 284 and 294 respectively in the rank list. Appointments were made till rank No. 278 only. The rank list has expired on 21.10.2017. The respondents did not allege discrimination or arbitrariness by violation of the rank list in making appointments. The High Court opined that the appellant was obliged to make appointments against requisitioned vacancies including those that may have arisen subsequently, but during the life of the rank list. Against the said judgment, the Appellants moved the Hon'ble Supreme Court.

ISSUES: -

According to the Hon'ble Court the short question arising for consideration in these appeals was whether mere empanelment can justify a mandamus to make appointments because vacancies may exist. Additionally, whether mandamus can be issued to make appointments from the panel on vacancies which may have arisen subsequently due to superannuation etc. during the life of the rank list. The question assumes significance in view of the stand of the appellant that it did not wish to make any further appointments due to a financial crunch and a skewed bus to passenger ratio, and for which purpose it had also appointed a committee to recommend remedial measures.

OBSERVATIONS AND DECISION

The Hon'ble Court referred to ***Kulwinder Pal Singh v. State of Punjab***[3], wherein it had been held as follows –

"12. In Manoj Manu v. Union of India, (2013) 12 SCC 171, it was held that (para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies..."

Setting aside the order of the Hon'ble High Court, the Hon'ble Supreme Court held that the cadre strength has rightly been held not to be a relevant consideration but the High Court has erred in issuance of mandamus to fill up a total of 97 vacancies, including those arising subsequently but during the life of the rank list. Vacancies which may have arisen subsequently could not be clubbed with the earlier requisition and necessarily had to be part of another selection process. The law stands settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment. The employer also has the discretion not to fill up all requisitioned vacancies, but which has to be for valid and germane reasons not afflicted by arbitrariness. The appellant contends a financial crunch along with a skewed staff/bus ratio which are definitely valid and genuine grounds for not making further appointments. The court cannot substitute its views over that of the appellant, much less issue a mandamus imposing obligations on the appellant corporation which it is unable to meet.

[3] (2016) 6 SCC 532.

3. ***Devendra Prasad Singh v. State of Bihar (Criminal Appeal No.579 of 2019)***
Decided on – 02.04.2019
Bench – 1. Hon'ble Mr. Justice Abhay Manohar Sapre
2. Hon'ble Mr. Justice Dinesh Maheshwari

(To attract the rigor of Section 197 of the Cr.P.C., it is necessary that the offence alleged against a Government Officer must have some nexus or/and relation with the discharge of his official duties as a Government Officer.)

FACTS

The Hon'ble Supreme Court was considering an appeal against the order of the High Court of Patna wherein the High Court quashed the order of the First Class Judicial Magistrate taking cognizance of the complaint filed by the appellant against the respondent, Police Officer (SHO) for the offences punishable under sections 323, 341, 379 and 504 of Indian Penal Code,1860. The complaint was quashed by the High Court on the two grounds. Firstly, that no sanction under section 197 Cr.P.C. was obtained by the prosecution for filing the complaint and secondly, on the finding that there are contradictions in the statement of the complainant and the witness.

DECISION AND OBSERVATIONS

The Hon'ble Supreme Court held that to attract the rigor of Section 197 of the Cr.P.C., it is necessary that the offence alleged against a Government Officer must have some nexus or/and relation with the discharge of his official duties as a Government Officer. And the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements. This could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings. The Hon'ble Supreme Court set aside the impugned order and restored the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

4. *Hammad Ahmed v. Abdul Majeed(Civil Appeal No.3383 of 2019)*

Decided on –04.04.2019

Bench – 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice Hemant Gupta

(The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction)

FACTS

The dispute between the parties is as to who should discharge the duties of Chief Mutawalli of Hamdard Laboratories (India) earlier known as Hamdard Dawakhana after the death of previous undisputed Chief Mutawalli - Abdul Mueed.

The background facts are that the Appellant asserted that after death of Abdul Mueed, Chief Mutawalli on 19.03.2015, the Appellant being living senior most male direct successor of Wakif Mutawalli took over the Office of Chief Mutawalli on 20.03.2015 when an office order was issued to this effect by him. The Respondent Nos. 1 and 2 are the defendants in the suit filed by the Appellant. Such Respondents are sons of former Chief Mutawalli late Shri Abdul Mueed, elder brother of the Appellant. The Respondent No. 1 – Abdul Majeed also issued an office order on 23.03.2015, appointing himself as Chief Mutawalli. The Respondent No. 1 issued letters on the basis of such declaration on 23.03.2015 to various authorities including Banks. It is in this background; the Appellant has sought declaration that the Respondent No. 1 is no longer Mutawalli under the Wakf Deed dated 28.08.1948 as amended from time to time on account of breach of his obligations under the said Deed and to issue a decree in nature of permanent injunction restraining Respondent No.1 to continue as Mutawalli of Hamdard. The Appellant filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 along with the suit.

The learned Single Judge held that the Appellant is a Chief Mutawalli by interpreting the Wakf Deed, whereas, the Division Bench has taken a different view

DECISION AND OBSERVATIONS

The Hon'ble Court observed that since, the Board of Trustees was contemplated to be five Mutawallis including Wakif Mutawalli or Chief Mutawalli, therefore, the induction of grandsons was not in order of date of birth but keeping in view the representations to both sons of the Wakif Mutawalli. **Therefore, the 1948 Deed as amended does not show the applicability of principal of rule of primogeniture but equal representation to the heirs of both sons of Wakif Mutawalli.**The Wakif Mutawalli has constituted a Board of five Mutawallis. **Therefore, it is a body of Mutawallis which has been vested with the**

right of management of Hamdard and senior most male descendant amongst them contemplated to be Chief Mutawalli.

The grant of mandatory injunction is not prohibited even in ***Samir Narain Bhojwani v. Arora Properties and Investments and Another***[4] it has held that unless clear and prima facie material justifies a finding that status quo has been altered by one of the parties the order in mandatory injunction can be given. **The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction**. In ***Deoraj v. State of Maharashtra and Others***[5], the Supreme Court held that Court would grant such **an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing**, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad-interim injunction in mandatory form can be granted.

The argument that under Order XXXIX Rules 1 and 2 of the Code, the Court has the jurisdiction to maintain the status of the parties on the date of filing of the suit or on the date of passing of the order but cannot direct the parties to do something which was not in existence at the time of filing of the suit, is not a general rule of universal application. The nature of the orders claimed by the Appellant are not passed ordinarily in a routine manner as the Plaintiff is required to have a case which should be of higher standard than mere prima facie case. But in view of the agreement between the parties, as recorded by the Division Bench in an earlier round of litigation the primary question was agreed to be that who is to act as Chief Mutawalli. Both learned Single Judge and the Division Bench has examined such question only. Even, before this Court, the parties have argued primarily on the question as to who shall be Chief Mutawalli. Therefore, a prima-facie opinion would lead to consequential order in respect of management of the affairs of the Hamdard. The court allowed the appeal.

[4] 2018 (10) Scale 33
[5] (2004) 4 SCC 697

5. ***Ajit Kaur @ Surjit Kaur v. Darshan Singh (Dead) Through Lrs.(Civil Appeal No. 226 of 2010)***

Decided on – 04.04.2019

Bench – 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Ajay Rastogi

(Mutation of a property in the revenue records are fiscal proceedings and does not create or extinguish title nor has it any presumptive value on title)

FACTS

Original plaintiffs, Darshan Singh son of Bhana, and Amriti and Udhi alias Iqbal Kaur, daughters of Bhana filed a suit for possession of the subject land in dispute. It was claimed by the plaintiffs that Bhana was the original owner of the 1 subject properties in dispute. The plaintiffs along with one Gurdev Kaur were the children of aforesaid Bhana from his first wife Bhago and after the death of his wife(Bhago), Bhana was remarried to Smt. Banti but because of strained relations of Bhana and Smt. Banti, they started living separately.

Bhana and Smt. Banti had a daughter, namely, Ajit Kaur(appellant).Bhana parted the suit land to Smt. Banti by way of gift for her maintenance way back in the year 1950. In furtherance thereof, mutation was also entered in favour of Smt. Banti bearing sanctioned on 25th February, 1950.
The aforesaid gift came to be challenged by the original plaintiff Darshan Singh in a Civil Suit for declaration under the customary law. It was claimed by him that the aforesaid gift by late Bhana in favour of Smt. Banti qua the ancestral property would not affect the reversionary rights of Darshan Singh(original plaintiff).

The aforesaid civil suit filed at the instance of Darshan Singh was decreed by the learned trial Court and it was held that the aforesaid gift by late Bhana in favour 2 of Smt. Banti would not affect the reversionary rights of Darshan Singh and would operate only during the life time of Bhana. The Civil Appeal preferred by Banti against the aforesaid judgment and decree was dismissed by learned District Judge and the Regular Second Appeal filed at her instance came to be dismissed by the High Court. It was claimed that Smt. Banti was to continue to have the rights in the property only during the life time of hana and was not an absolute owner. Since Bhana died on 27th March, 1973 and prior to his death, he had executed a registered will dated 5th January, 1973 whereby he bequeathed his estate in favour of plaintiffs Darshan Singh and others by excluding Smt. Banti and Smt. Ajit Kaur, original (defendant no. 1)and (defendant no. 25) appellant herein and other daughter Gurdev Kaur.

In reference to the aforesaid will dated 5thJanuary, 1973, Civil Suit was filed by the plaintiff for possession. The appellant contested the suit and it was claimed by her that Banti was the

absolute owner of the suit property. She even denied the earlier litigation between the parties whereby reversionary rights of Darshan Singh came to be upheld. the appellate Court reversed the findings of the trial Court with regard to Banti having become absolute owner of the suit property on the basis of an oral gift executed by Bhana in the year 1950 and the gift came to be set aside and held that Smt. Banti could not be held to be the absolute owner of the suit property even after the commencement of the Hindu Succession Act, 1956 inasmuch as her title to the suit property was to operate only during the life time of Bhana who died on 27th March, 1973.

The judgment of the Court of appeal came to be challenged at the instance of the appellant(defendant) and second appeal before the High Court also came to be dismissed which is the subject matter of challenge in the instant appeal.

DECISION AND OBSERVATIONS

It is a settled position of law that the mutation of a property in the revenue records are fiscal proceedings and does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation has been ordered, to pay the land revenue. At the same time, the effect of a declaratory decree to restore the property alienated to the estate of the alien or and until and unless the alienees are able to convince the court that they have no subsisting interest in the property, the heirs of the alienees would be entitled to the benefits of the property as per the law of succession.

The effect of the operation of the aforesaid declaratory decree would be to restore the land in dispute to the aforesaid estate of Bhana(deceased) and the succession would be deemed to have opened on 27th March, 1973 when Bhana died. On his death, the estate left behind him including the land in dispute would devolve upon his heirs as per their entitlement and after the registered will dated 5th January, 1973 has been upheld by the High Court in RSA No. 933/1984 decided on 28th July, 2004 and attained finality, its consequence was to follow accordingly

Section 14(1) of the Act, 1956 clearly envisage that the possession of the widow, however, must be under some vestige of a claim, right or title or under any of the devices which has been purported under the law. Undisputedly, in the instant case, the appellant was not holding any valid possession over the subject property and as already observed, opening of fiscal proceedings would not confer a right of acquisition by either of the device which has been referred to under the explanation to Section 14(1)[6] of the Act, 1956.

[6] *"14. Property of a female Hindu to be her absolute property*
(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation. – In this subsection, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any

The Hon'ble Court relied upon its decision in ***Eramma v. Veerupana***[7], wherein the widow was in possession of the half of the property of her late husband and claimed her absolute ownership by virtue of Section 14 of the Hindu Succession Act, 1956 which was negated by this Court for the reason that the widow was not holding possession over the subject property in question under any of the device indicated in the explanation to Section 14(1) of the Act, 1956. In this case it was held that It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner as given in the last portion of subsection (1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section. The object of the section is to extinguish the estate called limited estate or "widow's estate" in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder.

It is true that the Explanation has not given any exhaustive connotation of the word "property" but the word "acquired" used in the Explanation and also in subsection (2) of Section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the section cannot be interpreted so as to validate the illegal possession of female Hindu and it does not confer any title on a mere trespasser. In other words, the provision of Section 14(1)of the Act cannot be attracted in the case of a 16 Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.

The Hon'ble Court also relied upon ***V. Tulasamma Vs. Sesha Reddy(Dead) by LRs***[8] wherein the interpretation of section 14(1) and (2) has been summarized.

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other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
(2) Nothing contained in subsection(1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

[7] AIR 1996 SC 1879.

[8] 1977(3) SCC 99.

"(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained there from. If a charge is created for *the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a preexisting right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the preexisting rights.*

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socioeconomic ends sought to be achieved by this long needed legislation.

(3) Subsection (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Subsection (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate infavour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a preexisting right, such as a claim to maintenance or partition or share to which the female is entitled, the subsection has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of subsection (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the Explanation to Section 14(1) clearly makes subsection 18 (2) inapplicable to these categories which have been expressly excepted from the operation of subsection (2).

(6) The words 'possessed by' used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given

actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

The Hon'ble Court concluded that the appellant although was holding possession but not under any of the device referred to under explanation to Section 14(1)of the Act, 1956 and mere possession would not confer pre existing right of possession over the subject property to claim full ownership rights after the Act, 1956 came into force by operation of law.

6. ***Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan 2019 SCC OnLine SC 458,***

Decided on:- 02.04.2019

(Before Hon'ble Mr. Justice U.U. Lalit and Hon'ble Ms. Justice Indu Malhotra)

(-A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.

- When possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.)

FACTS

The Appellant - Builder launched a residential project by the name "Araya Complex" in Sector 62, Golf Course Extension Road, Gurugram. The Respondent - Flat Purchaser entered into an Apartment Buyer's Agreement dated 08.05.2012 with the Appellant - Builder to purchase an apartment in the said project for a total sale consideration of Rs. 4,83,25,280/-.

As per Clause 11.2 of the Agreement, the Appellant - Builder was to make all efforts to apply for the Occupancy Certificate within 39 months from the date of excavation, with a grace period of 180 days. The excavation of the project commenced on 04.06.2012. As per Clause 11.2 of the Agreement, the Builder was required to apply for the Occupancy Certificate by 04.09.2015, or within a further grace period of 6 months i.e. by 04.03.2016, and offer possession of the flat to the Respondent - Flat Purchaser.

The Appellant - Builder however failed to apply for the Occupancy Certificate as per the stipulations in the Agreement. The Respondent – Flat Purchaser filed a Consumer Complaint before the National Commission on 27.01.2017 alleging deficiency of service on the part of the Appellant - Builder for failure to obtain the Occupancy Certificate, and hand over possession of the flat.

On 06.02.2017, the National Commission passed an *ex-parte* Interim Order restraining the Appellant - Builder from cancelling the allotment made in favour of the Respondent - Flat Purchaser during the pendency of the Consumer Case. During the pendency of the proceedings before the National Commission, the Appellant - Builder obtained the Occupancy Certificate on 23.07.2018, and issued a Possession Letter to the Respondent - Flat Purchaser on 28.08.2018.

The Appellant - Builder submitted before the National Commission that since the construction of the apartment was complete, and the Occupancy Certificate had since been obtained, the Respondent - Flat Purchaser must be directed to take possession of the apartment, instead of directing refund of the amount deposited.

The Respondent - Flat Purchaser however submitted that he was not interested in taking possession of the apartment on account of the inordinate delay of almost 3 years. The Respondent - Flat Purchaser stated that he had, in the meanwhile, taken an alternate property in Gurugram, and sought refund of the entire amount of Rs. 4,48,43,026/- deposited by him along with Interest @18% p.a.

The National Commission *vide* Final Judgment and Order dated 23.10.2018 allowed the Consumer Complaint filed by the Respondent - Flat Purchaser, and held that since the last date stipulated for construction had expired about 3 years before the Occupancy Certificate was obtained, the Respondent - Flat Purchaser could not be compelled to take possession at such a belated stage. The grounds urged by the Appellant - Builder for delay in handing over possession were not justified, so as to deny awarding compensation to the Respondent - Flat Purchaser. The clauses in the Agreement were held to be wholly one - sided, unfair, and not binding on the Respondent - Flat Purchaser.

The Appellant - Builder was directed to refund Rs. 4,48,43,026/- i.e. the amount deposited by the Respondent - Flat Purchaser, along with Interest @10.7% S.I. p.a. towards compensation. However, for the period when the Interim Order dated 06.02.2017 was in operation, which restrained the Appellant - Builder from cancelling the Respondent's allotment, no Interest was awarded. The National Commission ordered payment of Interest from the date of each installment till 05.02.2017; and from the date of the Order passed by the Commission till the date on which the amount would be refunded.

Aggrieved by the Order dated 23.10.2018 passed by the National Commission, the Appellant - Builder preferred the present statutory Appeal under Section 23 of the Consumer Protection Act, 1986.

OBSERVATIONS AND DECISION

The Hon'ble Court referred to the judgment rendered in ***Lucknow Development Authority v. M.K. Gupta***[9] wherein it was held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2(o) of the Consumer Protection Act, 1986 and the inordinate delay in handing over possession of the flat clearly amounts to deficiency of service and the judgment given in ***Fortune Infrastructure v. Trevor D'Lima***[10], wherein it was held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation. The Hon'ble Court also referred to the 199th Law Commission Report wherein it hadaddressed the issue of 'Unfair (Procedural & Substantive) Terms in Contract'. The Law Commission *inter-alia* recommended that a

[9] (1994) 1 SCC 243.
[10] (2018) 5 SCC 442

legislation be enacted to counter such unfair terms in contracts and observed that *"A contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."*

Referring to Section 2(r)[11] of the Consumer Protection Act, 1986, and the judgment of the Supreme Court in ***Central Inland Water Transport Corporation Limited* v. *Brojo Nath Ganguly***[12], the Court reiterated the principle that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. Relying on the aforesaid cases and provisions of law, the Hon'ble Court held that the terms of the contract in the present case are *ex-facie* one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder and the Appellant - Builder could not seek to bind the Respondent with such one-sided contractual terms.

As far as the rate of interest imposed by the National Commission was concerned, the Hon'ble Court referred to the judgment of ***Bangalore Development Authority* v. *Syndicate Bank***[13] and held that when possession of the allotted plot/flat/house is not delivered within the specified time, the allottee is entitled to a refund of the amount paid, with reasonable Interest thereon from the date of payment till the date of refund.

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[11](r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

[12] (1986) 3 SCC 156.

[13] (2007) 6 SCC 711.

7. ***Dharani Sugars and Chemicals Ltd. v. Union of India and Others- 2019 SCC OnLine SC 460***

Decided on:- 02.04.2019

(Before Hon'ble Mr. Justice R.F. Nariman and Hon'ble Ms. Justice Vineet Saran)

(This batch of cases raises questions as to the constitutional validity of Sections 35AA[14] and 35AB of the Banking Regulation Act, 1949, introduced by way of amendment, w.e.f. 04.05.2017. The real bone of contention was a Reserve Bank of India ["RBI"] Circular issued on 12.02.2018, by which the RBI promulgated a revised framework for resolution of stressed assets.)

FACTS

This batch of cases raises questions as to the constitutional validity of Sections 35AA and 35AB of the Banking Regulation Act, 1949, introduced by way of amendment, w.e.f. 04.05.2017. The real bone of contention was a Reserve Bank of India ["RBI"] Circular issued on 12.02.2018, by which the RBI promulgated a revised framework for resolution of stressed assets.

The salient features of this circular are that restructuring in respect of borrower entities *de hors* the Insolvency and Bankruptcy Code, 2016 ["Insolvency Code"] can only occur if the resolution plan that involves restructuring is agreed to by all lenders, i.e., 100 per cent concurrence. Secondly, what has been chosen to be the subject matter of the circular is debts with an aggregate exposure of INR 2000 crore and over on or after 01.03.2018. With respect to such debts, if default persists for 180 days from 01.03.2018, or if the date of first default is after 01.03.2018, then 180 days calculated with effect from that date, lenders shall file applications singly or jointly under the Insolvency Code within 15 days from the expiry of the aforesaid 180 days. In short, unless a restructuring process in respect of debts with an aggregate exposure of over INR 2000 crore is fully implemented on or before 195 days from the reference date or date of first default, the lenders will have to file applications as financial creditors under the Insolvency Code. It will be noticed that the sources of power for issuance of the aforesaid circular have been stated to be Section 35A of the Banking Regulation Act read with the Central Government's circular dated 05.05.2017, Sections 35AA and 35AB of the said Act, and Section 45L of the Reserve Bank of India Act, 1934 ["RBI Act"].The RBI directed the banks to identify defaults of large borrowers with dues of over Rs. 2,000 crores within a day of the due date for installment.

[14]"35AA. - The Central Government may by order authorize the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.
Explanation. – For the purposes of this section, "default" has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016."

The circular further required that if the accounts of the defaulting large borrowers were not resolved within 180 days from the date its installment fell due, they had no choice but to refer these accounts for resolution under The Insolvency & Bankruptcy Code, 2016. The RBI circular provides various guidelines in the exercise of powers conferred under Section 35A, 35AA and 35AB of the Banking Regulation Act, 1949 and Section 45L of the Reserve Bank of India Act, 1934.

CONTENTION OF THE PETITIONERS

According to the petitioners, the source of power of RBI to issue a circular of this nature can neither be Section 35A nor Section 35AB as Section 35A was introduced way back in 1956 and that Section 35AB refers to the resolution of stressed assets in a manner which is dehors the Insolvency and Bankruptcy Code, 2016. Therefore, it was the argument of the petitioners that the circular derived power only from Section 35AA and that even assuming so, the circular will fall beyond the powers of RBI under Section 35AA as this provision simply authorizes RBI to issue directions to "any banking company" or "banking companies" to initiate insolvency resolution process in respect of "a default" under the provisions of Insolvency Code, 2016.

ARGUMENTS OF THE RBI

RBI argued before the Supreme Court that the basis of the circular is larger public interest, the interest of the national economy and above all interest of the depositors and that statutorily it is backed by Section 35A, 35AA, 35AB and Section 21 of the Banking Regulation Act. It argued that the regulatory powers of RBI under the above provisions must be widely construed so as to enable RBI to carry out its functions. It was contended that RBI has also the powers to require banking companies to engage in resolution of bad loans expeditiously within a certain timeline, and in the event of failure, to invoke the Insolvency and Bankruptcy Code. According to RBI, both the RBI Act and the IBC are intricately related to the operation of the credit system of the country.

OBSERVATIONS AND DECISION

The Hon'ble Court held that a conspectus of all the relevant provisions shows that the Banking Regulation Act specifies that the Central Government is either to exercise powers along with the RBI or by itself. The role assigned, therefore, by Section 35AA, when it comes to initiating the insolvency resolution process under the Insolvency Code, is thus, important. Without authorization of the Central Government, obviously, no such directions can be issued. A corollary of this is that prior to the enactment of Section 35AA, it may have been possible to say that when it comes to the RBI issuing directions to a banking company to initiate insolvency resolution process under the Insolvency Code, it could have issued such directions under Sections 21 and 35A. But after 35AA, it may do so only within the four corners of Section 35AA.

The Supreme Court further held that 'default' mentioned in Section 35AA would mean non-payment of a debt when it has become due and payable and that it is not a particular default of a particular debtor that is the subject matter of Section 35AA. However, the circular has a sweeping effect over all the defaulters and it is not restricted to a single defaulter as is clear from the wording of Section 35AA. The Supreme Court also noted that Section 45L of the Reserve Bank of India Act is also not satisfied by the circular. The said provision provides that the RBI can, for the purpose of enabling it to regulate the credit system of the country, give directions to the financial institutions to conduct its business in a particular way. However, the requirements of Section 45L of the RBI Act can be fulfilled only with due regard to the conditions in which, and the objects for which, the financial institution has been established, its statutory responsibilities and the effect the business of such financial institution is likely to have on the trends in the money and capital markets.

The Supreme Court, therefore, finally held that the circular is ultra vires Section 35AA of the Banking Regulation Act and therefore illegal in its entirety. As a result, all the cases in which debtors have been proceeded against by financial creditors under Section 7 of the Insolvency Code, only because of the operation of the impugned circular, will stand nullified.

CASES REFERRED

(i) ***Shayara Bano* v. *Union of India*, (2017) 9 SCC 1** – Discussion in relation to the interpretation of legislation affecting the economy

(ii) ***Harishankar Bagla* v. *State of M.P.*, (1955) 1 SCR *380*** – When it comes to lack of any guidelines by which the power given to the RBI is to be exercised such guidance can be obtained not only from the Statement of Objects and Reasons and the Preamble to the Act, but also from its provisions.

(iii) ***Senior Electric Inspector* v. *Laxminarayan Chopra*, (1962) 3 SCR** 146– *"ongoing" interpretation of a statute.* Whether a statute can apply to new situations not in contemplation of Parliament when the statute was enacted.

(iv) ***State of U.P.* v. *Singhara Singh*, (1964) 4 SCR 485** – If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed.

(v) ***Utkal Contractors & Joinery (P) Ltd.* v. *State of Orissa*, (1987) 3 SCC 279** – A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done.

(vi) ***Union of India* v. *Pfizer Ltd.*, (2018) 2 SCC 39; *Bharat Sanchar Nigam Ltd.* v. *Telecom Regulatory Authority of India*, (2014) 3 SCC 222** – The words "without prejudice" appearing in a Section make it clear that powers that are enumerated are only illustrative of a general power and do not restrict such general power.

(vii) ***Eera (through Dr. Manjula Krippendorf)* v. *State (NCT of Delhi)*, (2017) 15 SCC 133;*Arcelor Mittal India (P) Ltd.* v. *Satish Kumar Gupta*, (2019) 2 SCC 1*Asian Resurfacing of Road Agency (P) Ltd.*v. *Central Bureau of Investigation*, (2018) 16 SCC 299**– Theory of creative interpretation. Instances of creative interpretation are when the Court looks at both the literal language as well as the purpose or object of the statute in order to better determine what the words used by the draftsman of legislation mean.

(viii) ***J.K. Cotton Spinning & Weaving Mills Co. Ltd.* v. *State of U.P.*, (1961) 3 SCR 185; *Commercial Tax Officer, Rajasthan* v. *Binani Cements Ltd.*, (2014) 8 SCC 319** – When one section of a statute grants general powers, as opposed to another section of the same statute which grants specific powers, the general provisions cannot be utilised where a specific provision has been enacted with a specific purpose in mind.

8. *Vinod Verma v. Union of India and Others, 2019 SCC OnLine SC 459*

Decided on :- 02.04.2019

(Before Hon'ble Mr. Justice Ashok Bhushan and Hon'ble Mr. Justice K.M. Joseph)

(- No promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre.

- Discussion on the applicability of ROTA System in promotion)

FACTS

Rules have been framed under proviso to Article 309 of the Constitution, namely, the Telecommunications Engineering Service (Group "B" Posts) Recruitment Rules, 1996 (hereinafter referred to as "Rules, 1996"). The post of Sub-Divisional Engineer is the post governed by the Rules, 1996. The post of Sub-Divisional Engineer is hundred percent promotional post. Junior Telecom Officers are eligible for promotion under two methods: (i) 75% on the basis of seniority-cum-fitness, (ii) 25% on the basis of departmental competitive examination.

In the year 2000, the Telecommunication Department initiated the process for filling up of the vacancies "Post 1996-97". In the year 2001, the appellant was promoted as Sub-Divisional Engineer under the seniority-cum-fitness quota. The department announced the Limited Departmental Competitive Examination(LDCE) for promotion for the 25% quota for vacancies after 22.07.1996 which examination could be held on 01.12.2002. The department issued the promotion orders dated 26.04.2000 and 07.12.2001 for the officers promoted under the seniority-cum-fitness category for the vacancies occurring after 23.07.1996. The result of Limited Departmental Competitive Examination was declared on 15.12.2003. The appellant also appeared in the Departmental Competitive Examination held on 01.12.2001. The promotion order dated 26.05.2004 was issued for the promotion of LDCE successful candidates. The order contemplated that the seniority of these officers will be fixed as per Rules shortly.

DPC was again conducted and promotions were made against the 75% category for the subsequent years 2001-02 and 2002-03 on 16.09.2004. The seniority list of Sub-Divisional Engineers was issued on 12.01.2005 which seniority list became the subject matter of the challenge in various Benches of Central Administrative Tribunal.

In the seniority list Nos. 7 and 8, the inter se seniority of Sub-Divisional Engineer promoted through seniority-cum-fitness and LDCE was fixed by the department in the ratio of 3:1 as per OM dated 03.07.1986 which was sought to be challenged in the present case, where the appeal has arisen out of the order passed by the Chandigarh Bench of Central Administrative Tribunal.The question raised was as to what would be the mode of fixation of seniority in TES Group 'B' between members of service who are appointed

on the basis of seniority vis-a-vis those who enter the service after qualifying the Limited Departmental Competitive Examination. The applicants before the Tribunal belonged to the stream who were promoted under seniority-cum-fitness where few of the respondents who were impleaded before the Tribunal were those who were promoted Sub-Divisional Engineers vide order dated 26.05.2004 on the basis of Limited Competitive Departmental Examination. The Tribunal quashed the seniority list prepared by the department and directed for redrawing the seniority list on the basis of date of joining of the incumbents. ***The Tribunal held that the seniority of the incumbents has to be determined on the basis of date of joining and not of the notional date of promotion.*** In TA No. 84-HR-2009 (*Dewan Chand* v. *Union of India*), the applicants who had approached the Tribunal were promoted under seniority-cum-fitness and they were allocated to the seniority position below the promotees under LDCE quota under which they were given seniority slots earlier to date of promotion. The Tribunal had allowed the TA No. 84-HR-2009 and set aside the seniority list and directed for drawing the seniority list on the basis of date of joining of the incumbents. The appellant who claims seniority position as per occurring of vacancy for LDCE quota is aggrieved by the direction of the Tribunal.

OBSERVATIONS AND DECISION

The Rules did not contain any provision relating to determination of seniority. The Hon'ble Court held that it is settled law that the determination of seniority can be provided by the Executive instructions if the subject matter is not covered by the statutory rules. The Hon'ble Court also reliedon the judgment of a three-judge bench of the Supreme Court in ***B.S.N.L. v. S.K. Dubey***[15], wherein the challenge was made to the order of CAT, Jabalpur which directed the appellant, BSNL to assign the notional date of promotion to Sub-Divisional Engineers which order was set aside by the Supreme Court Court by the said judgment and had also held that in the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. The relevant paragraphs of the judgment are as under :-

"2. This appeal by special leave is directed against the order of the Central Administrative Tribunal, Jabalpur, whereby the original application filed by the respondents herein was allowed and the direction has been given to the present appellants (respondent therein) to assign the notional date of promotion as Sub Divisional Engineers (SDEs) with consequential benefits such as counting of experience for further promotions, annual increments etc. to the original applicants with effect from 23.01.2002.

3. The order passed by the Central Administrative Tribunal cannot be sustained for more than one reason. In the first place, there is no rule with regard to the subject service which gives benefit of assigning the notional date of promotion with retrospective effect. The present respondents were employees of the Department of Telecommunications, Government of India and were working as Junior Telecom Officers prior to 1996. In exercise of the powers conferred by the

[15] C.A. No. 7830/2014

proviso to Article 309 of the Constitution of India, the Telecommunications Engineering Services (Group 'B') Recruitment Rules, 1996 were made with effect from 22.07.1996. Inter alia, these rules provide for method of recruitment, age limit and other qualifications for the recruitment by way of promotion to the post of TES Group 'B'.

4. As per these Rules, 75% promotion is to be made on the basis of seniority-cum-fitness from amongst Junior Telecom Officers with three years regular service in the Grade and 25% is to be promoted on the basis of Departmental Competitive Examination from Junior Telecom Officers with three years regular service in the Grade. The crucial date for determining the eligibility is 1st July of the year to which the vacancy pertains. 1996 Recruitment Rules do not provide for ROTA nor does it provide for holding Departmental Competitive Examination for the vacancies every year in contradistinction to the earlier Rules of 1981 entitled Telegraph Engineering Service (Group 'B' Posts) Recruitment Rules, 1981. 1981 Rules, inter alia, had a provision that inter se seniority of the officials who have qualified in the Departmental Qualifying Examination shall be in the ratio of 2:1 starting with the officers selected by the method of selection by Departmental Promotion Committee on the basis of Departmental Qualifying Examination. It also provided that there shall be normally one examination consisting of two parts called Qualifying-cum-Competitive Examination for promotion to the service which shall be held at least once in a calendar year. The ROTA rule as well as holding the examination at least once in a calendar year which were provided in the 1981 Rules are conspicuously absent in the 1996 Rules. The validity of the 1996 Rules has not been put in issue by any one."

9. ***Secretary, Lucy Sequeira Trust and Another v. Kailash Ramesh Tandel and Others, 2019 SCC Online SC 479***
Decided on 08.04.2019

(Before Hon'ble Mr. Justice U.U.Lalit, Hon'ble Ms. JusticeIndira Banerjee)

(The initiation of the process in a departmental proceeding, especially on charges such as sexual harassment, can never be said to be amounting to contempt of court even if the criminal proceedings were pending. These allegations are of such level and dimension that an immediate action on the departmental front is required to be undertaken and such action by its very nature has to be completely independent. Whether any criminal trial is pending or not would not be having any bearing on the pending issue before the Inquiry Committee.)

FACTS

Respondent No. 1 was appointed as Assistant Teacher on 01.09.2004 in a school run by the Appellant. A warning was issued to him on 04.05.2009 for his objectionable behavior with adolescent girl students in said school. Thereafter, two F.I.R.s were also registered against him by the girl students, and he had been arrested and had been in custody for 7 days in connection with one of the F.I.R.s.

Respondent No. 1 was, thereafter, suspended and an Inquiry Committee was constituted consisting of the Convenor being Nominee of the Appellant, Nominee of Respondent No. 1 and a State Awardee Teacher. The Inquiry Committee examined both the girls as well as other witnesses. Nominee of Respondent No. 1 as well as the State Awardee Teacher, however refused to sign the Report prepared by the Convenor, observing that the matter is pending before the Court and any action taken as a result of the Inquiry, will amount to contempt of court.

The matter was, then considered by the Appellant and by its Resolution dated 26.09.2014 the Appellant terminated the service of Respondent No. 1. Thereafter, Appeal was filed by Respondent No. 1 before the School Tribunal, Mumbai Region, Mumbai. The tribunal while remitting the matter as aforesaid, directed reinstatement of Respondent No. 1, notionally for the purpose of conducting the inquiry. It was observed that the State Awardee Teacher and the Nominee of Respondent No. 1 had not given any firm decision as they had proceeded on the basis that if any decision was given, it would amount to contempt of court, as criminal proceedings were pending against Respondent No. 1 before the Metropolitan Magistrate's Court, Borivili and Sessions Court, Dindoshi. The Tribunal relied upon a decision of this Court in *State of Punjab* v. *Dr. Harbhajan Singh Greasy*[16] to the effect that if an inquiry was found to be faulty, the matter be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was

[16] (1996) 9 SCC 322.

pointed out. The appellant, being aggrieved, challenged the decision of the Tribunal by filing Writ Petition No. 4383 of 2017 in the High Court. The High Court by its judgment and order dated 04.09.2017 dismissed said Writ Petition and upheld the order passed by the Tribunal. It held that the Tribunal was justified in remitting the matter as the nominee of Respondent No. 1 and the State Awardee Teacher had not given any clear-cut opinions. The High Court also directed that the exercise of conducting the inquiry be undertaken as expeditiously as possible and preferably within three months. Aggrieved by the order, the Appellant preferred the present appeal befor the Hon'ble Supreme Court.

OBSERVATIONS AND DECISION

The Hon'ble Court observed that looking at facts and circumstances of the case, the conclusion by the Convener in the report that the charges were sensitive and that the case called for strict action, was absolutely correct. On the other hand, the reports of the Nominee of Respondent No. 1 and the State Awardee Teacher not only show complete lack of sensitivity but they also got bogged down unnecessarily by a question whether any action on their part would amount to contempt of court or not. ***It is well settled that a departmental proceeding and proceedings in a criminal court are completely different. The purpose is different, the standard of proof is different and the approach is also different. The initiation of the process in a departmental proceeding, especially on charges with which we are concerned in the present matter can never be said to be amounting to contempt of court even if the criminal proceedings were pending.*** The Hon'ble Court further observed that the allegations made against Respondent No. 1 were of such level and dimension that an immediate action on the departmental front was required to be undertaken and such action by its very nature had to be completely independent. Whether any criminal trial was pending or not would not be having any bearing on the pending issue before the Inquiry Committee. Therefore, the Hon'ble Court held that the approach of the Nominee of Respondent No. 1 and of the State Awardee Teacher was completely wrong and unsustainable.

The Hon'ble Court also observed that the approach adopted by the Management was not only fair and transparent but was in keeping with what is expected of the Management where allegations of sexual harassment of adolescent girls are in issue.

The Hon'ble Court referred to the case of ***Apparel Export Promotion Council v. A.K. Chopra***[17], to show the approach to be adopted by Courts in matters where allegations of sexual harassment are made is as under :-

"28. The observations made by the High Court to the effect that since the respondent did not "actually molest" Miss X but only "tried to molest" her and, therefore, his removal from service was not warranted, rebel against realism and lose their sanctity and credibility. In the instant

[17] (1999) 1 SCC 759

case, the behaviour of the respondent did not cease to be outrageous for want of an actual assault or touch by the superior officer. In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced and mercy has no relevance. The High Court overlooked the ground realities and ignored the fact that the conduct of the respondent against his junior female employee, Miss X, was wholly against moral sanctions, decency and was offensive to her modesty. Reduction of punishment in a case like this is bound to have a demoralising effect on the women employees and is a retrograde step. There was no justification for the High Court to interfere with the punishment imposed by the departmental authorities. The act of the respondent was unbecoming of good conduct and behaviour expected from a superior officer and undoubtedly amounted to sexual harassment of Miss X and the punishment imposed by the appellant was thus commensurate with the gravity of his objectionable behaviour and did not warrant any interference by the High Court in exercise of its power of judicial review."

10. Kushuma Devi v. Sheopati Devi (Civil Appeal No. 3448-3449 of 2019)

Decided on – 08.04.2019

Bench – 1. Hon'ble Mr. Justice Abhay Manohar Sapre
2. Hon'ble Mr. Justice Dinesh Maheshwari

(Judicial or and quasi-judicial order passed by the Court/Tribunal/Authority concerned, which decides the *lis* between the parties, must be supported with the reasons in support of its conclusion)

FACTS

The appellant filed an eviction petition against the respondents. By order dated 19.04.1996, the Civil Judge decreed the suit and passed the decree for eviction against the respondents. The respondents felt aggrieved and filed Rent Appeal in the Court of A.D.J. The first Appellate Court by order dated 04.12.2001 allowed the appeal and dismissed the eviction petition filed by the appellant. The appellant felt aggrieved and filed a writ petition in the High Court at Allahabad. By impugned order dated 27.07.2012, the High Court dismissed the writ petition and affirmed the order dated 04.12.2001 passed by the Additional District Judge, in the absence of the appellant. The appellant filed an application for recall of the order dated 27.07.2012. The High Court by order dated 16.01.2013 dismissed the said application. The appellant felt aggrieved by the said orders and has filed these appeals by way of special leave in this Court.

DECISION AND OBSERVATIONS

The Hon'ble Court remanded the case to the High Court because the High Court neither discussed the issues arising in the case, nor dealt with any of the submissions urged by the parties and nor assigned any reason as to why it has dismissed the writ petition.

Further, the Hon'ble Court said that the **Court has consistently laid down that every judicial or/and quasi-judicial order passed by the Court/Tribunal/Authority concerned, which decides the *lis* between the parties, must be supported with the reasons in support of its conclusion**. The parties to the lis and so also the appellate/revisionary Court while examining the correctness of the order are entitled to know as to on which basis, a particular conclusion is arrived at in the order. In the absence of any discussion, the reasons and the findings on the submissions urged, it is not possible to know as to what led the Court/Tribunal/Authority for reaching to such conclusion.

11. *Ramswaroop Soni v. State Of Madhya Pradesh(Criminal Appeal No. 614 of 2019)*

Decided on – 08.04.2019

Bench – 1. Hon'ble Mr. Justice U.U. Lalit 2. Hon'ble Ms. Justice Indu Malhotra

(Final report stating no offence found to be committed-Role of Magistrate in such cases)

FACTS

A case was filed against the appellant for the offences punishable under Section 326, 294 IPC and Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in which a Final Report under Section 173(2) of Cr.P.C. was filed submitting that no offence was found to have been committed by the appellant.

The matter was thereafter taken up by the Chief Judicial Magistrate who passed the order[18]directing the police to file charge-sheet under Section 326 and 294 IPC and also the provision of Section 3(1) and 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

DECISION AND OBSERVATION

The Apex Court said that the law is well-settled that in case a final report is filed under Section 173(2) Cr.P.C. stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate:

(a) He may accept the report which was filed by the police in which case the proceedings would stand closed.

(b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police.

(c) If he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories. In the present matter, the magistrate has issued directions directing the police to file charge-sheet under Section 326 and 294 IPC and also the provision of Section 3(1) and 10 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Apex court found the direction to be wholly unsustainable.

[18] "The case is fixed for order on closure. Final report was present by P.S. Ajak, Vidisha on 20.06.2009 under Section 326, 294 of IPC and Section 3(1) (10) of S.C/S.T. Act was registered against the Ramswarup Soni on the report of complainant Kishor Kumar. Since, sufficient evidence was not found by P.S. during the course of investigation, therefore, closure report was presented. The statement of complainant Kishore Kumar was recorded regarding aforesaid closure report. The complainant has stated in his statement that Police has deliberately not presented charge-sheet, nor has lodged a report in a proper manner. Complainant has expressed his objection in allowing closure report. Case diary was perused. Sufficient evidence is available on the record to submit charge-sheet against the accused Ramswaroop Soni, in this situation, while rejecting aforesaid closure report, the SHO of P.S. Ajak is hereby directed to submit charge-sheet against the accused in the Court.

A copy of this order be attached in the case diary and case diary be returned back to the Police Station. Remaining documents be filed in a bundle."

12. *P. Leelavathi (D) by LRs v. V. Shankarnarayana Rao (D) by LRs, 2019 SCC OnLine SC 489*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice L. Nageswara Rao, Hon'ble Mr. Justice M.R. Shah)

Whether in the facts and circumstances of the case and merely because some financial assistance has been given by the father to the sons to purchase the properties, can the transactions be said to benami in nature?

OBSERVATIONS AND DECISION

The Hon'ble Court referred to a few decisions[19] of the Court on the benami transactions/transactions of benami nature and observed that while considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. It was further observed by the Court as to what the intention of the person who contributed the purchase money, has to be decided on the basis of the surrounding circumstance; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc.

The Hon'ble Court also observed that in ***Binapani Paul* v. *Pratima Ghosh***[20], the Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of the Court on the point, the Court in that judgment had observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. The Court had ultimately concluded after considering its earlier judgment in the case of ***Valliammal* v. *Subramaniam***[21] that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

> "*(1) the source from which the purchase money came;*
> *(2) the nature and possession of the property, after the purchase;*
> *(3) motive, if any, for giving the transaction a benami colour;*
> *(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
> *(5) the custody of the title deeds after the sale; and*
> *(6) the conduct of the parties concerned in dealing with the property after the sale."*

Applying the aforesaid principles of law to the facts f the case, the Hon'ble Court held the transaction in the case to be not benami in nature and, thus, dismissed the appeal.

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[19] *Thakur Bhim Singh* v. *Thakur Kan Singh* (1980) 3 SCC 72; *Jaydayal Poddar* v. *Bibi Hazra (Mst.)* (1974) 1 SCC 3.
[20] (2007) 6 SCC 100.
[21] (2004) 7 SCC 233.

13. *D.J. Malpani v. Commissioner of Central Excise, Nashik, 2019 SCC OnLine SC 496.*

Decided on :- 09.04.2019

(Before Hon'ble Mr. Justice S.A. Bobde, Hon'ble Mr. Justice Deepak Gupta and Hon'ble Mr. Justice Vineet Saran)

(When an amount is paid as *Dharmada*[22] along with the sale price of goods, such payment is not made in consideration of the transfer of goods, and thus cannot be included in the transaction value for the purposes of assessments for excise duty)

FACTS

The Division bench of the Hon'ble Court referred the following question to the higher bench: -

"Whether the Dharmada collected by the appellant which is clearly an optional payment made by the buyer can be regarded as part of the transaction value for the sale of goods."

The appellant-assessee manufactured goods falling under Chapter 24 of the Schedule of The Central Excise Act, 1944 (hereinafter referred to as "the Act"). While selling goods, the appellant-assessee charged the customers invoices for the price of goods plus Dharmada, a charitable donation. According to the appellant, the Dharmada was paid voluntarily by customers and was meant for charity. It was accordingly credited to charity.However, the Superintendent, Central Excise, Nashik issued show cause notices and raised a demand of duty in respect of Dharmada, claiming it was part of the price for the sale of manufactured goods and included it for computing assessable value.

Initially, the Adjudicating Authority held that the Dharmada component was not part of the trading receipts and could not be included in the assessable value and dropped the demand for excise duty and the penalty.However, another show cause notice dated 3.8.2001 was issued by the Commissioner of Central Excise, Aurangabad under Section 4

[22]Dharmada is well known in India to be a donation or an offering made for the purpose of charity as distinct from a commercial transaction. The Supreme Court considered the nature and character of Dharmada in *The Commissioner of Income Tax (Central) Delhi, New Delhi* v. *Bijli Cotton Mills (P) Ltd. Hathras, District Aligarh,* (1979) 1 SCC 496. That case arose under the Income Tax Act. The assessee used to realise certain amounts on account of Dharmada from his customers on sales of yarn and bales of cotton. The rate was one anna per bundle of ten pounds of yarn and two annas per bale of cotton. The receipts of Dharmada were not credited to the trading account but the assessee maintained a separate account known as the Dharmada account. The authorities under the Act held that the amounts held by the assessee could not be regarded as having been held under trust for charitable purposes. The Supreme Court considered the question in great detail and after referring to *Professor Wilson's Glossary and Molesworth's Dictionary* observed that Dharmada means "an alms or a gift in charity". The Court observed that though there might be some vagueness as a matter of law, in the word Dharma, there was none in relation to Dharmada or Dharmadaya and such a payment would not be invalid for vagueness or uncertainty and observed that "it cannot be disputed that among the trading or commercial community in various parts of the country, a gift or payment for Dharmada is by custom invariably regarded as a gift for charitable purposes"

of the Act calling upon the appellant to show cause as to why penalty under Section 173Q and interest under Section 11AA should not be levied. After hearing the appellant, the Deputy Commissioner held vide order dated 26.02.2002 that Dharmada cannot be considered as trading receipts and was not part of the assessable value. Therefore, no duty was payable on the component of Dharmada. Thereafter, in an appeal filed by Revenue, the Commissioner (Appeals), however, held that the Dharmada was liable to be included as a part of the assessable value and therefore the goods were liable to be assessed on the basis of their price plus Dharmada.

The Central Excise and Service Tax Appellant Tribunal (for short "CESTAT"), in an appeal filed by the appellant, by judgment dated 6.1.2005 partly allowed the appeal and held that the duty amount needs to be recalculated. The CESTAT however rejected the appellant's contention that Dharmada was not part of the transaction value. The CESTAT purported to follow the judgment of the Supreme Court in ***Collector* v. *Panchmukhi Engineering Works***[23], whereby the Court held that Dharmada charged by the assessee is liable to be included in the assessable value.

In the appeal filed by the appellant before a Division Bench of the Supreme Court, it was contended that the decision in *Panchmukhi* (supra) followed an earlier decision of ***Tata Iron & Steel Co. Ltd.* v. *Collector of Central Excise, Jamshedpur***[2] which did not apply to the present case at all. *The Tata Iron & Steel case* was a case where steel plants added a surcharge to the ex-works price at the instance of a committee under the Iron and Steel (Control) Order, 1956. This surcharge was added to generate money for a steel development fund to implement schemes entrusted to the committee by the Central Government. The surcharge went to the committee for use in its various schemes and for the expenditure incurred towards discharge of the committee's functions. Thus, the question before the Court was if surcharge being a charge that was compulsorily payable by the customers could be considered as a part of the price i.e. the assessable value.

OBSERVATIONS AND DECISION

The Hon'ble Court discussed the meanings of "Dharmada" and "transaction value" for the purpose of arriving at assessable value in relation to excise duty. Referring to the provisions of the Sale of Goods Act and the Central Excise Valuation (Determination of Price and Excisable Goods), Rules, 2000, the Hon'ble Court held that "transaction value", in case of sale, is the value of such goods and the amount of money of value of any considerations following directly or indirectly from the buyer to the assessee. The duty is chargeable on the price actually paid for the goods. The test for determining whether in a transaction of sale any amount has been paid as price so that it can be treated as transaction value is only whether, the money was paid for the goods as consideration or the money value on any additional consideration paid in connection with the sale of

[23] 2003 (158) ELT 550 (SC).

goods. No amount not paid as consideration for the goods can go to make transaction value. The Hon'ble Court thus observed that if an amount is paid at the time of the sale transaction for a purpose other than the price of the goods, it cannot form part of the transaction value; also for the reason that such payment is not for the transaction of sale i.e. for the transfer of possession of goods. Any payment made along side such a transaction cannot be treated as consideration for the goods.

Referring to the decision of the Court in ***The Commissioner of Income Tax (Central) Delhi, New Delhi v. Bijli Cotton Mills (P) Ltd. Hathras, District Aligarh***[24], the Hon'ble Court also observed thatDharmada amounts cannot be said to have been paid involuntarily by the customers and in any case the compulsory nature of the payments, if there be any, cannot impress the receipts with the character of being trading receipts. Regarding the nature of Dharmada, the Hon'ble Court further held that it is true that without payment of "Dharmada" amount the customer may not be able to purchase the goods from the assessee but that would not make the payment of "Dharmada" amount involuntary inasmuch as it is out of his own volition that he purchases yarn and cotton from the assessee. The "Dharmada" amount is, therefore, clearly not a part of the price, but a payment for the specific purpose of being spent on charitable purposes.[25] The Court also held that the law laid down in ***Collector* v. *Panchmukhi Engineering Works***[26]cannot be said to be good law, and is therefore not applicable in the present case.

Relying on the decisions discussed by the Court and after making observations regarding the nature of *Dharmada* and the meaning of "transaction value", the Hon'ble Court held that**when an amount is paid as Dharmada along with the sale price of goods, such payment is not made in consideration of the transfer of goods. Such payment is meant for charity and is received and held in trust by the seller. If such amounts are meant to be credited to charity and do not form part of the income of the assessee they cannot be included in the transaction value or assessable value of the goods.**

[24] (1979) 1 SCC 496.
[25]*Ibid. See* also *Tata Iron & Steel Co. Ltd.* v. *Collector of Central Excise, Jamshedpur,* 2002 (146) ELT 3 (SC).
[26]2003 (158) ELT 550 (SC).

14. *Shriram Tomar and Another v. Praveen Kumar Jaggi and Others (2019 SCC OnLine SC 488)*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice M.R. Shah)

(Further fixing the qualifying marks to be obtained in the interview and the performance appraisal reports for promotion would not violate the principle of seniority-cum-merit)

FACTS

In this case, the dispute is with respect to promotion to the post of Junior Management Scale II in the Mahakoshal Kshetriya Bank. In exercise of powers conferred under Section 29 of the Regional Rural Banks Act, 1976, the Central Government, in consultation with National Bank and the Sponsor Bank, i.e., the UCO Bank, formulated the Rules called Regional Rural Banks (Appointment and Promotion of Officers and other Employees) Rules, 1998 (hereinafter referred to as the 'Rules'). Third Schedule of the aforesaid Rules, *inter alia*, provides for appointment of two different categories of officers. It also provides for eligibility as well as mode of selection in respect thereto. As regards Scale II officers, it was specifically provided that the source of appointment shall be 100% by promotion and the criterion for promotion shall be on the basis of seniority-cum-merit.

The respondent-bank for the purpose of promotion from Scale I to Scale II issued a memo dated 30.03.2004 and informed all the Branch Managers and all the departments of the Head Office to submit 'performance appraisal reports' of preceding five years' of Scale I officers. The bank also issued guidelines in consonance with the Rules, vide guidelines dated 12.04.2004.

For promotion of Scale I officers to the available 16 posts of Scale II, the Bank called 64 candidates/officers in the ratio of 1:4. The written test was conducted on 16.04.2004 and 32 candidates out of 64 were declared qualified in the written test, as it was found that they secured more than 40% marks in the written examination. Thereafter, the appellants along with other eligible candidates (32 in numbers) appeared in the interview conducted on 18/19.09.2004. Vide memo dated 09.10.2004, the bank published the results of successful officers/candidates shown to have been promoted to Scale II posts.

The appellants herein who were also placed in the seniority list came to be promoted, by virtue of their seniority, having secured more than minimum marks in the written test and having passed the interview and performance appraisals. However, three persons, namely, Sunil Kumar Gupta, Gopal Singh Raj and Rajesh Kumar Jain (respondents herein), though much junior in the seniority list of Scale I officers, were also included in the list of promoted officers, issued vide memo dated 9.10.2004 and three senior persons were ignored, namely, Anil Kumar Singh, K.C. Soni and N.K. Sharma. Therefore, the aforesaid three persons, namely, Anil Kumar Singh, K.C. Soni and N.K. Sharma and one

another, namely, Praveen K. Jaggi filed Writ Petition Nos. 12127/2004, 12125/2004, 12126/2004 and 11005/2004 challenging the order dated 09.10.2004 whereby the aforesaid three persons, namely, Sunil Kumar Gupta, Gopal Singh Raj and Rajesh Kumar Jain were placed below Anil Kumar Singh, K.C. Soni and N.K. Sharma in the seniority list. Before the learned single Judge, it was the case on behalf of the original writ petitioners that promotions to the post of Scale II were solely on the basis of seniority-cum-merit and the rules provide that only those candidates who secure minimum 40% marks in the written test shall be called for interview and there being no minimum qualifying marks provided so far as marks obtained in interview and performance appraisal reports and therefore the original writ petitioners being senior and they obtained more than 40% marks in the written test, they ought to have been promoted to the post of Scale II.

However, it was the case on behalf of the bank that as per the administrative instructions, a conscious decision was taken by the Selection Committee fixing the bench mark of minimum 12 marks to be secured in the interview as well as performance appraisals (each) and only those candidates who secured in all 24 marks in minimum in the interview as well as the performance appraisals were required to be considered for promotion and accordingly those candidates who secured 24 marks minimum in the interview as well as the performance appraisals were promoted.

The learned Single Judge of the High Court did not accept the same and observed that such a procedure and insisting upon securing 24 marks minimum in the interview and the performance appraisals was not provided under the rules and therefore such a procedure was not permissible by administrative instructions. The learned Single Judge also observed that the aforesaid criteria would violate the principle of seniority-cum-merit and by such a criteria the principle of merit-cum-seniority is applied, which is contrary to the rules. Therefore, while allowing the aforesaid writ petitions and quashing and setting aside the list dated 9.10.2004, the learned Single Judge directed to prepare a fresh selection list by prescribing the minimum necessary cut off marks out of 100 so that the rule of seniority-cum-merit should be made applicable and thereafter may proceed to prepare a fresh selection list and after prescribing the necessary minimum/cut off marks the persons who secure the minimum merit marks on the basis of their seniority shall be re-arranged and accordingly a fresh order of promotion shall be passed by the bank.

Feeling aggrieved and dissatisfied with the common impugned judgment and order passed by the learned Single Judge of the High Court, the bank as well as the appellants herein - original respondents before the learned single Judge preferred writ appeals before the Division Bench of the High Court. By common impugned judgment and order, the Division Bench has not only dismissed the appeals, but while dismissing the appeals has set aside the direction issued by the learned Single Judge to prepare a fresh merit list and has further directed that instead of preparing a fresh selection list by prescribing the minimum necessary cut off merit marks out of 100, the bank shall conduct the fresh

exercise for promotion. The Division Bench also observed that the bank would be obliged to prescribe minimum necessary cut off merit marks out of 100 so that the rule of seniority-cum-merit is made applicable.

Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court dismissing the appeals and further directing to conduct the fresh exercise for promotion, the original appellants before the Division Bench of the High Court (those who were promoted pursuant to the list/order dated 09.10.2004) preferred the present appeals.

OBSERVATIONS AND DECISIONS

As far as the finding recorded by the learned Single Judge and the Division Bench that further fixing the qualifying marks/benchmark of obtaining minimum 12 marks each in the interview and the performance appraisal reports is not permissible and it would defeat the principle of seniority-cum-merit is concerned, the Hon'ble Supreme Court held, after referring to the case of ***Chairman, Rushikulya Gramya Bank v. Bisawamber Patro***[27], that the same is permissible. In that case, the Court was considering a similar situation and the similar rules governing promotions from Junior Management Scale I to Middle Management Scale II. In the case before the Court, the rule was similar to the rule in the present case. In the rule before the Court, also there was no minimum qualifying marks for the interview provided. However, the bank in addition to the requirement of 40% qualifying marks in the written test further fixed the qualifying marks of 60% for general candidates and 55% marks for SC/ST candidates on the aggregate marks comprising written test, performance appraisal reports and interview. Thereafter the names of all the candidates who got 60% or above in the aggregate were put in the list for promotion strictly as per their seniority. All candidates were promoted in the order of seniority, irrespective of anyone among them having got marks in excess of 60% in the aggregate. The candidates unsuccessful in getting promotion challenged the select list on the similar grounds on which the select list in the present case was challenged. The High Court allowed the writ petition holding that prescription of the benchmark of 60% marks in the aggregate was in violation of the promotion policy and the rules governing the field. Consequently, the High Court allowed the writ petition and directed the bank to make fresh selection in accordance with the rules. Reversing the order passed by the High Court, and even after considering the decision of the Supreme Court in the case of ***B.V. Sivaiah v. K. Addanki Babu***[28], the Court observed that the procedure adopted by the bank to further fixing the qualifying marks in the written test, performance appraisal reports and the interview has not violated the principle of seniority-cum-merit. While observing so, this Court took into consideration the observations made by the Court in

[27] (2013) 4 SCC 376.
[28] (1998) 6 SCC 720.

another decision of the Court in the case of ***Rajendra Kumar Srivastava* v. *Samyut Kshetriya Gramin Bank***[29].

Applying the law laid down by the Court in the aforesaid two decisions to the facts of the case on hand, the Hon'ble Court was of the opinion that both, the learned Single Judge as well as the Division Bench erred in holding that further fixing the qualifying marks to be obtained in the interview and the performance appraisal reports, viz., 12 minimum marks each to be obtained in interview and the performance appraisal reports and fixing such a benchmark would violate the principle of seniority-cum-merit. As the promotion to the post of Junior Management Scale II shall be made on the basis of seniority-cum-merit, the only requirement would be that after it is found that the candidates have possessed the minimum necessary merit, namely, minimum 40% qualifying marks in the written test and minimum 12 marks each out of 20 marks each in interview and the performance appraisal reports respectively, thereafter the candidates are required to be promoted in the order of seniority, irrespective of anyone among them having obtained more marks.

[29] (2010) 1 SCC 335.

15. *Sampat Babso Kale and Another v. State of Maharashtra – 2019 SCC OnLine SC 498*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice S.A. Bobde and Hon'ble Mr. Justice Deepak Gupta)

(- There is a need for corroborative evidence when there is a possibility of delusion at the time of recording dying declaration even though the Doctor has stated that state of mind was fit to give such a declaration.

- Powers of an Appellate Court in an appeal against acquittal)

FACTS

These appeals by the accused are directed against the judgment of the High Court of Bombay whereby the appeal of the State was allowed and the appellants were convicted for offences punishable under Section 302/498A of Indian Penal Code ('IPC' for short) read with Section 34 of IPC and were sentenced to undergo imprisonment for life.

The facts of the case are that the Appellant No. 2, Tarabai Dhanaji Dhaigude is the sister of the Appellant No. 1, Sampat Babso Kale. Appellant No. 1, was married to Sharada Sampat Kale on 25.04.1987. After residing for about one year at Thergaon, Chinchwad, they shifted to a quarter in MIDC Colony, Chinchwad. Sharada died of burn injuries suffered during the night intervening 08.07.1989 and 09.07.1989 in the wee hours of the morning of 09.07.1989. It is also not disputed that on the date of the occurrence, the Appellant No. 2 had come to stay at the house of her brother i.e. the Appellant No. 1. Burn injuries were to the extent of 98%. Sharada made two dying declarations - the first was in the nature of the information given to Dr. Sanjeev Chibbar (PW-5), who had attended upon her when she was admitted to the hospital and the second was a formal dying declaration made to Mr. Kamlakar Adhav, Special Judicial Magistrate, Pune (PW-2).

The accused were charged and tried for the murder of Sharada. The trial court acquitted the accused by giving them the benefit of doubt mainly on the ground that the possibility of the deceased having committed suicide could not be ruled out. The trial court did not rely upon the dying declarations. On the other hand, the High Court came to the conclusion that there was no reason to discredit the dying declarations and held that dying declarations were totally reliable in view of the testimonies of PW-2 and PW-5. The High Court held that the reasoning given by the trial court was perverse and thereafter, allowed the appeal. Hence, the present appeals were filed before the Supreme Court *inter alia* mainly on two grounds namely – the powers of the appellate court in appeals against acquittal and secondly, the reliance on dying declaration for conviction.

OBSERVATIONS AND DECISION

The Hon'ble Court, addressing the first issue, reiterated the settled principles related to the powers of the Appellate Court in appeals against acquittal laid down in ***Chandrappa v. State of Karnataka***[30], which are as follows:-

> ***"42.*** *From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*
>
> *(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
>
> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

Referring to the aforesaid principles, the Hon'ble Court held that with regard to the powers of an appellate court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses.

Addressing the issue of whether the Court can convict the accused solely on the basis of dying declarations, the Hon'ble Court referred to the decision of the Court in ***Sham Shankar Kankaria v. State of Maharashtra,***[31]wherein the Court had held –

[30] (2007) 4 SCC 415.
[31] (2006) 13 SCC 165.

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

Relying on the aforementioned case, the Hon'ble Court held that no doubt, a dying declaration is an extremely important piece of evidence and where the Court is satisfied that the dying declaration is truthful, voluntary and not a result of any extraneous influence, the Court can convict the accused only on the basis of a dying declaration. However, in the present case, the Hon'ble Court held that though the Doctor had stated that the victim was in a fit state of mind to give dying declaration, there were circumstances which raised some doubt regarding the fit state of mind such as the admission of the Doctor that in a case of 98% burn, the shock may lead to delusion. Therefore, the Hon'ble Court held that the combined effect of the combined effect of the trauma with the administration of painkillers could lead to a case of possible delusion, and therefore, there is a need to look for corroborative evidence in the present case. After referring to other evidences in the case, the Hon'ble Court upheld the judgment passed by the trial court and set-aside the order of conviction passed by the Hon'ble High Court.

16. *Rupali Devi v. State of Uttar Pradesh and Others – 2019 SCC OnLine SC 493.*

Decided on – 09.04.2019

(Before Hon'ble Mr. Justice Ranjan Gogoi, C.J., Hon'ble Mr. Justice L. Nageswara Rao, and Hon'ble Mr. Justice Sanjay Kishan Kaul)

(The courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.

ISSUE

The question before the three-Judges Bench was – *"Whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the courts where she is forced to take shelter with the parents or other family members?"*

The opinions of the Hon'ble Supreme Court on this issue were sharply divided and, therefore, the issue was referred to the present larger Bench. In some cases[32], the Hon'ble Court had taken the view that if on account of cruelty committed to a wife in a matrimonial home she takes shelter in the parental home and if no specific act of commission of cruelty in the parental home can be attributed to the husband or his relatives, the initiation of proceedings under Section 498A in the courts having jurisdiction in the area where the parental home is situated will not be permissible.

On the other hand, in some cases[33], a seemingly different view has been taken that the consequences of the offence under Section 498A have occurred at the parental home and, therefore, the court at that place would have jurisdiction to take cognizance of the offence alleged in view of Section 179 of the Cr.P.C. Similarly in *State of M.P.* v. *Suresh Kaushal* (Supra) as the miscarriage was caused to the wife at Jabalpur, her parental home, on account of cruelty meted out to her in the matrimonial home, it was held that the court at the place of the parental home of the wife would have jurisdiction to entertain the complaint under Section 179 Cr.P.C.

Though the aforesaid decisions had been taken keeping in mind the peculiar facts and circumstances in each set of cases, the issue still needed to be addressed and settled by a larger Bench.

[32] *Y. Abraham Ajith* v. *Inspector of Police, Chennai* (2004) 8 SCC 100, *Ramesh* v. *State of Tamil Nadu* (2005) 3 SCC 507, *Manish Ratan* v. *State of Madhya Pradesh* (2007) 1 SCC 262, *Amarendu Jyoti* v. *State of Chhattisgarh,* (2014) 12 SCC 362.

[33] *Sujata Mukherjee* v. *Prashant Kumar Mukherjee* (1997) 5 SCC 30; *Sunita Kumari Kashyap* v. *State of Bihar*(2011) 11 SCC 301 and *State of M.P.* v. *Suresh Kaushal* (2003) 11 SCC 126.

OBSERVATIONS AND DECISION

The Hon'ble Court discussed the provisions of Chapter XIII of the CrPC particularly Section 177 which contemplates that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed". It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.Sections 178[34] and 179[35] are exceptions to the above rule.Section 178 creates an exception to the "ordinary rule" engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

The Hon'ble Court also discussed "continuing offence" and referred to the decision of ***State of Bihar v. Deokaran Nenshi* (1972) 2 SCC 890**, wherein it was held –

*"**5.** A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."*

[34]**178.Place of inquiry or trial.** (a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed, partly in one local area and partly in another, or
(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

[35]**179.Offence triable where act is done or consequence ensues**. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

The Hon'ble Court opined that the answer to the issue in the present case can be found by answering the question whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

The Hon'ble Court further discussed the object behind the Criminal Law [2nd Amendment Act, 1983 (Act 46 of 1983)] by which Section 498A was inserted in the Indian Penal Code and Section 198A was inserted in the CrPC and opined that the object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

The Hon'ble Court opined that "cruelty is the crux of the offence under Section 498A and can be both mental and physical. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. Drawing a close connection between "cruelty" as contemplated under The Protection of Women from Domestic Violence Act with that under Section 498A, the Hon'ble Court was of the opinion that the provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.

Based on the discussions made by the Hon'ble Court as mentioned above, the Hon'ble Court finally held –

"16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code." (emphasis supplied)

17. *Royal Sundaram Alliance Insurance Company Ltd. v. Mandala Yadagari Goud and Others, 2019 SCC OnLine SC 495*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice S.A. Bobde, Hon'ble Mr. Justice Sanjay Kishan Kaul, and Hon'ble Mr. Justice M.M. Shantanagoudar)

(In the case of a motor accident where there is death of a person, who is a bachelor, whether the age of the deceased or the age of the dependents would be taken into account for calculating the multiplier)

OBSERVATIONS AND DECISION

The only issue in the case was that in the case of a motor accident where there is death of a person, who is a bachelor, whether the age of the deceased or the age of the dependents would be taken into account for calculating the multiplier.

The Hon'ble Court opined that the concept of insurance for a motor vehicle is to cover risk in case of an accident. The insurance policy covers personal risk of injury or death, including for third parties. The premium charged in this behalf is uniform. The judicial pronouncements of the Hon'ble Court have endeavoured to devise a standard formula, so far as possible, in respect of the calculation of the amount of compensation qua various components. The amount of compensation determined is to be paid to the claimants who are dependents in case of a death of a person based on what the deceased would have contributed to their support. The amount thus received by the dependents in turn becomes a part of the estate as they may live longer or may be younger than the age limits taken into account for calculation of a multiplier to be applied in such a situation. In the context of liability to pay compensation on the principle of no fault, as enunciated under Section 140 of the Motor Vehicles Act, 1988, thus, it was observed by the Supreme Court that even if there is no loss of dependency, the quantification cannot be below that amount and to that extent the amount would form a part of the estate of the deceased, as held in ***Manjuri Bera (Smt) v. Oriental Insurance Company Ltd.*, (2007) 10 SCC 643**.

The Hon'ble Court was of the opinion that the issue is already settled in light of the judgments rendered by a Constitutional Bench in ***National Insurance Company Ltd. v. Pranay Sethi***[36] and three-judges Bench in other cases[37] according to which, the loss of dependency is thus stated to be based on: (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased.Though the exact issue related to a bachelor, had not been addressed in these cases,

[36] (2017) 16 SCC 680.

[37] *Sube Singh v. Shyam Singh (Dead),* (2018) 3 SCC 18; *Reshma Kumari* v. *Madan Mohan,* (2013) 9 SCC 65; *Munna Lal Jain* v. *Vipin Kumar Sharma,* (2015) 6 SCC 347; *Sarla Verma (Smt.)* v. *Delhi Transport Corporation,* (2009) 6 SCC 121;

the Hon'ble Court relied on the principles laid down in these cases and held that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that **it is the age of the deceased which has to be taken into account and not the age of the dependents**.

18. *Food Corporation of India v. Rimjhim, 2019 SCC OnLine SC 487*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice M.R. Shah)

(Delay in the submission of documents related to essential qualifications for the purposes of appointment is merely a curable irregularity and is not fatal to the appointment of a candidate who has otherwise been found meritorious and qualified in the recruitment process)

FACTS

The facts in the present case is that the appellant herein - the original respondent - FCI invited applications for the post of Assistant Grade-II (Hindi) by publishing an advertisement on 14.02.2015. The original writ petitioner applied for the said post on 16.03.2015. Her application form was accepted and she was issued an admitted card for the written test to be conducted by the FCI. The written test was held on 4.10.2015. The original writ petitioner was short-listed. She was ranked sixth in the merit list. A call letter was issued to her on 31.12.2015. She was asked to report at the Zonal office of the FCI and produce her original documents, which were retained by the FCI and after verification, the same were returned. However, she did not receive the final letter of appointment. The list of selected candidates was published on the website of the FCI in which her name did not figure. Therefore, a representation was submitted by her which was not considered favourably. Therefore, the original writ petitioner approached the High Court by way of a writ petition. Before the learned Single Judge, it was the case on behalf of the FCI that the original writ petitioner was not finally selected as she did not produce any experience certificate to show that she had one year's experience of translation from English to Hindi and vice-versa. The learned Single Judge dismissed the writ petition holding that since the original writ petitioner did not have requisite experience of one year for translation work from English to Hindi and vice-versa, the FCI was justified in denying her employment. Aggrieved by the order, the respondent herein filed an appeal before the Division Bench of the High Court which set aside the order passed by the Single Judge. Considering the certificates of the original writ petitioner, she can be said to have the requisite experience of translation from English to Hindi and vice-versa, and considering the fact that the original writ petitioner ranked 6th in the merit list, therefore otherwise was found to be meritorious, the Division Bench of the High Court held that FCI was not justified in denying the appointment to the original writ petitioner. Against this order, the FCI approached the Hon'ble Supreme Court.

OBSERVATIONS AND DECISION

The Hon'ble Court observed that the advertisement did not provide specifically and/or provide that a candidate shall produce the certificate of experience along with the

application. What was provided in the advertisement is that a candidate must have one year's experience of translation from English to Hindi and vice-versa along with the other qualifications. Therefore, it was held that the Division Bench of the High Court had rightly observed that non-production of one year's experience certificate along with the application cannot be said to be fatal to the case of the original writ petitioner and on that ground the original writ petitioner could not have been denied the appointment, if otherwise she is found to be meritorious.

The Hon'ble Court further held that even if the candidate failed to produce document related to the essential qualification or produced incomplete or non-satisfactory certificates related to essential qualifications, she must have been informed by the recruiter, which was not done in the present case. The Hon'ble Court referred to Clause 33 of the advertisement, which was also considered by the Division Bench of the High Court, which provided that the management reserved the right to call for any additional documentary evidence in support of educational qualification & experience of the applicant. As found from the record and even as observed by the Division Bench, the management at the time of verification of the documents, did not think it fit to call upon the applicant to produce any additional documentary evidence in support of her experience. The management could have called for any additional documentary evidence in support of experience of the applicant. If the management would have called for the additional documentary evidence in support of experience of the applicant, in that case, the original writ petitioner would have produced the certificates, which are subsequently produced before the High Court.

In support of its observations, the Hon'ble Court referred to the decision of the Court in ***Charles K. Skaria v. Dr. C. Mathew, (1980) 2 SCC 752*** and the subsequent decision of the Court in the case of ***Dolly Chhanda v. Chairman, Jee (2005) 9 SCC 779***. In the case of Charles K. Skaria (supra), the Hon'ble Court had held that "what is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification". The Court specifically observed and held that "to confuse between a fact and its proof is blurred perspicacity". The Court further observed and held that "to make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence. Applying the law laid down by the Court in the aforesaid two cases to the facts and circumstances of the case on hand, the Hon'ble Court held that the Division Bench had rightly set aside the action of the FCI in rejecting the case of the original writ petitioner and had rightly directed the FCI to consider the case of the original writ petitioner for appointment on merits, if all other conditions stand satisfied.

19. *Palakom Abdul Rahiman v. Station House Officer Badiadka Police Station, Kerala and Another, 2019 SCC OnLine SC 490*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Ajay Rastogi)

(Discussion on Section 34 of the Indian Penal Code)

FACTS

The accused persons faced trial for double murder of a father and son (Assainar & Abdul Rahiman) and causing grievous injuries to PW-2 Mohammed, son of deceased Assainar. That in all, 11 persons were initially charge-sheeted including appellants for offence punishable under Section 143, 148, 323, 324, 325 and 302 IPC read with Section 149 IPC. There was separate charge against accused nos. 1 and 3 for offence under Section 302 read with Section 34 IPC yet alternate charge against accused no. 3 under Section 302 IPC.

After analysing the evidence, learned trial Court convicted accused nos. 1 and 3 along with other accused persons for offence under Section 143, 148, 323, 324 read with Section 149 IPC and for 302 read with Section 149 IPC and sentenced them to rigorous imprisonment for life vide judgment dated 31st July, 2006. Accused nos. 1, 2 & 3 preferred joint appeal against the impugned judgment of the learned trial Court and the High Court of Kerala after due appraisal of the evidence on record, found all the three accused guilty and convicted them under Section 302 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life vide impugned judgment dated 16th November, 2007.

Accused no. 2 died at the later stage and accused nos. 1 and 3 have preferred their appeals in the present case against the impugned judgment.

INCIDENT

The incident alleged to have occurred around 2.15 p.m. on 5thDecember, 1995 in front of the Madrassa building situated in the premises of Bardar Masjid, Belincha, Kumbadage village. The fateful day being Friday, almost all the male members of Jamayath had assembled for prayer. PW-2 Mohammed reached at the mosque around 11.30 a.m. and was entrusted with the duty to bring the new Katheeb Mohammed Musliyar. The Katheeb had given a letter with amorous overtones to one Mimuna. On the basis of the majority opinion, the masjid committee terminated the services of earlier Katheeb of the mosque. At 1.45 p.m., the prayer speech was over. There was a dispute between the committee members who were in favour of the removal of earlier Katheeb and those who opposed. Just after the prayer, new Katheeb made a brief religious discourse. Afterwards, people began dispersing. PW-2 requested them to remain there and decide whether the new Katheeb was fit or not. Inspite of the request made, some people left the place and around 40 persons including the accused remained in the mosque. PW-1 made a declaration that the action of the old Katheeb was not

proper. At that time, accused no. 1 and accused no. 3(appellants herein) along with other persons were standing in a group. PW-1 again said that the old Katheeb was not terminated in accordance with his personal wish but as decided by the committee. Seeing that situation was getting tense, PW-1's brother caught PW-1 and escorted him to the door and both went out. Behind them PW-2 and his father and brother came out of the mosque. Behind PW-2 and others, the accused persons also came out in a group. PW-2's father and younger brother hurried along the front courtyard of the madrassa to reach the road abutting on the eastern boundary of the compound. Accused no. 2 who was just approaching the courtyard of the madrassa suddenly exhorted raising his voice "There they go! Why simply watch? Go and stab." Immediately accused no. 1 dashed at PW-2's father Assainar and stabbed him right on his back with the dagger. Assainar-on receipt of the stab swayed on his unsteady steps and finally fell down. Seeing the incident, PW-2's brother Abdul Rahiman came running to the spot and threw a stone at accused no. 1. It struck him on his chest. When Abdul Rahiman reached near, accused no. 1 stabbed him also on the left side of his neck. Seeing this, PW-2 hugged accused no. 1 from behind. Seeing that accused no. 1 was in the grips of PW-2, accused no. 3 dashed to the spot with a dagger stabbed Abdul Rahiman on his hand. Abdul Rahiman fell down. Accused no. 2 came running to the spot and he with the dagger in his hand stabbed PW-2 on his back. In the fateful incident, the Assainar and Abdul Rahiman, father and brother of PW-2 and PW-4 who were the ocular witnesses of the incident succumbed to the injuries.

OBSERVATIONS AND DECISION

The Hon'ble Court noticed that both accused nos. 1 and 3 (appellants herein) were charge-sheeted for offences under Section 302 read with Section 149 IPC and there was also a separate charge against both of them under Section 302 read with Section 34 and yet another separate charge against accused no. 3 under Section 302 IPC apart from offences punishable under Section 143, 148, 323, 324, 325 IPC. After analysing the evidence on record, the learned trial Court convicted both the accused appellants for offence under Section 302 read with Section 149 IPC but on reappraisal of the evidence on record, the High Court confirmed their guilt but convicted both of them under Section 302 read with Section 34 IPC.

The Hon'ble Court held that a careful analysis and appraisal of the evidence on record establish the presence of accused no. 1 and accused no. 3 at the time of occurrence with sharp edged weapon(dagger) with accused no. 2 who was also armed with sharp edged weapon, and had shared common intention with accused no. 2 of causing bodily injuries to the deceased Assainar and Abdul Rahiman which were sufficient in the ordinary course of nature to cause death of the deceased.

The Hon'ble Court also discussed the provisions contained in Section 34 of the IPC and held that the true purport of Section 34 IPC is that if two or more persons intentionally do an act jointly, the position of law is just the same as if each of them have done it individually. The process of law is intended to meet a situation in which it may be difficult to distinguish

between acts of individual members of a party who act in furtherance of the common intention as held by the Court in ***Chinta Pulla Reddy* v. *State of Andhra Pradesh* 1993 Supp (3) SCC 134** and ***Girija Shankar* v. *State of U.P.* (2004) 3 SCC 793**. As was observed by the Court in *Chinta Pulla Reddy case* (supra), Section 34 is applicable even if no injury has been caused by the particular accused himself. it would depend on facts of each case as to whether Section 34 or Section 149 or both the provisions are attracted. The non-applicability of Section 149 IPC is no bar in convicting the accused persons under Section 302 IPC read with Section 34 IPC provided there is evidence which discloses commission of offence in furtherance of common intention and this Court had an occasion to consider the scope of Section 34 IPC and Section 149 IPC in ***Birbal Choudhary alias Mukhiya Jee* v. *State of Bihar* (2018) 12 SCC 440** as follows:—

> *"There cannot be any quarrel about the law laid down in the aforesaid judgments where subtle distinction is drawn between Section 34 and Section 149 IPC which deal with "common intention" and "common object" respectively. At the same time, it is also clarified that it would depend on the facts of each case as to whether Section 34 or Section 149 IPC or both the provisions are attracted. It is also held that non-applicability of Section 149 IPC is no bar in convicting the accused persons under Section 302 IPC read with Section 34 IPC, if the evidence discloses commission of offence in furtherance of common intention of them all. From the facts of the present case, we are satisfied that the courts below have rightly concluded that there was a common intention in committing the offence of kidnapping for ransom, by all the convicted persons."*

The Hon'ble Court, therefore, held that the submission of the learned counsel for the appellants that once the common object has not been established then they would not have been convicted with the aid of Section 34 IPC was without substance for the reason that both the accused persons were charged with Section 302 read with Section 149 IPC and also under Section 302 read with Section 34 IPC in alternate. In the present case, the prosecution has been able to establish the common intention of the accused persons for their overt acts in commission of crime and they have been rightly held guilty for offence under Section 302 read with Section 34 IPC, and, thus, the appeals were dismissed.

20. *Anurag Soni v. State of Chattisgarh, 2019 SCC OnLine SC 509*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice M.R. Shah)

(If it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.)

FACTS

The prosecutrix was familiar with the accused since 2009 and there was love affair between them. The appellant had even proposed her for marriage and this fact was within the knowledge of their respective family members. At the time of incident, accused was posted as Junior Doctor in the government hospital of Maalkharoda and at that time the prosecutrix was doing her studies of Pharmacy in Bhilai. On 28.4.2013 the accused expressed his desire to the prosecutrix that he wanted to meet her and accordingly she reached Sakti railway station from where the accused took her on a motorcycle to his house situated at Maalkharoda and there she stayed from 2 pm of 29.4.2013 to 3 p.m. of 30.4.2013 and during this period despite refusal of the prosecutrix, the accused established physical relation with her on the pretext of marrying her. On 30.4.2013 the accused asked the prosecutrix to leave by saying that on 1st or 2ndMay he will talk to his parents about their marriage and he will soon marry her. Next morning accused dropped the prosecutrix at Railway Station, Bilaspur from where she boarded train for Bhilai (Durg). Accused asked the prosecutrix not to tell about the incident to anyone and as a result of which the prosecutrix did not disclose the incident to anyone, but from 2.5.2013 to 5.5.2013 the prosecutrix had repeatedly asked from the accused about the marriage and when she did not receive any reply from the accused, on 6.5.2013, she informed her family members about the incident and then the family members of the prosecutrix had gone to the house of accused at village Kharod and informed his family members about the incident whereupon the family members of accused had said that now marriage of accused and prosecutrix was the only option available. In the meantime, members of both the families used to visit house of each other, however, after keeping the prosecutrix and her family members in dark for about two months, the accused had refused to marry the prosecutrix and performed marriage with another girl and then on 21.6.2013 the prosecutrix submitted written report in the police station Maalkharoda in respect of rape committed by the accused upon her on the pretext of marriage based on which FIR for the offence under Section 376 of IPC was registered against the accused.

After investigation and trial,on appreciation of evidence, the learned Sessions Court observed and held that the prosecutrix gave consent for sexual intercourse on a misrepresentation of fact and the promise by the accused that he would marry the prosecutrix and therefore the said consent cannot be said to be a consent and therefore the accused committed the offence under Section 376 of the IPC. Thereupon, the learned Sessions Court convicted the accused for the offence under Section 376 of the IPC and sentenced him to undergo 10 years rigorous imprisonment.

Feeling aggrieved and dissatisfied with the judgment and order of conviction, the accused preferred appeal before the High Court where the appeal was dismissed and the judgment and order convicting the accused for the offence under Section 376 of the IPC was confirmed. The judgment of the High Court has been challenged in the present appeal.

OBSERVATIONS AND DECISION

The Hon'ble Court referred to the following cases related to Section 375 of the IPC and "consent" under Section 90 of the IPC: -

(i) ***Kaini Rajan* v. *State of Kerala* (2013) 9 SCC 113;*State of H.P.* v. *Mango Ram* (2000) 7 SCC 224** – The essentials and parameters of the offence of rape

(ii) ***Deepak Gulati* v. *State of Haryana* (2013) 7 SCC 675** –

*"**21.** Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.*

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten

criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(iii) *Yedla Srinivasa Rao* **v.** *State of A.P.* **(2006) 11 SCC 615** – The concept of "consent" underSection 90 of the IPC and the presumption as to absence of consent in certain cases under Section 114A of the Indian Evidence Act.

(iv) *State of U.P.* **v.** *Naushad* **(2013) 16 SCC 651** - If consent is given by the prosecutrix under a misconception of fact, it is vitiated. the alleged consent said to have been obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions since it was apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix.

(v) *Dr. Dhruvaram Murlidhar Sonar* **v.** *The State of Maharashtra,* **2019 SCC OnLine SC 3100** –

*"**23.** Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC."*

The Hon'ble Court, in the present case, held that the sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.

Applying the aforesaid principles of law to the present facts and circumstances, the Hon'ble Court held :-

*"Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that **from the very beginning the accused***

never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 of the IPC*. Though, in Section 313 statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady - Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated that initially she did not give her consent for physical relationship, however, on the appellant's promise that he would marry her and relying upon such promise, she consented for physical relationship with the appellant-accused.* ***Even considering Section 114-A of the Indian Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her****. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship.* *Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the Courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 of the IPC. Both the Courts below have rightly convicted the accused for the offence under Section 376 of the IPC."***(Emphasis supplied)**

The Hon'ble Court also observed –

*"**41.** As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase now-a-days. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the appellant-accused for the offence punishable under Section 376 of the IPC. The appellant-accused must face the consequences of the crime committed by him."*

21. *Basalingappa v. Mudibasappa, 2019 SCC OnLine SC 491*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice Ashok Bhushan and Hon'ble Mr. Justice K.M. Joseph)

(A complainant in a cheque bounce case is bound to explain his financial capacity, when the same is questioned by the accused, by leading evidence to that effect)

FACTS

The cheque dated 27.02.2012 was presented for encashment by the complainant, which was returned on 01.03.2012. Signature on the cheque is not denied by the accused, due to which presumption shall be raised that cheque was issued in discharge of any debt or liability. The complainant gave his evidence to prove his case. In the examination-in-chief, he stated that a loan of Rs. 6,00,000/- was a hand loan and in discharge of the same, the accused had given a cheque dated 27.02.2012. Neither in the complaint nor in examination-in-chief, complainant stated the date of giving the loan to the accused, however, in his cross-examination, he stated that in the month of November, 2011, accused availed loan of Rs. 6,00,000/-. In cross-examination, he further stated that except accused, he has not lent loan to any other person. He denied having filed a suit for recovery of money against one Balana Gouda. However, he admitted that suit was filed on the basis of promissory note with interest at the rate of @18% per month. He further admitted that he has filed a criminal case under Section 138 of Negotiable Instruments Act, 1881 against one Siddesh bearing CC No. 2298 of 2012. When a suggestion was given that the complainant had lent Rs. 25,000/- to the accused, he said that he does not remember the accused has borrowed Rs. 25,000/- from him. In his cross-examination, he has admitted that he has signed as a witness to the agreement to transfer the lease hold rights of accused in favour of one M/s. Sri Lakshmi Narasimha Industries. Further on question, whether the accused received Rs. 15 lakhs from the said transaction, he showed his ignorance. Suggestion was also put that a blank cheque was issued at the time of loan availing of Rs. 25,000/-. Suggestion was also put in his cross-examination that he was not having Rs. 6,00,000/- on hand on the date of loan.

The trial court after considering the evidence and material on record held that if the accused is able to raise a probable defense which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. By judgment dated 20.02.2015, the accused was acquitted for the offence under Section 138. Complainant aggrieved by said judgment filed a Criminal Appeal under Section 378(4) of Code of Criminal Procedure. The High Court set aside the judgment of the trial court and convicted the accused for the offence under Section 138. Accused aggrieved by judgment of the High Court came up in this appeal.

OBSERVATIONS AND DECISION

After discussing presumptions as to negotiable instruments in Section 118 and presumptionin favour of the holder under Section 139, the Hon'ble Court, referring to the case of *Kali Ram* v. *State of Himachal Pradesh*, (1973) 2 SCC 808, discussed the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused and observed that the complainant being holder of cheque and the signature on the cheque having not been denied by the accused, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability and the presumption under Section 139 is a rebuttable presumption.

CASES REFERRED –

(i) *Bharat Barrel & Drum Manufacturing Company* v. *Amin Chand Pyarelal*, (1999) 3 SCC 35 – Discussed Section 118(a). Once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable and defendant can prove the non-existence of a consideration by raising a probable defence.

(ii) *M.S. Narayana Menon Alias Mani* v. *State of Kerala*, (2006) 6 SCC 39 - Considered Sections 118(a), 138 and 139 of the NI Act, 1881. It was held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Referring to *Union of India* v. *Pramod Gupta*, (2005) 12 SCC 1, the Court had also examined the expressions "may presume" and "shall presume". The expression 'shall presume' cannot be held to be synonymous with 'conclusive proof'.

(iii) *Krishna Janardhan Bhat* v. *Dattatraya G. Hegde*, (2008) 4 SCC 54 – an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities".

(iv) *Kumar Exports* v. *Sharma Carpets*, (2009) 2 SCC 513 – The Court examined as to when complainant discharges the burden to prove that instrument was executed and when the burden shall be shifted.

(v) *Rangappa* v. *Sri Mohan*, (2010) 11 SCC 441 – The Court elaborately considered provisions of Sections 138 and 139 and held that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption.[38]

[38] *Kishan Rao* v. *Shankargouda*, (2018) 8 SCC 165

(vi) *Rangappa* **v.** *Sri Mohan* **(2010) 11 SCC 441** – in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail.

After referring to the aforementioned cases and appreciating the facts and circumstances of the case, the Hon'ble Court held :-

*"**28.** We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs. 6 lakhs given to the accused, within 02 years, amount of Rs. 18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity.* ***Court cannot insist on a person to lead negative evidence.*** *The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence. This Court had occasion to consider the expression "perverse" in Gamini Bala Koteswara Rao v. State of Andhra Pradesh through Secretary, (2009) 10 SCC 636, this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only judgment is against the weight of evidence.*

.....

29. High Court without discarding the evidence, which was led by defence could not have held that finding of trial court regarding financial capacity of the complainant is perverse. *We are, thus, satisfied that accused has raised a probable defence and the findings of the trial court that complainant failed to prove his financial capacity are based on evidence led by the defence. The observations of the High Court that findings of the trial court are perverse are unsustainable. We, thus, are of the view that judgment of the High Court is unsustainable."* (**Emphasis supplied**)

22. *Caretel Infotech Ltd. v. Hindustan Petroleum Corporation Limited and Others , 2019 SCC OnLine SC 494*

Decided on 09.04.2019

(Before Hon'ble Mr. Justice S.A. Bobde and Hon'ble Mr. Justice Sanjay Kishan Kaul)

(The Supreme Court expressed its concern about the trend of challenging almost every tender in writ proceedings 'almost as a matter of routine' and observed that it affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector.)

The Epilogue mentioned in the aforesaid judgment wherein the Hon'ble Court has expressed its concerns over is important.

The Hon'ble Court observed that in ***Afcons Infrastructure Limited* v. *Nagpur Metro Rail Corporation Limited***, this Court had expounded further on this aspect, while observing that the decision making process in accepting or rejecting the bid should not be interfered with. Interference is permissible only if the decision making process is arbitrary or irrational to an extent that no responsible authority, acting reasonably and in accordance with law, could have reached such a decision. It has been cautioned that Constitutional Courts are expected to exercise restraint in interfering with the administrative decision and ought not to substitute their view for that of the administrative authority. Mere disagreement with the decision making process would not suffice.

In ***Nabha Power Limited (NPL)* v. *Punjab State Power Corporation Limited (PSPCL),*** the legal principles for interpretation of commercial contracts have been discussed where the Court had also taken note of the earlier judgment of the court in ***Satya Jain (Dead) Through LRs. v. Anis Ahmed Rushdie (Dead) Through LRs***., which discussed the principle of business efficacy as proposed by Bowen, L.J. in the *Moorcock*. It has been elucidated that this test requires that terms can be implied only if it is necessary to give business efficacy to the contract to avoid failure of the contract and only the bare minimum of implication is to be there to achieve this goal. Thus, if the contract makes business sense without the implication of terms, the courts will not imply the same.

The Hon'ble referring to the case of ***Afcons Infrastructure Limited* v. *Nagpur Metro Rail Corporation Limited***[39] and ***Nabha Power Limited (NPL)* v. *Punjab State Power Corporation Limited (PSPCL)***[40], observed :-

> ***"38.*** *We consider it appropriate to make certain observations in the context of the nature of dispute which is before us. Normally parties would be governed by their contracts and the tender terms, and really no writ would be maintainable under*

[39] (2016) 16 SCC 818
[40] (2018) 11 SCC 508

Article 226 of the Constitution of India. In view of Government and Public Sector Enterprises venturing into economic activities, this Court found it appropriate to build in certain checks and balances of fairness in procedure. It is this approach which has given rise to scrutiny of tenders in writ proceedings under Article 226 of the Constitution of India. It, however, appears that the window has been opened too wide as almost every small or big tender is now sought to be challenged in writ proceedings almost as a matter of routine. This in turn, affects the efficacy of commercial activities of the public sectors, which may be in competition with the private sector. This could hardly have been the objective in mind. An unnecessary, close scrutiny of minute details, contrary to the view of the tendering authority, makes awarding of contracts by Government and Public Sectors a cumbersome exercise, with long drawn out litigation at the threshold. The private sector is competing often in the same field. Promptness and efficiency levels in private contracts, thus, often tend to make the tenders of the public sector a non-competitive exercise. This works to a great disadvantage to the Government and the Public Sector."

23. *State of Rajasthan and Others v. Mukesh Sharma*

Decided on – 22.04.2019

Bench – (1) Hon'ble Mr. Justice Arun Mishra (2) Hon'ble Mr. Justice Navin Sinha

(Remission claim, not being a right, States can impose restrictions on the consideration of remission claims, even after 14 years, in light of *Maru Ram v. Union of India*)

Facts

Each of the respondents in this batch of appeals was convicted under Section 302 and other provisions of the Indian Penal Code in different Sessions trials arising from separate unconnected incidents and sentenced to imprisonment for life. They filed individual writ petitions contending that they had served more than 14 years in custody but their cases were not placed by the Jail Authorities before the State Advisory Boards for shortening of their sentences and premature release. The constitutional validity of Rule 8(2)(i) of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006, (hereinafter referred to as "the Rules, 2006") was challenged, putting a fetter on consideration of their cases till they earned a minimum of four years of remission after completing 14 years of actual imprisonment excluding remission, as being contrary to Section 433-A Cr.P.C. No other issue was urged.

The Rule was challenged on two grounds – *firstly,* on procedural impropriety and *secondly,* on the ground that the Rule restricts consideration for remission after 14 years and is, therefore, in violation of the judgment rendered in *Maru Ram v. Union of India*[41].

Observations and Decision

The Hon'ble Court referring to *Gopal Vinayak Godse v. State of Maharashtra*[42] which was also followed in ***Maru Ram*** (supra), observed that sentence for imprisonment for life under the Penal Code shall mean the convict's natural life. It further observed that Section 432 Cr.P.C. provides for the power to suspend or remit sentences and also to refuse the same. Section 433 (b) Cr.P.C. provides for commuting a sentence of imprisonment for life to 14 years. Section 433-A Cr.P.C. provides that remission or commutation shall not enable release of the convict from prison unless the person had served at least 14 years of imprisonment. Referring to *Union of India v. V. Sriharan*[43], the Hon'ble Court also observed that any rule that may provide to consider remission before 14 years would obviously be bad in view of the statutory provision contained in the Code.

The Hon'ble Court, therefore, held that manifestly remission not being a matter of right, much less upon completion of 14 years of custody, but subject to rules framed in that regard, including complete denial of the same in specified circumstances, as a matter of State policy, nothing prevents the State from imposing restrictions, as imposed by the impugned Rule of the Rajasthan Government.

[41] 1981 (1) SCC 107.
[42] (1961) 3 SCR 440
[43] (2016) 7 SCC 1

24. *Kumar Ghimirey v. The State of Sikkim*

Decided on – 22.04.2019

Bench – (1) Hon'ble Mr. Justice Ashok Bhushan (2) Hon'ble Mr. Justice K.M.Joseph

(The High Court has the power to *suo motu* enhance sentence while dismissing an appeal of the convict, even when an appeal for enhancement of sentence has not been filed but the power can be exercised only when the Appellant/convict has been given notice and a fair opportunity of being heard)

Facts

This appeal was filed by the appellant against the judgment of Sikkim High Court dismissing the Criminal Appeal filed by the appellant questioning the order of conviction and sentence passed by the Special Judge (POCSO Act, 2012) convicting the appellant under Section 9/10 of the Protection of Children from Sexual Offences Act, 2012(POCSO Act, 2012), Section 341 of IPC. The appellant was to undergo simple imprisonment for a period of seven years and to pay fine of Rs.50,000/- under Section 9/10 of POCSO Act, 2012 and under Section 341 of IPC he was sentenced to undergo simple imprisonment for a period of one month.

The appellant aggrieved by the judgment of the Special Judge filed an appeal which was dismissed by the High Court but while dismissing the appeal, sentence under Section 9/10 of POCSO Act, 2012 was converted into sentence under Section 5(m) of the POCSO Act read with Section 6 of the POCSO Act and sentence was enhanced from seven years to ten years with fine of Rs.5,000/-. The victim was also directed to be paid compensation of Rs.1,00,000/-(Rupees one lakh) by the High Court under Sikkim Compensation to Victim Scheme.

The Appellant challenged the judgment of the High Court on the ground that it had erred in enhancing the punishment whereas no appeal was filed for enhancement of the punishment. It was further contended that the punishment awarded by the trial court was the maximum punishment under Section 9/10 of POCSO Act, 2012 whereas in the facts and circumstances of the case, the appellant could have been at best awarded punishment of five years only under Section 10.

Observations and Decision

The Hon'ble Court referred to the provisions contained in Section 386 (b) and Section 401 of the CrPC and observed that there can be no doubt that the High Court can *suo motu* enhance the sentence even if no appeal for enhancement has been filed. Such power of

enhancement of sentence has also been discussed in several cases[44], which were referred to by the Hon'ble Court in the present case. However, at the same time, the Hon'ble Court held that the power of enhancement of notice can be done only when the Appellant/convict is put on notice and has been given a fair opportunity of being heard as required under Section 386 and laid down by the judgments[45] of the Supreme Court. On this ground, the enhancement of sentence, in the present case, was held to be bad in the eyes of law as the procedure for the same had not been followed. As far as the excessiveness of sentence in the present case was concerned, the Hon'ble Court held that the sentence was appropriate and not excessive depending on the facts and circumstances of the case.

[44] *Surjit Singh and others v. State of Punjab*, 1984 (Supp) SCC 518; *Sahab Singh and others v. State of Haryana*, (1990) 2 SCC 385,

[45] *Govind Ramji Jadhav v. State of Maharashtra*, (1990) 4 SCC 718; *Surendra Singh Rautela @ Surendra Singh Bengali v. State of Bihar* (*Now State of Jharkhand*), (2002) 1 SCC 266.

25. *Nagji Odhavji Kumbhar & Anr. v. State of Gujarat*

Decided on 23.04.2019

Bench – (1) Hon'ble Mr. Justice S.K. Kaul (2) Hon'ble Mr. Justice Hemant Gupta

(The exercise of right to private defence to the extent of causing death must be based on reasonable apprehension that such exercise was necessary under the provisions of IPC. When the persons against whom the right was exercised, were unarmed, there is no reason for the exercise of right to private defence and that too to the extent of causing death. Secondly, the presence of multiple wounds and the nature thereof indicate that the action was not taken at the spur of the moment.

Facts

Nagji Odhavji Kumbhar and others were accused of attacking and injuring Bhura Govind and Lakha Arjan with spears etc who had both succumbed to death on the spot. The motive of the attack is said to be the soured relationship between the accused and the deceased on account of dispute over right of pathway which culminated in the death of the deceased persons, who had secured a favourable injunction order in a civil suit. The accused were found guilty and convicted by the Trial Court for offence under section 302 and 324 IPC. Before the Apex Court, they asserted that the deceased and their accomplices, who were 9 in number, were the aggressors and injuries were inflicted on the them in their attempt to protect the seisen of their land and thus they have only acted within the contours of their right to private defence. Another contention was that their conviction under Section 302 read with Section 34 of IPC is not sustainable because the occurrence had taken place at the spur of the moment without any pre-meditation and they have not taken any advantage or acted in a cruel or unusual manner and at best, an offence under section 304(Part II) can be said to have made out.

Observations and Decision

Discussing the right of private defence, the Hon'ble Court observed that the right of private defence is not available when the alleged assailants are unarmed. The right of private defence is to protect the person and the property. In such right, the person cannot cause more harm than what is necessary for the protection of the person and the property. Relying on *Jangir Singh v.. State of Punjab*[46], the Hon'ble Court further observed that in order to succeed in such plea of private defence, it must be proved that the right of private defence extended to cause death.

Regarding the second ground that the attack was in the spur of the moment, the Hon'ble Court held that since the deceased had multiple wounds, it cannot be said that the appellants had acted at the spur of the moment without pre-meditation and that the appellants did not take any advantage or did not act in a cruel or unusual manner and, therefore, the case was held no to be a case of single injury which one can infer on account of sudden fight.

[46] 2018 SCC OnLine SC 2722.

26. *Dipakbhai Jagdishchandra Patel v. State of Gujarat and Another*

Decided on – 24.04.2019

Bench – (1) Hon'ble Mr. Justice Ashok Bhushan (2) Hon'ble Mr. Justice K.M. Joseph

(- While framing charge, strong suspicion must be founded on some material which can be translated into evidence during trial and w3hich commends itself to the Court as sufficient to entertain the prima facie view that the accused has committed the offence.

- In a case where statement containing not a confession but admission, which is otherwise relevant and which is made before the investigation commences, may be admissible.)

Issues discussed:

1. Law and principles related to the framing of charge and those related to discharge
2. Scope of the bar imposed under Section 162 CrPC regarding the admissibility of statements made to the Police (In this case the Trial Court had relied on the statement made under Section 161 to frame charge)

Observations and Decision

Regarding the law related to the framing of charge and related to discharge, the Hon'ble Court referred to the principles established through the judgments rendered in *State of Bihar v. Ramesh Singh*[47] and in *Union of India v. Prafulla Kumar Samal and Another*[48] wherein it had been held:

> *"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."*

[47] AIR 1977 SC 2018.
[48] AIR 1979 SC 366.

Referring to the aforementioned cases, the Hon'ble Court held that at the stage of framing the charge in accordance with the principles which have been laid down by the Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

In the present case, the Trial Court had relied on the statements made by the Appellant under Section 161 and also the statements made by the co-accused. The Hon'ble Court after referring to various cases on "what amounts to a confession"[49], "confession of a co-accused containing incriminating substance"[50], "scope of Article 20(3) of the Constitution"[51], "meaning of 'person accused of an offence' under Article 20"[52], "whether an accused or a suspect can be examined under Section 161 of the CrPC"[53] , and differentiating "confession" from "admission" by referring to ***CBI. v. V.C. Shukla and Others***[54] and the case of ***Pakala Narain Swami***, held that the bar under Section 162 Cr.PC, no doubt, operates in regard to the statement made to a Police Officer in between two points of time, viz., from the beginning of the investigation till the termination of the same. In a case where statement containing not a confession but admission, which is otherwise relevant and which is made before the investigation commences, may be admissible. What amounts to an admission can be used against the maker of the admission or his representative in interest. As to what constitutes an admission is to be found in Section 17 of the Evidence Act After referring to ***Bharat Singh and Others v. Mst. Bhagirathi***[55], where the true nature of the evidentiary value of admission, and

[49] *Pakala Narayana Swami v. Emperor*, (1939) PC 47. *Palvinder Kaur v. State of Punjab,* AIR 1952 SC 354. *Veera Ibrahim v. State of Maharashtra,* AIR 1976 SC 1167.
[50] *Suresh Budharmal Kalani Alias Pappu Kalani v. State of Maharashtra*, (1998) 7 SCC 337. *Kashmira Singh v. State of Madhya Pradesh,* AIR 1952 SC 159.
[51] *M.P. Sharma and Others v. Satish Chandra, Distt. Magistrate, Delhi and Others,* AIR 1954 SC 300
[52] *State of Bombay v. Kathi Kalu Oghad,* AIR 1961 SC 1808.
[53] *Nandini Satpathy v. P.L. Dani and Another,* AIR 1978 SC 1025. *Mahabir Mandal and others v. State of Bihar,* AIR 1972 SC 1331.
[54] AIR 1998 SC 1406.
[55] AIR 1966 SC 405.

whether without confronting the maker of the admission, it could be used, had been discussed, the Hon'ble Court held that a confession, even if does not constitute a confession, may still be an admission and being an admission, it may be admissible under the Evidence Act provided that it meets the requirements of admission as defined in Section 17 of the Evidence Act. However, even if it is an admission, if it is made in the course of investigation under the Cr.PC to a Police Officer, then, it will not be admissible under Section 162 of the Cr.PC as it clearly prohibits the use of statement made to a Police Officer under Section 161 of the Cr.PC except for the purpose which is mentioned therein. Statement given under Section 161, even if relevant, as it contains an admission, would not be admissible, though an admission falling short of a confession which may be made otherwise, may become substantive evidence.

27. *Reliance Life Insurance Co Ltd & Anr. v. Rekhaben Nareshbhai Rathod*

Decided on :- 24.04.2019

Bench – (1) Hon'ble Mr. Justice D.Y. Chandrachud (2) Hon'ble Mr. Justice Hemant Gupta

(The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer.) [56]

Facts

On 10 July 2009, the spouse of the respondent took a policy of life insurance from Max New York Life Insurance Co Ltd, for a sum of Rs 11 lakhs. Barely two months thereafter, on 16 September 2009 he submitted a proposal for a life insurance term plan policy of the appellant for an insurance cover of Rs 10 lakhs. Among the questions that the proposer was required to answer in the proposal form was whether he was currently insured or had previously applied for life insurance cover, critical illness cover or accident benefit cover. This query was answered in the negative. On the details of other insurance covers held by him (Question No. 17), the proposer had indicated —NA or a "not Applicable" response.

On 22 September 2009, the appellant issued a policy of life insurance to the spouse of the respondent based on the disclosures contained in the proposal form. The respondent's spouse died on 8 February 2010. On 24 May 2011, nearly fifteen months after the date of death, the respondent, who was a nominee under the policy issued by the appellant, submitted a claim of Rs 10 lakhs under the terms of the policy. The claim was supported by a medical certificate stating that the policy holder had suffered from sudden chest pain prior to his death. On 7 June 2011, the appellant sought copies of medical reports including, as the case may be, death or discharge summaries together with previous medical records of the deceased. On 14 July 2011, in response to the appellant's e-mail dated 29 June 2011, Max New York Life Insurance Co Ltd informed the appellant that the spouse of the respondent had been insured with them for a sum of Rs 11 lakhs and that the claim had been settled. The appellant repudiated the respondent's claim on 30 August 2011 stating thus:

"In the light of suppression of material fact, where glaring omission to answer especially the question no (17) relating to details of the life insurance policies held by the life assured, we are constrained to repudiate the claim under the policy in terms of Section 45 of the Insurance Act 1938."

On 24 February 2012 the respondent addressed a legal notice alleging a deficiency in service and then moved a consumer complaint before the District Consumer Disputes Redressal Forum, Bhavnagar. The appellant contested the claim. On 31 August 2013, the

[56] *See* also, the decision of the Hon'ble Supreme Court delivered on 15.04.2019, in *Life Insurance Corporation of India v. Manish Gupta,* on the issue of non-disclosure of "material facts" in the proposal form of an Insurance.

District Forum dismissed the complaint inter alia, on the ground that there was a non-disclosure of the fact that the insured had held a previous policy in the proposal form filled up by the proposer. The appeal filed by the respondents was, however, allowed by the SCDRC on 28 November 2014 relying on a decision of the NCDRC in ***Sahara India Life Insurance Company Limited v. Rayani Ramanjaneyulu***. This decision of the SCDRC was affirmed by the NCDRC for the reason that the omission of the insured to disclose a previous policy of insurance would not influence the mind of a prudent insurer as held in ***Sahara India*** (supra).

Observations and Decision

The Hon'ble Court discussed the provision of Section 45[57] of the Insurance Act and observed that the cumulative effect of Section 45 is to restrict the right of the insurer to repudiate a policy of life insurance after a period of two years of the date on which the policy was effected. Beyond two years, the burden lies on the insurer to establish the inaccuracy or falsity of a statement on a material matter or the suppression of material facts. Moreover, in addition to this requirement, the insurer has to establish that this non-disclosure or, as the case may be, the submission of inaccurate or false information was fraudulently made and that the policy holder while making it knew of the falsity of the statement or of the suppression of facts which were material to disclose. Section 45 curtails the common law rights of the insurer after two years have elapsed since the cover for life insurance was effected. In the present case, the Court is called upon to determine the nature of the authority of the insurer where a policy of life insurance or a claim under it is sought to be repudiated within two years.

It further observed that the fundamental principle is that insurance is governed by the doctrine of *uberrima fidei*. This postulates that there must be complete good faith on the part of the insured. The relationship between an insurer and the insured is recognized as one where mutual obligations of trust and good faith are paramount, as discussed and held by the judgments of the Supreme Court.[58]

While discussing the scope of Section 45, the Hon'ble Court further referred to the decision of ***Life Insurance Corpn of India v Asha Goel (Smt)***[59], wherein it had been held

[57] "*45 – No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected be called in question by an insurer on the ground that statement made in the proposal or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.*

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

[58] *Mithoolal Nayak v LIC,* 1962 Suppl (2) SCR 531. *Life Insurance Corporation of India v Smt GM Channabasamma*, (1991) 1 SCC 357.

[59] (2001) 2 SCC 160.

that where a dispute in regard to a repudiation of a claim raises a serious matter requiring oral and documentary evidence, the appropriate remedy would be a civil suit and not a writ petition.

For the scope of "material facts" for the purposes of Section 45, the Hon'ble Court referred to several decisions[60] and observed that any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the contract of insurance and has a bearing on the risk involved would be material. However, in ***Satwant Kaur Sandhu v New India Assurance Co Ltd***[61], the Hon'ble Court had also held that it is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, the obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment.

The Hon'ble Court also referred to the notification dated 16 October, 2002, issued by the Insurance Regulatory and Development Authority of India, according to Regulation 2(d) of which a "proposal form" is a form which is filled by a proposer for insurance to furnish all material information required by the insurer in respect of a risk. The purpose of the disclosure is to enable the insurer to decide whether to accept or decline to undertake a risk. The disclosures are also intended to enable the insurer, in the event that the risk is accepted, to determine the rates, terms and conditions on which a cover is to be granted. The explanation defines the expression —material to mean and include —all important essential and relevant information for underwriting the risk to be covered by the insurer. Regulation 4(3) stipulates that while filling up the proposal, the proposer is to be guided by the provisions of Section 45.

After making the aforesaid discussions, the Hon'ble Court held, in the present case, that it cannot be accepted that the proposer was unaware of the contents of the form that he was required to fill up or that in assigning such a response to a third party, he was absolved of the consequence of appending his signatures to the proposal. The proposer duly appended his signature to the proposal form and the grant of the insurance cover was on the basis of the statements contained in the proposal form. Barely two months before the contract of insurance was entered into with the appellant, the insured had obtained another insurance cover for his life in the sum of Rs 11 lakhs. Therefore, the Hon'ble Court was of the view that the failure of the insured to disclose the policy of insurance obtained earlier in the proposal form entitled the insurer to repudiate the claim under the policy.

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[60] *United India Insurance Co Ltd v MKJ Corporation*, (1996) 6 SCC 428. *Modern Insulators Ltd v Oriental Insurance Co Ltd*, (2000) 2 SCC 734.
[61] (2009) 8 SCC 316.

On the submission that the signatures of the assured on the form were taken without explaining the details, the Hon'ble Court referred to the judgment of the Mysore High Court in ***VK Srinivasa Setty v Messers Premier Life and General Insurance Co Ltd***[62], and held that a person who affixes his signature to a declaration cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it because in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.

[62] AIR 1958 Mys 53.

28. *Girish Mittal v. Parvati V. Sundaram and Another*

Decided on :- 26.04.2019

Bench :- (1) Hon'ble Mr. Justice L. Nageswara Rao (2) Hon'ble Mr. Justice M.R. Shah

(When the directions issued in a judgment are general in nature, any aggrieved party (not just the party to the judgment), can file a Contempt petition when there is violation of such directions.)

Facts

In *Reserve Bank of India v. Jayantilal N. Mistry*[63], the Hon'ble Supreme Court addressed the issue whether the information sought under the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act') can be denied by the Reserve Bank of India (RBI) and the other banks on the ground of economic interest, commercial confidence, fiduciary relationship or public interest. In that case, the Central Information Commissioner had directed the RBI to disclose the information that was sought for. The decision of the Central Information Commissioner was upheld by the Hon'ble Court which also held that the Right to Information Act, 2005 overrides all earlier laws in order to achieve its objective and the only exceptions to access to information were those which were contained in Section 8 of the RTI Act. The argument of the RBI that the information sought for by the Respondents therein was rightly refused on the ground of fiduciary relationship, was rejected by this Court. It was observed by this Court that there is no fiduciary relationship between the RBI and the financial institutions and by attaching an additional 'fiduciary' label to the statutory duty, regulatory authorities have intentionally or unintentionally created an *in terrorem* effect. This Court further emphasized that RBI has a statutory duty to uphold the interests of the public-at-large, the depositors and the country's economy and the banking sector. This Court was also of the opinion that the RBI should act with transparency and not hide information that might embarrass the individual banks and that the RBI is duty-bound to comply with the provisions of the RTI Act and disclose the information sought by the Respondents therein.

In the present case, the Petitioner filed an application seeking information from the RBI regarding the loss to the nation in the foreign derivative contract cases. He also sought for a bank-wise breakup of the market-to-market (MTM) losses. The RBI gave information on some of the questions upon the receipt of the application, while some other questions were answered after the direction of Central Information Commissioner, and some after the direction issued in the aforementioned case vide order dated 16.12.2015. On the question of MTM losses, the response of the RBI was that there was no reference to losses of more than 32,000/- crores on account of currency derivatives in the affidavit filed by RBI in Writ Petition (Criminal) No. 344 of 2009 in the High Court of Orissa. Not satisfied with the said information and being convinced that the RBI was intentionally withholding information in spite of the directions issued by this Court, this Contempt Petition was filed.

[63] (2016) 3 SCC 525.

Another contempt petition was filed in a case where the petitioner had asked for seeking details of the Show Cause Notices and fines imposed by the RBI on various banks. The information was not disclosed by the RBI by claiming exemption under Section 8(1)(a), (d) and (e) of the RTI Act on the ground that the disclosure would affect the economic interest of the country, the competitive position of the banks, and that the information cannot be disclosed by the RBI as it received the same in a fiduciary capacity. The RBI uploaded a Disclosure Policy on 30.11.2016 on its website by which the Public Information Officers were directed not to disclose virtually all kinds of information. The petitioner has filed the contempt petition aggrieved by the said disclosure policy on the ground of the same being in violation of the direction issued in ***Reserve Bank of India*** case (supra).

Observations and Decision

On the *locus standi* of the petitioners to file the contempt petition on the ground that they were not parties to the original writ, the contempt of which has been contested, the Hon'ble Court referring to the judgment rendered in ***Priya Gupta v. Ministry of Health & Family Welfare***[64], held that the directions issued by this Court are general in nature and any violation of such directions would enable an aggrieved party to file a contempt petition.

The Hon'ble Court further referred to the judgment of ***Attorney General v. Times Newspapers Ltd. (1973) 3 All ER 54 (HL)***, held that ***there is an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any Court of law could be disregarded with impunity.*** The Hon'ble Court observed that After holding that there is no fiduciary relationship between the RBI and the other banks, this Court stressed the importance of the RTI Act, and held that it is in the interest of the general public that the information sought for by the Respondents therein has to be furnished. There is a specific reference to the inspection reports and the other materials, which were directed to be given to the Respondents therein. The only exception that was carved out by this Court is in paragraph 77 of the judgment, particularly, information which has a bearing on the security of the State etc. Regarding the Disclosure Policy of the RBI uploaded on its website on 12.04.2019 which replaces the disclosure policy dated 30.11.2016 directs various departments not to disclose information that was directed to be given by the judgment of the Court on 16.12.2015 and is, therefore, a contempt of the order of the Court. The Hon'ble Court, however, deemed it proper to give the RBI a last opportunity to withdraw the disclosure policy insofar as it contains exemptions which are contrary to the directions issued by this Court and reiterated that the RBI is dutybound to furnish all information relating to inspection reports and other material apart from the material that was exempted in Para 77 of the judgment and any further violation shall be viewed seriously by this Court.

[64] (2013) 11 SCC 404.

29. *N. Ramamurthy v. State By Central Bureau Of Investigation (Criminal Appeal No. 751-752 of 2019)*

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice Abhay Manohar Sapre

2. Hon'ble Mr. Justice Dinesh Maheshwari

(Distinction in the proposition for suspension of an order of conviction on one hand and that for suspension of sentence on the other)

FACTS

The appellant herein was tried as Accused No. 2 for the offences under Section 120-B read with Sections 409, 420, 468, 471, 477-A of the Indian Penal Code ('IPC') and Section 13(2) read with Sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 ('PC Act'). The appellant and the Accused No. 1, who were respectively working as clerk and manager in the State Bank of Mysore, entered into a criminal conspiracy and committed several acts of breach of trust, cheating, forgery, falsification of accounts and misappropriation of funds. During the trial, Accused No. 1 expired and the matter stood abated qua him. The trial Court convicted the Appellant under Section 120B ,420 409, 468, 471, 477A, Section 13(2) r/w. 13(1) (c) & (d) of Prevention of Corruption Act, 1988. The sentences were to run concurrently.

The appellant also moved an application seeking suspension of execution of sentence that was considered and dismissed by the High Court. The High Court also referred to the decision of this Court in the case of *Navjot Singh Sidhu v. State of Punjab*[65] and observed that the Appellate Court could suspend the order of conviction only when the convict specifically shows the consequences that may follow if the order is not suspended or stayed; and the present one was not a fit case for suspension of sentence and enlargement of the accused on bail.

DECISION AND OBSERVATIONS

The Apex Court was of the opinion that the approach of the High Court in dealing with the applications made on behalf of the appellant under Section 389 CrPC had apparently been from a wrong angle and on two major misconceptions: One, that the High Court assumed as if the sentences awarded to the appellant for different offences are to run consecutively i.e., one after another and, while taking sum total of the sentences so awarded, the High Court has proceeded as if the accused appellant has been ordered to undergo imprisonment for a whopping 45 years. Secondly, the High Court has proceeded to refer to the principles governing the consideration of the prayer for suspension of the operation of the order of conviction, although the prayer in the present matter had only been for suspension of execution of sentence.

[65](2007) 2 SCC 574.

The applications ought to have been considered while keeping in view the fact that with concurrent running of sentences, the maximum period for imprisonment envisaged by the order of the Trial Court is 7 years. The length of imprisonment to be served under an impugned order of sentencing has obvious bearing on the consideration of the prayer for suspension of execution of sentence during the pendency of an appeal or revision; and when there had been fundamental error as regards such an over-bearing factor, the prayer of the appellant requires reconsideration after removal of this error.

Also, the prayer on behalf of the appellant had only been for suspension of execution of sentence and not for stay or suspension of the operation of the order of conviction. Therefore, the case of *Navjot Singh* won't be applicable in this case.

The Apex Court referred to ***K.C. Sareen v. CBI, Chandigarh***[66], wherein it has been stated that ordinarily, the superior Court should suspend the sentence of imprisonment in the matters relating to the offence under the PC Act, unless the appeal could be heard soon after filing. ***This Court pointed out the subtle distinction in the proposition for suspension of an order of conviction on one hand and that for suspension of sentence on the other.*** This Court explained and laid down as under:

> *"11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter."*

[66] (2001) 6 SCC 584

30. Rashmi Chopra v. State Of Uttar Pradesh (Criminal Appeal No. 594 of 2019)

Decided on: 30.04.2019
Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice K.M. Joseph

(Complaint under section 498 A not necessarily to be filed by women who is subjected to cruelty)

FACTS

The Apex Court was dealing with an appeal against Allahabad High Court order refusing to quash the summons issued by the Magistrate in the complaint against husband and relatives, filed under Section 498A and Section 3/4 of Dowry Prohibition Act. The complaint is not by Vanishka but it has been filed by father of Vanishka, respondent No.2

DECISION AND OBSERVATIONS

The Apex Court noted that the judgment of this Court in *State of Haryana* v. *Bhajan Lal*,[67] has elaborately considered the scope and ambit of Section 482 CrPC. It enumerates 7 categories of cases where power can be exercised under Section 482 CrPC which is extracted as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and

[67] 1992 Supp (1) SCC 335

continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Apex Court stated: "we are of the view that present is a case, which is covered by Category 7 as enumerated by *State of Haryana* v. *Bhajan Lal* and the High Court erred in refusing to exercise under Section 482 Cr.P.C."

The crux of the complaint filed by the father is that the husband of his daughter started harassing her by "demanding additional dowry of one crore". There being no specific allegation regarding any one of the applicants except common general allegation against everyone clearly indicate that application under Section 156(3) Cr.P.C. was filed with a view to harass the applicants, said the court. The court also noted that, in divorce proceedings the couple had settled all issues between them including division of properties at the time when divorce proceedings were in progress at Michigan.

Also, the Apex Court held that Section 498A provides for an offence when husband or the relative of the husband, subject her to cruelty. There is nothing in Section 498A, which may indicate that when a woman is subjected to cruelty, a complaint has to be filed necessarily by the women so subjected. A perusal of Section 498A indicates that the provision does not contemplate that complaint for offence under Section 498A should be filed only by women, who is subjected to cruelty by husband or his relative.

31. Poonam Bai v. State Of Chhattisgarh (Criminal Appeal No. 903 of 2018)

Decided on: 30.04.2019
Bench: 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Mr. Justice S. Abdul Nazeer

(Dying declaration may not be invalid solely on the ground that it was not certified by the doctor)

FACTS

The Appellant was convicted under section 302 of the Indian Penal Code for committing murder of deceased Vimla Bai and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 500. The Appellant was the niece of the deceased who caused her death by pouring kerosene over her and lighting a match stick after a quarrel took place between them. Vimla Bai sustained burn injuries and succumbed to death in the hospital.The prosecution mainly relies upon the dying declaration, which is stated to have be en recorded by the Naib Tehsildar cum Executive Magistrate in the hospital.

DECISION AND OBSERVATIONS

The Apex Court stated that there cannot be any dispute that a dying declaration can be the sole basis for convicting the accused.
However, such adying declaration should be trustworthy, voluntary, blemishlessand reliabl.
In case the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make the statement and if there are no suspicious circumstances, the dying declaration may not be invalid solely on the ground that it was not certified by the doctor. Insistence for certification by the doctor is only a rule of prudence, to be applied based on the facts and circumstances of the case. The real test is as to whether the dying declaration is truthful and voluntary.
The Apex Court acquitted the accused in the absence of reliable dying declaration as the Naib Tehsildar had not recorded the finding that the deceased was in a fit condition to declare.

32. *Union of India v. Dharam Pal (Criminal Appeal No. 804 of 2019)*

Decided on: 24.04.2019

Bench: 1. Hon'ble Mr. Justice N. V. Ramana

2. Hon'ble Mr. Justice Mohan M. Shantangoudar

3. Hon'ble Mr. Justice S. Abdul Nazeer

(Solitary confinement prior to the disposal of the mercy petition is per se illegal and amounts to separate and additional punishment not authorized by law)

FACTS

Dharam Pal was tried and convicted under section 302/34of the Indian Penal Code for the commission of murder of the five members of a family. In an earlier incident, he was tried and convicted under section 376/452 of the Indian Penal Code passed by the Additional Sessions Judge and sentenced to undergo rigorous imprisonment for 10 years. The Respondent was released on bail by the High Court , however on the intervening night of 09.06.1993 and 10.06.1993 at around 3.30 a.m., Dharam pal accompanied by his brother Nirmal committed the murder of five persons of the family of the prosecutrix for whose rape he was convicted.

Dharam pal and his brother were convicted under section 302/34of the IPC by the Sessions Court and were sentenced to death. Death reference was heard and the conviction and sentence was affirmed by the High Court. Dharam pal and his brother further filed an appeal before the Supreme Court which commuted the death sentence of Nirmal into life imprisonment but upheld the death sentence of Dharam pal taking into account his conviction in the rape case, and commisision of the murder of five family members of the prosecutrix of that case while on bail.Dharam Pal filed a mercy petition before the e Governor which came to be rejected. He then applied for Presidential Pardon on 02.11.1999 which came to be rejected on 25.03.2013 after an inordinate and unexplained delay of 13 years and 5 months and a date was fixed for his execution.

It is under these circumstances that the Respondent filed the impugned Writ Petition before the High Court praying for his death sentence to be commuted to life imprisonment in light of the change in circumstances viz. his acquittal in the rape case, which was an important deciding factor by this Court in negating his appeal. He also challenged it on grounds of delay in deciding his mercy petition by the President, among other grounds.

The High Court while allowing his Writ Petition held that it is a case of violation of the fundamental rights of the Respondent, which makes him eligible for getting his death sentence commuted to life imprisonment, and orders were passed accordingly. The State has filed this appeal against the decision of the High Court.

DECISION AND OBSERVATIONS

The Apex Court noted that the Respondent has undergone incarceration for a total period of over 25 years, out of which 18 years were in solitary confinement. It held that ***Solitary confinement prior to the disposal of the mercy petition is per se illegal and amounts to separate and additional punishment not authorized by law.***

Then the Apex Court quoted Section 30 of the Prisoners Act, 1894 which is as follows:

"30. Prisoners under sentence of death-

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard."

On this point reference was made to the majority decision in *Sunil Batra* v. *Delhi Admn.*[68] and the Apex Court stated that the sum and substance of the judgment in *Sunil Batra* is that ***even if the Sessions Court has sentenced the convict to death, subject to the confirmation of the High Court, or even if the appeal is filed before the High Court and***

the Supreme Court against the imposition of death punishment and the same is pending, the convict cannot be said to be "under sentence of death" till the mercy petition filed before the Governor or the President is rejected.

The Apex Court also referred to its decision in ***Shatrughan Chauhan v. Union Of India***[69] and ***held that solitary confinement prior to the rejection of mercy petition,*** which has taken place in spite of various decisions of this Court to the contrary, ***is unfortunate and palpably illegal***. In the present case, the Respondent underwent such a long period of solitary confinement that too, prior to his mercy petition being rejected, thereby making it a formidable case for commuting his death sentence into life imprisonment, as rightly held by the High Court.

On the point of inordinate and unexplained delay in disposing of the mercy petition the Apex Court again referred to its decision in *Shatrughan Chauhan* and held that the High Court has rightly found it to be illegal and commuted the death sentence.

Also, the authorities did not place the records regarding the acquittal of the Respondent in the rape case before the President for consideration of the mercy petition which has caused grave injustice and prejudice against the Respondent. On receipt of a mercy petition, the Department concerned has to call for all the records and materials connected with the conviction. When the matter is placed before the President, it is incumbent on the part of the concerned authority to place all the materials such as judgments of the courts, as well as any other relevant material connected with the conviction. In the present case, this Court while upholding the death sentence of the Respondent and commuting the sentence of his brother

[68] (1978) 4 SCC 494
[69] (2014) 3 SCC 1

to life imprisonment had placed reliance on the fact that the Respondent was convicted in the rape case, and the persons who he had killed were the family members of the prosecutrix of the rape case***. The fact that he was subsequently acquitted for that case has great bearing on the quantum on sentence that ought to be awarded to the Respondent and the same should have been brought to the notice of the President while deciding his mercy petition. Failure to do so has caused irreparable prejudice against the Respondent.***

After consideration of all these three factors, and also the fact that the respondent has killed five person while on bail , the Apex Court found it appropriate to direct the release of the Respondent after the completion of 35 years of actual imprisonment including the period already undergone by him.

33. S. K. Miglani v. State Nct Of Delhi (Criminal Appeal No. 744 of 2019)

Decided on: 30.04.2019
Bench: 1. Hon'ble Mr. Justice Ashok Bhusan
2. Hon'ble Mr. Justice K.M. Joseph

(Manager of a Nationalized Bank though a Public Servant can't claim protection U/S 197 CrPC)

FACTS

The appellant has been working as Manager in Bank of Baroda. A written complaint was given by Director, Housing on the basis of which an F.I.R was registered under Section 201, 409, 419, 420, 467, 468, 471, 120-B IPC. After investigation, a charge sheet was submitted against the DDA officials, property dealers and a supplementary charge sheet was also filed, in which the appellant's name was included. In the supplementary charge sheet, it is mentioned that the appellant opened a fictitious savings bank account No.33604 in the name of Gautam Dhar in connivance with Praveen Kumar, attorney of Shri Gautam Dhar and Shri Rajinder s/o Shri Braham Pal in order to encash the cheque dated 07.01.2000 for Rs.2,22,263.

An application dated 09.05.2012 was filed by the appellant before the ACMM, stating that appellant is a public servant employed with a nationalized bank as a Manager and it is mandatory to seek prosecution sanction against the appellant in terms of Section 197 Cr.P.C.

The Chief Metropolitan Magistrate passed an order rejecting the application of the appellant seeking discharge for want of sanction. Charge was framed against the appellant under Section 465/120-B I.P.C. An application under Section 482 Cr.P.C. was filed by the appellant before the High court of Delhi which was dismissed upholding the order of CMM. Aggrieved against the said judgment, this appeal has been filed.

DECISION AND OBSERVATIONS

The Apex court noted that One of the reasons given by CMM is that accused has not satisfied the Court that Section 197 Cr.P.C. applies in this case because at the relevant time, he was public servant not removable from his office saved by or with the sanction of the Government.

The question as to whether a manager of nationalized bank can claim benefit of Section 197 Cr.P.C. is not res integra, the Apex Court said It relied on its judgment in ***K.CH. Prasad v. Smt. J. Vanalatha Devi and Others,***[70] *which* had occasion to consider the same very question in reference to one, who claimed to be a public servant working in a nationalized bank. This Court while dismissing the appeal held that even though a person working in a nationalized bank is a public servant still provisions of Section 197 are not attracted at all.

[70] (1987) 2 SCC 52

The Apex Court in that case held that :

> *"6. It is very clear from this provision that this section is attracted only in cases* ***where the public servant is such who is not removable from his office save by or with the sanction of the Government****. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the government. In this view of the matter even if it is held that appellant is a public servant still provisions of Section 197 are not attracted at all."*

Therefore, the Apex Court took the view that appellant being not removable by or saved with the sanction of the Government was not covered by Section 197 Cr.P.C.

34. Sadayappan @ Ganesan v. State (Criminal Appeal No. 1990 of 2012)

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice N.V. Ramana

2. Hon'ble M. Justice Mohan M. Shantanagoudar

(The witness may be called "interested" only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished)

FACTS

Sadyappan was convicted by the Trial Court for the murder of his neighbour Selvam under section 302/34 of the Indian penal Code. The Trial Judge opined that the circumstantial evidence correlates with the accused and clearly proves that owing to prior enmity, A1 and A2, in furtherance of their common intention, committed the murder of the deceased with a gun shot from the unauthorized gun owned by accused-appellant. The conviction was upheld by the High Court.

Aggrieved thereby, both the accused preferred separate appeals before this Court.

The appeal of the A1 stood abated owing to his death during its pendency. The Appellant contended that witnesses were all related to the deceased and therefore they were interested witnesses and their testimonies should not have been relied by the trial court.

DECISION AND OBSERVATIONS

The Apex Court stated that Criminal law jurisprudence makes a clear distinction between a related and interested witness. A witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. The witness may be called "interested" only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished.

Therefore, in the present case, witnesses maybe related but they cannot be labelled as interested witnesses. A scrutiny of their testimonies which has stood the rigour of cross-examination corroborates the prosecution story.

The Apex Court upheld the conviction.

35. *63 Moons Technologies Ltd.(Formerly Known As Financial Technologies India Ltd.) v. Union Of India (Civil Appeal No. 4476 of 2019)*

Decided on: 30.04.2019

Bench: 1. Hon'ble Mr. Justice R. F. Nariman

2. Hon'ble Mr. Justice Vineet Saran

(Compulsory amalgamation of two or more companies- "public interest" would mean the welfare of the public or the interest of society as a whole, as contrasted with the "selfish" interest of a group of private individuals.)

FACTS

in 2016 the Union Ministry ordered the compulsory amalgamation of National Spot Exchange Ltd (NSEL) with its parent company 63 Moons Tech Ltd. (earlier known as Financial Technologies India Ltd or FTIL) under Section 396 of the Companies Act wherein all assets and liabilities of NSEL would become assets and liabilities of FTIL.This raises questions as to the applicability and construction of Section 396 of the Companies Act, 1956, which deals with compulsory amalgamation of companies by a Central Government order when this becomes essential in the public interest.

DECISION AND OBSERVATIONS

The Apex Court noted that there must be facts on which a reasonable body of persons properly instructed in law may hold that it is essential in public interest to amalgamate two or more companies. The formation of satisfaction cannot be on irrelevant or imaginary grounds, as that would vitiate the exercise of power.

Further, "Public interest" is an expression which is wide and amorphous and takes colour from the context in which it is used. However, like the expression "public purpose", what is important to be noted is that public interest is the general interest of the community, as distinguished from the private interest of an individual.[71]

In the context of compulsory amalgamation of two or more companies, the expression "public interest" would mean the welfare of the public or the interest of society as a whole, as contrasted with the "selfish" interest of a group of private individuals. Thus, "public interest" may have regard to the interest of production of goods or services essential to the nation so that they may contribute to the nation's welfare and progress, and in so doing, may also provide much needed employment. "Public interest" in this context would, therefore, mean the combining of resources of two or more companies so as to impact production and

[71] *State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors., [1952] 3 SCR 889*

consumption of goods and services and employment of persons relatable thereto for the general benefit of the community.

Conversely, any action that impedes promotion of industry or obstructs growth which is in national or public interest would run counter to public interest as mentioned in this Section.

Further the Apex Court noted that when it comes to "public interest" as opposed to the "private interest" of investors/traders, who have not been paid, the amalgamation order dated 12.02.2016 makes interesting reading. It will be seen that all the expressions used in relation to "public interest" have relation only to the businesses of the two companies that are sought to be amalgamated. What is important to note is that there is no interest of the general public as opposed to the businesses of the two companies that are referred to. It is important to notice that the leveraging of combined assets, capital, and reserves is only to settle liabilities of certain stakeholders and creditors when the order is read as a whole, and given the fact that the businesses of the two companies were completely different. So far as achieving economy of scale and efficient administration is concerned, it is difficult to see how this would apply to the fact situation in this case where NSEL is admittedly a company which has stopped functioning as a commodities exchange at least with effect from July, 2013 with no hope of any revival. Thus, the consolidation of businesses spoken about does not exist as a matter of fact, as NSEL's business has come to a grinding halt, as has been observed by the FMC and the Central Government itself. Each one of these expressions, when read with the rest of the order, therefore, only shows that the sole object of the amalgamation order is very far from the high-sounding phrases used in the opening, and is really only to effect speedy recovery of dues of INR 5600 crore, which has been referred to in the letter of the FMC to the Secretary, Ministry of Corporate Affairs, dated 18.08.2014.

Also, it is the Central Government that has to be "satisfied" that its order is in public interest and such "satisfaction" must, therefore, be of the Central Government itself and must, therefore, appear from the order itself.

Given the fact that the assessment order dated 01.04.2015 did not provide any compensation to either the shareholders or creditors of FTIL for the economic loss caused by the amalgamation in breach of Section 396(3), it is clear that an important condition precedent to the passing of the final amalgamation order was not met. On this ground also, therefore, ***the final amalgamation order has to be held to be ultra vires Section 396 of the Companies Act, and, being arbitrary and unreasonable, violative of Article 14 of the Constitution of India.***

36. *Rajbir Surajbhan Singh v. The Chairman, Institute Of Banking Personnel Selection, Mumbai(Civil Appeal No. 4455 of 2019)*

Decided on: 29.04.2019
Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice M.R. Shah

(Conducting recruitment tests for appointment in banking and other financial institutions, is not a public duty)

FACTS

The respondent conducted a written exam for the post of clerk in which the petitioner qualified and was called for interview in which he produced the caste certificate dated 28.10.2010 wherein he was required to produce the caste certificate issued during the period 01.04.2013 and 31.03.2015 showing that he belonged to the OBC category. For this reason he was disqualified from participating further in the selection process. The petitioner filed a writ petition against the said order in the High Court which was dismissed. Therefore, the appeal was filed. The High Court was of the view that the Respondent was not a State within the meaning of Article 12 of the Constitution of India and there was no public function that was discharged by the Respondent. On said grounds, the High Court opined that the Respondent is not amenable to writ jurisdiction of the High Court under Article 226 of the Constitution of India.

DECISION AND OBSERVATIONS

The Apex Court stated that the question that remains to be answered is whether the Writ Petition is maintainable against the Respondent on the ground that it discharges public duty.

This Court in *Andi Mukta Sadguru S. M. V. S. S. J. M.S.T. and Ors. v. V.R. Rudani and Ors*.[72] held :

"The term 'authority' used in Article 226 of the Constitution of India, must receive a liberal meaning unlike the term "other authorities" in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. ***Article 226 confers power on the High Courts to issue Writs for enforcement of fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty***. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or the authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied."

[72] 1989 (2) SCC 691

There is no manner of doubt that a Writ Petition under Article 226 is maintainable even against a private body provided it discharges public functions.

However, the Apex Court held that The Respondent-Institute has been set up for the purpose of conducting recruitment for appointment to various posts in Public Sector Banks and other financial institutions. The High Court is right in holding that the Writ Petition is not maintainable against the Respondent. ***Conducting recruitment tests for appointment in banking and other financial institutions, is not a public duty***. The Respondent is not a creature of a statute and there are no statutory duties or obligations imposed on the Respondent.

Also, As the activity of the Respondent of conducting the selection process for appointment to the banks is voluntary in nature, it cannot be said that there is any public function discharged by the Respondent. There is no positive obligation, either statutory or otherwise on the Respondent to conduct the recruitment tests. For the reasons above, the Apex Court was of the considered opinion that the Respondent is not amenable to the Writ Jurisdiction under Article 32 or Article 226 of the Constitution of India.

37. *JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Company Ltd. through its Director & Ors.(Civil Appeal No. 20978/2017)*

Decided on – 30.04.2019

Bench – (1) Hon'ble Mr. Justice R.F. Nariman,
(2) Hon'ble Mr. Justice Vineet Saran

A registered trade union which is formed for the purpose of regulating the relations between workmen and their employer can maintain an Insolvency Petition as an operational creditor on behalf of its members.

Issue

Whether a trade union could be said to be an operational creditor for the purpose of the Insolvency and Bankruptcy Code, 2016?

Facts

The facts of the case reveal a long-drawn saga of a jute mill being closed and reopened several times until finally, it has been closed for good on 07.03.2014. Proceedings were pending under the Sick Industrial Companies (Special Provisions) Act, 1985. On 14.03.2017, the appellant issued a demand notice on behalf of roughly 3000 workers under Section 8 of the Code for outstanding dues of workers. This was replied to by respondent No.1 on 31.03.2017. The National Company Law Tribunal ["NCLT"], on 28.04.2017, after describing all the antecedent facts including suits that have been filed by respondent No.1 and referring to pending writ petitions in the High Court of Delhi, ultimately held that a trade union not being covered as an operational creditor, the petition would have to be dismissed. By the impugned order dated 12.09.2017, the National Company Law Appellate Tribunal ["NCLAT"] did likewise and dismissed the appeal filed by the appellant before the Hon'ble Supreme Court, stating that each worker may file an individual application before the NCLT.

Observations and Decision

The Hon'ble Court referred to the following provisions of :

The Insolvency and Bankruptcy Code:-
Section 5(20) – Definition of "Operational Creditor"
Section 5 (21) – Definition of "Operational Debt"
Section 3 (23) – Definition of "person"

The Trade Unions Act
Section 2 (h) – Definition of a "trade union"
Section 2 (g) – Definition of "trade dispute"
Section 8 – "Registration" of trade union
Section 13 – "Incorporation of registered trade union"

Section 15 (c) and (d) – "Objects on which general funds may be spent"

The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
Rule 6 – Related to "Application by operational creditor"

The Hon'ble, after referring to the aforementioned provisions, held that on a reading of the aforesaid statutory provisions, what becomes clear is that a trade union is certainly an entity established under a statute – namely, the Trade Unions Act, and would therefore fall within the definition of "person" under Sections 3(23) of the Code. This being so, it is clear that an "operational debt", meaning a claim in respect of employment, could certainly be made by a person duly authorised to make such claim on behalf of a workman.

The Hon'ble Court further observed that Rule 6, Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 also recognises the fact that claims may be made not only in an individual capacity, but also conjointly. Further, a registered trade union recognised by Section 8 of the Trade Unions Act, makes it clear that it can sue and be sued as a body corporate under Section 13 of that Act. Equally, the general fund of the trade union, which inter alia is from collections from workmen who are its members, can certainly be spent on the conduct of disputes involving a member or members thereof or for the prosecution of a legal proceeding to which the trade union is a party, and which is undertaken for the purpose of protecting the rights arising out of the relation of its members with their employer, which would include wages and other sums due from the employer to workmen.

The Hon'ble Court also referred to the case of ***Sanjay Sadanand Varrier v. Power Horse India Pvt. Ltd***.[73], decided by the Bombay High Court and to the case of ***Commissioner of Income Tax (TDS), Kanpur and Anr. v. Canara Bank***[74], decided by the Supreme Court, and observed that though these cases do not deal directly with the issue involved in the present case, they are of help in holding that instead of one consolidated petition by a trade union representing a number of workmen, filing individual petitions would be burdensome as each workman would thereafter have to pay insolvency resolution process costs, costs of the interim resolution professional, costs of appointing valuers, etc. under the provisions of the Code read with Regulations 31 and 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. "***Looked at from any angle, there is no doubt that a registered trade union which is formed for the purpose of regulating the relations between workmen and their employer can maintain a petition as an operational creditor on behalf of its members. We must never forget that procedure is the handmaid of justice, and is meant to serve justice***."

The Hon'ble Court, thus, held :-

[73] (2017) 5 MahLJ 876
[74] (2018) 9 SCC 322

" 11. The NCLAT, by the impugned judgment, is not correct in refusing to go into whether the trade union would come within the definition of "person" under Section 3(23) of the Code. Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor. What is clear is that the trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union. Equally, to state that for each workman there will be a separate cause of action, a separate claim, and a separate date of default would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all. For all these reasons, we allow the appeal and set aside the judgment of the NCLAT. The matter is now remanded to the NCLAT who will decide the appeal on merits expeditiously as this matter has been pending for quite some time. The appeal is allowed accordingly. "

38. Vikram Johar v. State Of Uttar Pradesh(Criminal Appeal No. 759 Of 2019)

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice K.M. Joseph

(Mere abuse does not satisfy the ingredients of Section 506)

FACTS

Complainant filed an application under Section 156(3) Cr.P.C. alleging offences under Sections 383, 384, 471, 504 and 506 I.P.C. In the complaint, allegation was made against the appellant that he along with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and was about to assault him, When some neighbours arrived there, the appellant and two or three other unknown persons fled the spot on their vehicle. On the order of the Magistrate, first information report was lodged under Sections 383, 384, 471, 504 and 506 I.P.C.

Appellant in support of this appeal contends that complaint filed by the complainant was nothing but proceeding for harassment of the appellant. The appellant, who was surveyor having given adverse reports regarding the fire claim of the company, the complainant due to annoyance and to teach a lesson to the appellant has filed the complaint. It is submitted that incident is alleged of 02.10.2011 when appellant is claimed to be visited his house and threatened him whereas the complaint in the Court of Chief Judicial Magistrate was filed on 14.11.2011, i.e., about more than one month and 12 days, which itself indicate that whole story was concocted to harass the appellant. It is submitted that police after making thorough investigation twice have found no offence committed and has submitted the closure report

DECISION AND OBSERVATIONS

The Apex Court considered the decision in *Fiona Shrikhande Vs. State of Maharashtra & Another, (2013) 14 SCC 44* on the ingredients in section 504 of the I.P.C. wherein the Court said:

"Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."

Then the Court considered the judgment in ***Manik Taneja and Another Vs. State of Karnataka and Another, (2015) 7 SCC 423***, wherein this Court has again occasion to examine the ingredients of Sections 503 and 506 and said as follows:

"A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do."

In the above case, allegation was that appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506.

Further, in this case the Apex Court stated that the ingredients of section 504 have not been fulfilled as the intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that appellant came and abused the complainant does not satisfy the ingredients as laid down in the judgment of this Court in *Fiona Shrikhande.*

39. Jagdishraj Khatta v. State Of Himachal Pradesh (Criminal Appeal Nos. 539540 Of 2008)

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice S. Abdul Nazeer

(Incidents which have taken place much before the deceased's death could not be treated as conduct which drove the deceased to commit suicide)

FACTS

It was alleged that the deceased committed suicide on account of the cruelty and harassment met by her by the appellant. The Appellant was charged under Sections 498A and 306 of the IPC and Section 30 of the Indian Arms Act. The trial Court aquitted the accused and the High Court reversed the order of acquittal against which the appeal was filed before the Supreme Court.

The Appellant strongly urged that the High Court erred in relying on a letter which was allegedly sent by the deceased to her relatives in overturning the well-reasoned judgment of the Trial Court as the letter was surrounded by suspicious circumstances that the family of the deceased had never received any other letter from the deceased, who had a phone connection and often used to be visited by her family.

DECISION AND OBSERVATIONS

The Apex Court noted that the judgment of the High Court, has reversed the findings of the Trial Court by mainly relying on the following evidences: (1) the testimonies of the relatives of the deceased that the appellant acted in a cruel manner against the deceased in front of her relatives, and (2) the letter allegedly written by the deceased around the time of her death to her parents.

Further, the Apex Court stated that as the High Court itself indicated somewhat contradictorily, reliance on the instances testified to by the witnesses would not be appropriate as the said incidents had taken place much before the deceased's death and could not be treated as conduct which drove the deceased to commit suicide.

Also, the letter has not been proved to have been written by the deceased and is surrounded by suspicious circumstances. While the handwriting expert testified that the writing in the letter is the same as that of certain notebooks, no independent proof has been led regarding who owned or wrote in the aforesaid notebook. The fact that the deceased had never written any other letter to her family after her marriage but had rather been in touch with her relatives through the telephone, further strengthens the case of the appellant.

40. Mallikarjunaiah v. Nanjaiah (Civil Appeal No. 7768 of 2011)

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice Abhay Manohar Sapre
2. Hon'ble Mr. Justice Dinesh Maheshwari

(Plea of Adverse possession can be sustained only when such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner.)

FACTS

The Appellant filed a civil suit in the year 1992 against the respondents for declaration of his ownership rights over the entire land including the suit land and for grant of permanent injunction in relation to the suit land. The respondents defended their possession over the suit land on the basis of their adverse possession over the suit land for a long period of time. The trial Court declared the appellant as the owner of larger part of Schedule A property but observed that the defendants had perfected their title by adverse possession over 1 Gunta of and in Sy. No. 17/3. The First Appellate Curt upheld all the findings of the trial Court . The High Court in appeal declared the appellant to be the owner in respect of the land admeasuring 19 Guntas in Sy.No. 17/3 and Sy.No. 34/3 but dismissed his claim as being the owner of suit land admeasuring 1 Gunta in Sy.No. 17/3 and instead declared the defendants as being its owner by adverse possession of the suit land.

DECISION AND OBSERVATIONS

The Apex Court relied on *Chatti Konati Rao v. Palle Venkata Subba Rao*[75] in which it was laid down:

"Mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter."

In the light of the above decision the Apex Court observed in this case:

First, it is not in dispute that the appellant(plaintiff) was the owner of the entire land including the suit land, i.e., encroached portion, which was alleged to be in possession of the respondents(defendants). In other words, the respondents(defendants) have admitted the

[75] (2010) 14 SCC 316

ownership of the appellant(plaintiff) over the entire land including the suit land by setting up the plea of adverse possession over it;

Second, the burden to prove the adverse possession was on the respondents(defendants) because it was they who had set up this plea;

Third, the respondents(defendants), failed to discharge this burden;

Fourth, there was no element of either adversity or/and hostility between two co-owners/brothers because in a dispute of this nature where both the parties are related to each other, the possession of one is regarded to be the possession of other unless the facts show otherwise;

Fifth, the respondents(defendants) failed to adduce any evidence to prove that they were asserting their right of ownership over the entire land or the suit land or its part openly and to the knowledge of the appellant(plaintiff) continuously for a period of more than 12 years;

Sixth, it is a settled principle of law *that mere continuous possession howsoever long it may have been qua its true owner is not enough to sustain the plea of adverse possession unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner.* Such is not the case here.

Seventh, this was a case where both the parties were not aware as to how much land was in exclusive possession of each. In other words, here is a case where both the parties to the suit did not know as to how much land was in the exclusive possession of the appellant (plaintiff) and how much land was in possession of the respondents(defendants). It was only when the appellant(plaintiff) got the suit land measured through the revenue department in the year 1983, he came to know that some portion of the land, which had fallen to his share was in possession of the respondents(defendants).

Then the appellant(plaintiff) having come to know that the respondents(defendants) had encroached upon his land in the year 1983 and he rightly filed the suit within 12 years from the date of knowledge, a plea of adverse possession was not available to the respondents(defendants) against the appellant(plaintiff) because 12 years had not been completed by then.

As mentioned above, even if the respondents(defendants) claimed to be in possession over the suit land prior to the year 1983, the same was of no consequence for the simple reason that such possession was neither exclusive nor hostile and nor it was to the knowledge of the parties for want of actual measurements.

Therefore, the Apex Court set aside the judgment of the High Court and plaintiff's (appellant's) suit is decreed in its entirety against the defendants.

41. State Bank of India v. P. Soupramaniane (Civil Appeal No . 7011 of 2009)

Decided on: 26.04.2019

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice M. R. Shah

(Whether an offence involving bodily injury can be categorized as a crime involving moral turpitude-Held, all cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude.)

FACTS

The Respondent who was working as a Messenger in the State Bank of India at Puducherry was discharged from Service . The Respondent filed a Writ Appeal which was allowed by the Division Bench of the Madras High Court. The order of discharge of the Respondent from service was set aside and the Appellants were directed to reinstate the Respondent. The discharge of the Respondent from service is on the basis of conviction for an offence involving moral turpitude wherein the Respondent voluntarily stabbed Karthiban but the trial court was of the opinion that there was no material to convict the Respondent under Section 307 IPC. However, the trial court convicted the Respondent under Section 324 IPC and sentenced him to undergo imprisonment for three months.

The conviction was affirmed by the Appellate Court. The Appellate Court released the Respondent on probation as it was of the opinion that the Respondent was a fit person to be dealt with under Section 360 CrPC. One of the reasons given by the Appellate Court to release the Respondent on probation was that the Respondent was employed as a Messenger in a Bank and any sentence of imprisonment would affect his career.

Section 10(1)(b)(i) of the Banking Regulation Act, 1949 provides that conviction by a criminal court of an offence involving moral turpitude shall disentitle a person from continuing in employment of a banking company. The Writ Appeal filed by the Respondent was allowed by a Division Bench of the High Court on the ground that the criminal court released the Respondent under probation in exercise of its power under Section 360 CrPC to enable the Respondent to continue in service. The High Court was of the opinion that the purpose of the order of the criminal court would be defeated if the Respondent is discharged from service.

DECISION AND OBSERVATIONS

The Apex Court held that the release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably.

The Apex Court then went on to examine whether the conviction of the Respondent under Section 324 IPC can be said to be for an offence involving moral turpitude.

Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends

upon the facts and the circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

b) Whether the motive which led to the act was a base one, and

c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.

The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are :– the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society.

In this case the Court was concerned with the question whether an offence involving bodily injury can be categorized as a crime involving moral turpitude. In this case, we are concerned with an assault. The Apex Court stated that all cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude.

42. *Hindustan Sanitaryware and Industries Ltd. v. State of Haryana(Civil Appeal No . 2539 Of 2010)*

Decided on: 29.04.2019

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice M. R. Shah

The categorization of unskilled employees as semiskilled and semi-skilled as skilled on the basis of their experience in the notification issued for fixing/revising the minimum rates of wages is beyond jurisdiction of Government, under the Minimum Wages Act.

FACTS

The Appellant filed a Writ Petition challenging the Notification dated 27.06.2007 issued under Section 5 (2) of the Minimum Wages Act, 1948 (hereinafter, "the Act").

The said Writ Petition was dismissed by the High Court. Aggrieved by the judgment of the High Court, the Appellant has approached the Supreme Court. In exercise of the powers conferred by Section 5(2) of the Act, the Finance Commissioner and Principal Secretary to the Government of Haryana, Labour Department issued a Notification on 27.06.2007 fixing/revising the minimum rates of wages in respect of different scheduled employments as mentioned in the schedule therein with effect from 01.07.2007. The relevant provisions of the Notification dated 27.06.2007 are as under:

- Unskilled employees having 10 years' experience would be deemed categorized as semi-skilled "A".
- After 3 years of experience in semi-skilled "A", the employees would be deemed categorized as semi-skilled "B".
- After 3 years of experience in skilled "A", the employees would be deemed categorized as skilled "B".

DECISION AND OBSERVATIONS

The Apex Court noted that there is no power vested in the Government by the Act to make alterations to the terms of a contract. The Act only confers jurisdiction in Government to fix/revise the minimum rate of wages notwithstanding the contract. The Notification dated 21.10.2015 postulates that unskilled employees having five years experience would be deemed categorized as semi-skilled "A"; that after three years of experience in semi-skilled "A", the employees would be deemed categorized as semi-skilled "B"; that after three years of experience in skilled "A", the employees would be deemed categorized as skilled "B". Such categorization or classification by deeming workmen in one category to belong to another category is in direct contravention of the contract between the employer and the employee and is beyond the jurisdiction of the Government.

Also, the Apex Court held the word "employee" as defined in the Act means any person who is employed for hire or reward in a scheduled employment. There is no distinction made between a person employed by the principal employer and a person employed through a contractor. Any person who employs, whether directly or through any other

person, one or more employees in a scheduled employment falls within the definition of an "employer".A close scrutiny of the definitions of the employer and the employee would bring the workmen employed through the contractors within the purview of the Act.

The Apex Court concluded:

"(a) The prohibition of segregation of wages into components in the form of allowances in the Notification is impermissible;

(b) The security inspector/ security officer/ security supervisor cannot be included in the Notification;

(c) Trainees who are employed without payment of any reward cannot be covered by the Notification;

(d) Categorization of unskilled employees as semi- skilled and semi-skilled as skilled on the basis of their experience is ultra vires.

(e) Fixing the training period for one year is beyond the jurisdiction of the Government."

43. *Rajan v. Home Secretary, Home Department of Tamil Nadu and Ors. (Writ Petition (Criminal) No. 321 Of 2018)*

Decided on: 25.04.2019

Bench: 1. Hon'ble Mr. Justice A.M. Khanwilkar
2. Hon'ble Mr. Justice Ajay Rastogi

The case is related to a 'Sri Lankan Refugee' who spent 30 years in jail seeking remission of life sentence and for premature release.

FACTS

The petitioner, along with co-accused, committed dacoity at the house of one Pitchaikara Grounder and while he was trying to escape in a Maruti Van, the police and common public erected a barricade, upon which the petitioner fired from a machine gun killing three persons and injuring four.

After a full fledged trial he was convicted of offences punishable under Sections 395, 302 (3 counts), 307 (4 counts)of IPC and Section 3 read with Sections 25(1A) and 27(3) of the Indian Arms Act and sentenced to undergo 7 years' rigorous imprisonment for offence punishable under Section 395 of IPC, life imprisonment for offence punishable under Section 307 (4 counts) of IPC for each count as also awarded capital sentence for offence punishable under Section 302 (3counts) and further 5 years' imprisonment for offences punishable under Section 3 read with Section 25 (1A) of the Indian Arms Act. The sentences awarded to the petitioner were directed to run concurrently. The High Court affirmed the judgment and order of conviction and sentence awarded by the Trial Court for the concerned offences but converted the death sentence into life imprisonment on each of the 3 counts.

He filed an application for premature release in 2010, but it was rejected by the Advisory board and later by the competent authority of the state government. After 8 years, he filed another representation on 5th February, 2018. As he did not get any response to the said representation, he filed writ petition before the Supreme Court.

DECISION AND OBSERVATIONS

The Apex Court referred to the decision in *Muthuramalingam and Ors. v. State represented by Inspector of Police*[76] wherein it was held that remission or commutation granted by the competent authority for any one of the offences does not ipso facto result in release of the prisoners for other offences for which he has been convicted and sentenced at one trial.

The Apex Court declared that the conviction and sentence in reference to the offence under Section 27(3) of the Arms Act, having been declared ultra vires and unconstitutional; and the sentence awarded to the petitioner in reference to offence under Section 3 read with Section 25(1A) of the Arms Act having already been completed by the petitioner as it was to run concurrently with life imprisonment, even these offences cannot be reckoned for considering the representation made by the petitioner. Therefore, representation of the petitioner will

[76] (2016) 8 SCC 313

have to be considered only in reference to the sentence of life imprisonment concerning offences under Sections 302 and 307 of IPC, respectively.
The Apex Court noted that as a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the Court to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 of Cr.P.C., to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.

The Apex Court disposed of the petition with a direction to the competent authority to process the representation made by the petitioner dated 5th February, 2018 and take it to its logical end expeditiously and preferably within four months, in accordance with law, without being influenced by the rejection of the earlier representation vide order dated 14th June, 2010, by the State Government. It was also held that consultation with the Central Government would not be necessary and the State Government, being the appropriate Government, must exercise power conferred upon it in terms of Sections 432 and 433 of Cr.P.C.