# JUDICIAL ACADEMY JHARKHAND

# SNIPPETS

# OF

# SUPREME COURT JUDGMENTS

## (July 22-July 26, 2019)

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*Decided on* :- 23.07.2019

Bench :- 1. Hon'ble Mr. Justice D.Y. Chandrachud
2. Hon'ble Ms. Justice Indira Banerjee

**(Discussed the *doctrine of merger* and the provisions of Section 28 of the Specific Relief Act)**

***Facts***

In 2006, the appellant instituted a suit for specific performance of an agreement to sell. The appellant sought to enforce an agreement for the sale of land. By its judgment dated 20 March 2012, the Trial Court decreed the suit for specific performance filed by the appellant save and except for the land admeasuring 2 kanals. The decree of the Trial Court envisaged performance of the agreement to sell dated 8 December 2003 in respect of the land which formed the subject matter of the suit, except for 2 kanals. The judgment debtor was directed to execute the sale deed in respect of the remaining portion of the suit land

(i) within a period of 2 months;
(ii) on receipt of the balance sale consideration; and
(iii) upon deducting the consideration for 2 kanals of land.

The decision of the Trial Court was carried in appeal both by the decree holder and by the judgment debtor. The Appellate Court issued notice on the appeal and the application for stay filed by the judgment debtor, while the decree holder moved for execution of the decree. The judgment debtor had filed objections to the execution of the decree. The Appellate Court dismissed both sets of appeals by confirming the judgment and decree of the Trial Court.

On 23 February 2015, the executing court rejected the objections of the respondents to the execution of the decree and allowed the appellant's execution petition. The respondent then filed a civil revision before the High Court which resulted in the judgment of the learned Single Judge dated 1 June 2018 by which the order of the executing court was set aside. The High Court held that there was a failure on the part of the appellant to deposit the balance of the sale consideration within a period of two months from the date of the decree and as a consequence, the decree had been rendered inexecutable by virtue of the provisions of Section 28 of the Specific Relief Act 1963. The High Court noted that of the total sale consideration of Rs. 8,35,000/- under the terms of the agreement to sell, the appellant in 2004 had paid an amount of Rs. 5,85,000/- while the balance of Rs. 1,15,864/-, consequent upon the partial decree in the suit had been deposited on 19 February 2015 after the dismissal of the first appeals on 17 January 2015.

According to the High Court, the time frame for the deposit of the balance sale consideration was implicit in the decision of the Trial Court which had ordered the execution of the sale deed within two months from the date of the judgment upon deposit of the remaining sale consideration. The High Court held that the judgment and decree had not been stayed during the pendency of the first appeals and the mere filing of an appeal did not amount to a stay under Order 41 Rule 5 of the Code of Civil Procedure 1908. Hence, it was not open to the appellant to seek the execution of the decree on account of the lapse of the period stipulated in the decree for its execution. The High Court relied upon the provisions of Section 28 of the Specific Relief Act. It also observed that no application for the enlargement of time had been filed by the appellant. The present appeal challenged the order of the High Court.

***Observations and Decision***

The Hon'ble Court discussed the ***doctrine of merger*** and for that referred to the judgments of the Court in ***Kunhayammed v. State of Kerala***[1], ***Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.***[2], ***Chandi Prasad v. Jagdish Prasad***[3] and in the case of ***Shanthi v. T D Vishwanathan***[4] and held that upon the decision of the Appellate Court, there was a merger of the judgment of the Trial Court with the decision which was rendered in appeal. Consequent upon the passing of the decree of an Appellate Court, the decree of the Trial Court merges with that of the Appellate Court. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point in time. The doctrine of merger applies irrespective of whether the Appellate Court has affirmed, modified or reversed the decree of the Trial Court. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time. The Hon'ble Court held that the doctrine of merger operates as a principle upon a judgment being rendered by the Appellate Court. In the present case, once the Appellate Court confirmed the judgment and decree of the Trial Court, there was evidently a merger of the judgment of the Trial Court with the decision of the Appellate Court. Once the Appellate Court renders its judgment, it is the decree of the Appellate Court which becomes executable. Hence, the entitlement of the decree holder to execute the decree of the Appellate Court cannot be defeated.

The Hon'ble Court also discussed the provisions of Section 28 of the Specific Relief Act which read as follows :-

> *"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.— (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the*

[1] (2000) 6 SCC 359.
[2] (2019) 4 SCC 376.
[3] (2004) 8 SCC 724.
[4] 2018 SCC OnLine SC 2196.

> *decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require."*

While discussing the provisions of Section 28 of the Specific Relief Act, the Hon'ble Court referred to the judgments of the Court in and in ***Bhupinder Kumar* v. *Angrej Singh***[5] and in ***Sardar Mohar Singh* v. *Mangilal***[6] wherein the Hon'ble Court had held as follows:-

> *"4. From the language of sub-section (1) of Section 28, it could be seen that the court does not lose its jurisdiction after the grant of the decree for specific performance nor it becomes functus officio. The very fact that Section 28 itself gives power to grant order of rescission of the decree would indicate that till the sale deed is executed in execution of the decree, the trial court retains its power and jurisdiction to deal with the decree of specific performance. It would also be clear that the court has power to enlarge the time in favour of the judgment-debtor to pay the amount or to perform the conditions mentioned in the decree for specific performance, in spite of an application for rescission of the decree having been filed by the judgment-debtor and rejected. In other words, the court has the discretion to extend time for compliance of the conditional decree as mentioned in the decree for specific performance..."*

The Hon'ble Court finally allowed the appeal and held that in the present case The appellant had deposited an amount of Rs. 5,85,000/- The partial decree of the Trial Court in the suit for specific performance was placed in issue before the Appellate Court. After the Appellate Court affirmed the decree on 17 January 2015, the decree of the Trial Court merged with that of the Appellate Court. Barely a month thereafter, on 19 February 2015, the appellant deposited the balance of the sale consideration. The appellant acted bona fide. The equities in a matter arising out of a decree in a suit for specific performance must weigh in his favour. The executing court was justified in rejecting the specious objections of the respondents. The Hon'ble Court also observed that the High Court acted in excess of its revisional jurisdiction in impermissibly substituting the decree for specific performance with an order for refund of the sale consideration, beyond the earnest money of Rs. 2,00,000/- to the decree holder. According to the Apex Court, the reasons which weighed with the High Court in doing so as well as its ultimate directions are unsustainable since in a Civil Revision arising out of an execution proceeding, the High Court has modified the decree and such a course was not open in law.

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[5] (2009) 8 SCC 766.

[6] (1997) 9 SCC 217. *See* also, *V S Palanichamy Chettiar Firm* v. *C Alagappan,* (1999) 4 SCC 702; *Ramankutty Guptan* v. *Avara,* (1994) 2 SCC 642.

## 2. *Shiv Prakash Mishra v. State of Uttar Pradesh and Another, (2019 SCC OnLine SC 898)*

*Decided on* :- 23.07.2019

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Mr. Justice A.S. Bopanna

**("The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C. should be exercised sparingly.")**

***Facts***

As per the complaint lodged by complainant-Shiv Prakash Mishra (PW-1), on 06.09.2013 at about 09.00 am, respondent No. 2-Subhash Chandra Shukla along with other accused viz. Sashendra Shukla, Devender Shukla, Lakshmi Kant Shukla and Rahul Shukla formed themselves into an unlawful assembly and came to the house of complainant and started abusing him due to old enmity. The elder brothers of the complainant namely Sangam Lal Mishra and Sunil Kumar Mishra who were living in the opposite house came out and tried to forbade the accused from abusing. On this, accused Sashendra Shukla fired from the pistol in his hand with intention to kill Sunil Kumar Mishra. Other accused beat Sangam Lal Mishra with *lathi* and *dandas* while the second respondent is alleged to have strongly attacked the deceased Sangam Lal Mishra on his head with the butt of home-made pistol (*katta*). Deceased Sangam Lal Mishra and Sunil Kumar Mishra sustained injuries and fell down. During treatment, Sangam Lal Mishra succumbed to injuries. The incident was witnessed by PW-2-Anand Kumar Mishra, Dev Narain Mishra and the complainant. Shiv Kumar Mishra-complainant (PW-1) lodged the complaint before the Police Station, Meja at 18.15 hours on the same day i.e. 06.09.2013. Based on the complaint, FIR No. 275/2013 was registered in Case Crime No. 328A/2013 against five accused persons viz. Subhash Chandra Shukla, Sashendra Shukla, Rahul Shukla, Lakshmi Kant Shukla and Devender Shukla under Sections 147, 148, 149, 302, 307, 323 and 504 IPC. Investigation of the case was taken up by the police of the concerned police station. As per the government order, the investigation of the case was transferred to C.B.C.I.D. C.B.C.I.D. which took up the investigation, examined number of persons at the office of second respondent and filed charge sheet No. 13/2014 on 19.09.2014 only against three accused persons namely Sashendra Shukla, Devender Shukla and Laxmi Kant Shukla. Upon further investigation, subsequently on 15.10.2014, a supplementary charge sheet No. was filed against accused Rahul Shukla.

Case was committed to the Sessions Court and charges were framed in Sessions Trial No. 1329/2014. The trial was commenced in or about August, 2016. The witnesses namely Shiv Prakash Mishra (PW-1), Anand Kumar Mishra (PW-2) and Sunil Kumar Mishra (PW-3) were examined. On 03.10.2017, PW-1-Shiv Prakash Mishra filed a petition under Section 319 Cr.P.C. to implead the second respondent-Subhash Chandra Shukla as an accused. The trial court vide order dated 28.08.2018 dismissed the application filed under Section 319 Cr.P.C.

observing that there are contradictions in the statement of Shiv Prakash Mishra (PW-1) and the statement of Anand Kumar Mishra (PW-2) as to the role of the second respondent. The trial court held that the presence of the proposed accused Subhash Chandra Shukla at the place of work at District Mirzapur has been verified and the same has also been corroborated with the statement of the complainant and presence of the second respondent in the scene of occurrence is highly doubtful. The trial court placed reliance upon ***Brijendra Singh* v. *State of Rajasthan*, (2017) 7 SCC 706**. The revision petition preferred by the complainant before the High Court was also dismissed on the ground that there are no materials on record to summon respondent No. 2 as an accused. Being aggrieved, the complainant filed an appeal before the Hon'ble Supreme Court.

***Observations and Decision***

The Hon'ble Court, after referring to the provisions of Section 319 and also to the judgments of the Court thereon rendered in ***Kailash v. State of Rajasthan***[7], ***Hardeep Singh v. State of Punjab***[8] and ***Brijendra Singh* v. *State of Rajasthan***[9], held that the power of summoning an additional accused under Section 319 Cr.P.C. should be exercised sparingly. The key words in Section are *"it appears from the evidence"…."any person"…."has committed any offence"*. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court. The power is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused. After making the aforementioned discussions, the Hon'ble Court dismissed the appeal and held that No substantial ground is made out warranting interference in the orders passed by the High Court and the Trial Court whereby both the courts have that the materials brought on record are not sufficient to summon the second respondent as an accused in the present case.

[7] (2008) 14 SCC 51
[8] (2014) 3 SCC 92
[9] (2017) 7 SCC 706

### 3. *A.M.C.S. Swamy, ADE/DPE/Hyd (Central) v. Mehdi Agah Karbalai and Another, (2019 SCC OnLine SC 899)*

*Decided on* :- 23.07.2019

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Mr. Justice R. Subhash Reddy

**(The Special Court under the Electricity Act can take cognizance of the offence under the Act under Section 151 without the case being committed to it, which is otherwise prohibited under Section 193 of the CrPC)**

***Facts***

Respondent No. 1 herein is a consumer of electricity of Southern Power Distribution of Telangana Limited (SPDTL). On 12.11.2009 at about 12.26 hours, premises of respondent No. 1 was inspected in his presence by the concerned staff of the appellant. At the time of inspection, the inspecting authorities found extra pressing and seal bit bulging marks along with seal wire on the meter box seal. The said meter was replaced with another meter and the earlier meter was sent to MRT Lab for examination. The MRT Lab, on examination, certified that the meter was tampered. The loss thereby was assessed at Rs. 6,28,383/- (Rupees six lakhs twenty eight thousand and three hundred and eighty three only). It is a case of the appellant that the offence committed by respondent No. 1 is a second offence. The first offence registered against respondent No. 1 was in Crime No. 491 of 2008 dated 25.11.2008. The first criminal case registered against respondent No. 1 was compounded on 03.08.2009 upon payment of Rs. 47,000/- (Rupees forty seven thousand only).

When the appellant noticed tampering of meter, on receipt of report from MRT Lab, the concerned officer lodged a complaint on 24.11.2009, for the offence punishable under Section 135 of Electricity Act, 2003. On filing the charge sheet, as contemplated under Section 173 of the Code of Criminal Procedure, 1973, on 10.01.2011, the Special Court took cognizance of the case under Section 151 of the Electricity Act, 2003 as amended by Act 26 of 2007, which came into force from 15.06.2007.

Respondent No. 1 herein filed a Criminal Petition before the High Court of Judicature at Hyderabad under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the aforesaid proceedings on two grounds. The first ground was that the complaint was not filed within twenty-four hours of disconnection as mandated under proviso to Section 135(1-A) of the Indian Electricity (Amendment) Act, 2007. The second ground was that the Special Court has taken cognizance without any order of committal and the same is in violation of Section 193 of the Code of Criminal Procedure, 1973. In the said case, the High Court by relying on the decision of the Supreme Court in *Gangula Ashok v. State of Andhra Pradesh*[10] held that committal order is must, unless it is strictly made clear in the special enactment that

[10] (2000) 2 SCC 504.

committal order is not required. In the impugned order, the High Court, mainly on the ground that the Special Court has taken cognizance directly and the same is not disputed by the learned Public Prosecutor, quashed the proceedings. The order of the High Court was under challenge before the Supreme Court in this case.

***Observations and Decision***

It was contended that the case of *Gangula Ashok* (supra), which was a case arising out of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, there was no provision in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, equivalent to Section 151 of the Electricity Act, 2003. In that context, considering the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Supreme Court had held that the Special Court cannot take cognizance directly unless the case has been committed to it by a Committal Court as contemplated under Section 193 of the Code of Criminal Procedure, 1973.

The Hon'ble Court, in this case, made a distinction and held that the Additional District Judge's Court has been notified as a Special Court under the Electricity Act and observed that as per the procedure under Section 193 of the Code of Criminal Procedure, 1973, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate except as otherwise expressly provided by the Code of Criminal Procedure, 1973, or any other law for the time being in force. It further held as follows:-

> *"**18.** Section 151 of the Electricity Act, 2003 is altogether a new provision.* ***Section 151 of the Act provides that no court shall take cognizance of an offence punishable under the Act except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose. Second proviso to Section 151 of the Electricity Act, 2003, specially empowers the Special Court constituted under Section 153 of the Electricity Act, 2003, to take cognizance of an offence without the accused being committed.*** *In view of the specific provision under Section 151 of the Electricity Act, 2003, we are of the view that Special Court is empowered to take cognizance without there being an order of committal as contemplated under Section 193 of the Code of Criminal Procedure, 1973. When there is express provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed, it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 of the Code of Criminal Procedure, 1973. It appears that the High Court has not considered the said proviso to Section 151 and passed the impugned order. As the impugned order is passed only on the said ground, we are of the view that the order impugned is liable to be set aside by this Court."*
>
> (Emphasis supplied)

## 4. *Manjit Singh v. State of Punjab and Another, (2019 SCC OnLine SC 896)*

*Decided on* :- 22.07.2019

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Mr. Justice A.S. Bopanna

**(A non-compoundable offence cannot be ordered to be compromised but the factum of compromise can be taken into consideration while imposing substantive sentence)**

***Facts***

Case of the prosecution is that on 04.06.2001 at about 05:30 p.m. when complainant-Hardip Singh (PW-1) was returning to his village Baghiari from bus stop on his scooter, appellant-accused, Manjit Singh, along with his brother Ranjit Singh, armed with knife, are said to have attacked/inflicted knife blows on the left and right thigh of the complainant. On the complaint lodged by the complainant a case was registered under Section 307 read with Section 34 I.P.C. and Section 324 read with Section 34 I.P.C. After completion of the investigation, the chargesheet was filed against the accused for the aforesaid offences.

Upon consideration of the evidence of the complainant/injured person and other witnesses, the Trial Court convicted the accused appellant-Manjit Singh and his brother-Ranjit Singh under Section 307 I.P.C. and sentenced each of them to undergo rigorous imprisonment for five years along with fine of Rs. 1000/- each. For the offence punishable under Section 324 I.P.C., they were sentenced to undergo rigorous imprisonment for two years. The Trial Court acquitted the accused-Davinder Singh giving him benefit of doubt. In appeal, the High Court affirmed the conviction of the appellant and also the sentence of imprisonment imposed upon the accused-Manjit Singh. The High Court, however, acquitted the accused-Ranjit Singh by holding that the charges against him are not proved beyond reasonable doubt. Being aggrieved, the appellant-Manjit Singh preferred the present appeal before the Supreme Court.

During pendency of the appeal, the parties compromised the matter. Learned counsel for the appellant-accused and the complainant-Hardip Singh, represented by his counsel filed an affidavit stating therein that the parties have compromised the matter. The appellant-accused also filed the compromise entered into between the parties.

***Observations and Decision***

The Hon'ble Court referred to the decision of the Supreme Court in ***Ishwar Singh* v. *State of Madhya Pradesh***[11], wherein it was held as follows :-

> *"13. In Jetha Ram v. State of Rajasthan, (2006) 9 SCC 255, Murugesan v. Ganapathy Velar, (2001) 10 SCC 504 and Ishwarlal v. State of M.P., (2008) 15 SCC 671, this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan, 1990 Supp SCC 681 such offence was ordered to be compounded.*
>
> *14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."*

The Hon'ble Court, thus, held that Section 307 I.P.C. is a non-compoundable offence and, therefore, no permission can be granted to record the compromise between the parties. However, the Hon'ble Court took the compromise into consideration *inter alia* while deciding the sentence in the case and held as follows :-

> ***"7.** As noted earlier, in the present case the appellant-accused, Manjit Singh, has been sentenced to undergo imprisonment for five years. The appellant is said to have served seventeen months of imprisonment.* ***Taking note of the compromise entered into between the parties and considering the relationship of the parties and the facts and circumstances of the case and also the sentence undergone by the appellant-accused, the sentence of imprisonment imposed upon the appellant under Sections 307 and 324 I.P.C. is reduced from five years/two years to the period already undergone by him.*** *The appellant is ordered to be released forthwith unless his presence is required in any other case. In view of the compromise entered into between the parties, the fine amount of Rs. 50,000/- imposed upon the appellant is set aside. If the said fine amount has already been paid, the same shall be refunded to the appellant-Manjit Singh."* (Emphasis supplied)

[11] (2008) 15 SCC 667

## 5. *Girish Singh v. The State of Uttarakhand, (2019 SCC OnLine SC*

*Decided on* :- 23.07.2019

Bench :- 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice K.M. Joseph

**(- Before the presumption for Section 304B, IPC is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry.**

**- Unless appellate power is expressly limited by additional conditionalities, the Appellate Court has power or rather is duty bound in the case of an appeal by the accused to reappraise the evidence.**

**- If there is benefit of doubt, it must go to the accused, and in case of two views, the view that favours the accused, should be taken, which was more so where the Trial Court's decision was not manifestly *illegal, perverse* and did not cause miscarriage of justice and a court will not interfere with the verdict of acquittal merely because on evaluation of evidence, a different plausible view may arise.)**

***Facts***

The first accused used to treat his wife with cruelty on account of dowry demand. The same allegation was made against his father-second accused. It is also alleged that his father wanted to fulfil his lust with his daughter-in-law. She did not agree. The accused tortured her and gave her beating. The daughter-in-law committed suicide by burning herself on 05.06.1991. After complying with the formalities, the charge-sheet was filed against the accused. Prosecution examined nine witnesses and produced 17 documents. The Trial Court came to the conclusion that the prosecution failed to prove the case against both the accused. They were accordingly acquitted. Reliance was in particular placed on certain letters.
The appeal carried against their acquittal by the State was allowed by the High Court by the impugned order. The appellants were convicted under Section 304B read with Section 34 of the IPC. It was, however, found that offence under Section 306 read with Section 34 of the IPC was not made out against the appellants. The appellants were sentenced to seven years rigorous imprisonment.

The observations made by the High Court in the impugned judgment were as follows :-

> *"22. ... Just before her death and after 5-6 months of her marriage, respondents-accused Girish Singh and Jodh Singh harassed the deceased Ishwari Devi for getting T.V. and V.C.R. in dowry and by non-fulfilling the demand of dowry, they were continuously beating her. Respondent - Jodh Singh also harassed her by saying her to provide him liquor in the glass and after taking liquor in the state of intoxication, he was asking her to sleep with him. On her refusal, she was subjected to mental cruelty.*

*P.W. 4 Ganesh Singh has specifically stated that after coming back from Mumbai, he came to know that respondent-accused Jodh Singh after taking the liquor was trying to commit rape with Ishwari and also used to harass her for T.V. and V.C.R., due to which his daughter Parvati Devi, P.W. 2 Smt. Laxmi Devi, P.W. 3 Smt. Anandi Devi, P.W. 4 Ganesh Singh, and P.W. 5 Yasodh Singh, it is proved beyond reasonable doubt by the prosecution that Ishwari Devi was harassed for the demand of T.V. and V.C.R. in dowry by the respondents after 5-6 months of marriage and they were continuously making demand of dowry just before her death.... Therefore, in view of the aforesaid discussion, it is proved that deceased Ishwari Devi died an unnatural death within 1 ½ years of her marriage in the house of respondents where she was residing along with her husband-Girish Singh and father in law Jodh Singh. Deceased Ishwari Devi has died due to the burn injuries and her body was found to be 100% burnt by the Medical Officer P.W. 9 Dr. P.K. Karnatak. As such, it has been proved by the prosecution beyond reasonable doubt that the deceased was subjected to mental cruelty by the respondents for the demand of T.V. and V.C.R. in dowry and due to non-fulfilment of this demand and due to the harassment and Marpit by the respondents, Ishwari Devi committed suicide by burning herself in the house of her husband. Hence, in view of the above-said facts and circumstances of the case, offence punishable u/s 304-B/34 of IPC is fully made out against the respondents beyond reasonable doubt and learned Sessions Judge has erred in law by acquitting the respondents' u/s 304-B r/w Section 34 IPC."*

***Observations and Decision***

The Hon'ble Court observed that the High Court apart from making the aforementioned observations also held that the Sessions Judge erred in holding that the oral evidence is not supported by the documentary evidence. After referring to Section 113B of The Evidence Act, 1872, it is found that a presumption is to be drawn under the said provision that dowry death has been caused. The finding by the Trial Court that the cruelty to his wife by the first accused is not proved, was found to be incorrect. Still further, it is found that the Trial Court erred in finding that the deceased ran away to her father's house where she committed suicide. The deceased committed suicide in the house of the appellants. In regard to the letters produced by the appellants to show that there was no cruelty, it is found that the actual letters, which show the cruelty, written by the deceased could not be produced due to the reason that as submitted by PW4 as they were misplaced due to the shifting of the house. The Hon'bl;e Court observed further that the contradictions in the statements made by the prosecution witnesses also did not appeal to the High Court. It was found that the deposition given by the prosecution witnesses was reliable and trustworthy.

The Hon'ble Court, then, referred to the entire evidence in the case.

The Hon'ble Court referred to the cases of ***Upendra Pradhan v. State of Orissa***[12], ***Dilawar Singh v. State of Haryana***[13] and ***Gamini Bala Koteswara Rao v. State of Andhra Pradesh Through Secretary***[14] and observed that if there is benefit of doubt, it must go to the accused,

[12] (2015) 11 SCC 124.
[13] (2015) 1 SCC 737.
[14] (2009) 10 SCC 636. *See* also, *K. Prakashan* v. *P.K. Surenderan,* (2008) 1 SCC 258.

and in case of two views, the view that favours the accused, should be taken, which was more so where the Trial Court's decision was not manifestly ***illegal, perverse*** and did not cause miscarriage of justice and a court will not interfere with the verdict of acquittal merely because on evaluation of evidence, a different plausible view may arise. Very substantial and compelling reasons must exist with the Appellate Court to interfere with an acquittal. It was also declared in these cases that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and the Trial Court has taken one of the views merely because another view is plausible, the Appellate Court will not be justified in interfering with the verdict of acquittal.

The Hon'ble Court referred to Section 304B of the Indian Penal Code and to section 113B of the Indian Evidence Act and held that for an offence under Section 304B, the following conditions must be fulfilled :-

*I. Within 7 years of the marriage, there must happen the death of a woman (the wife).*
*II. The death must be caused by any burns or bodily injury.*

*OR*

*The death must occur otherwise than under normal circumstances.*
*III. It must be established that soon before her death, she was subjected to cruelty or harassment.*
*IV. The cruelty or harassment may be by her husband or any relative of her husband.*
*V. The cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.*

The Hon'ble Court further held as follows :-

> ***"34.*** *Section 304B treats this as a dowry death. Therefore, in such circumstances, it further provides that husband or relative shall be deemed to have caused her death. Section 113B of The Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304B of the IPC, has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is no doubt a rebuttable presumption and it is open to the husband and his relatives to show the absence of the elements of Section 304B.*
>
> ***35.*** *The foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment for or in connection with, demand for dowry."*

After referring to the cases mentioned hereinabove, the facts and evidences of the case and the judgment of the High Court, the Hon'ble Court made the following observations:-

*"**47.** We would think that particularly in an appeal from acquittal, the High Court has exceeded its jurisdiction in the appreciation of evidence as well as its approach to how the reliability of the witness is to be evaluated.*

***48.** We are troubled with another aspect highlighted by the facts of this case. A right of appeal is the creature of statue. Unless appellate power is expressly limited by additional conditionalities, the Appellate Court has power or rather is duty bound in the case of an appeal by the accused to reappraise the evidence. Even in an appeal against acquittal, the appellate court has power of reappraisal of evidence though subject to the limitation that interference would be in a case where the Trial Court's verdict is against the weight of evidence which is the same thing as a perverse verdict. We need not catalogue the circumstances which are well-settled.*

***49.** In this case, we notice that the High Court has referred to the contents of the chief examination of the witnesses. Thereafter, it has been stated that the witnesses have been cross-examined at length but nothing has come out in evidence which would create any doubt in his evidence. The witnesses are declared as being found reliable and believable. We have noted the facts in this case.*

***50. Truth in a criminal trial is discovered by not merely going through the cross-examination of the witnesses. There must be an analysis of the chief examination of the witnesses in conjunction with the cross examination and the re-examination, if any. The effect of what other witnesses have deposed must also enter into consideration of the matter. On the one hand, the laudable object underlying Section 304B of the IPC is not to be lost sight of. On the other hand, it is equally important that the Appellate Court must not be oblivious to the fact what it is duty bound to find is whether an offence is committed or not and such a pursuit also would embrace the duty of the court to apply its mind to the evidence as a whole and arrive at conclusions as to facts and inferences therefrom as well. After all, at stake for the accused are, priceless rights to liberty, reputation and the right to life, not only of himself but also his family members. The Law Giver, has contemplated that the High Court will be the final arbiter of facts and even of law. The jurisdiction of the Apex Court was deliberately limited to the extra ordinary powers it enjoys under Article 136 of the Constitution of India unless it be exercised under other provisions. What we wish to emphasise is that the cause of justice and the interest of litigants would be better subserved if the Appellate Court takes a closer look, in particular of the cross-examination of the witnesses and analyse the same**."*

(Emphasis supplied)

Based on the aforementioned discussions and observations, the Hon'ble Court allowed the appeal and set-aside the judgment of the High Court.

## 6. *Sanjeev Kumar Gupta v. State of Uttar Pradesh and Another, (2019 SCC OnLine SC 926)*

*Decided on* :- 25.07.2019

Bench :- 1. Hon'ble Mr. Justice D.Y. Chandrachud
2. Hon'ble Ms. Justice Indira Banerjee

**(If the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then an enquiry for determination of the age of the accused is permissible.)**

***Facts***

On 28 October 2015, a First Information Report was lodged by the appellant at Firozabad in Uttar Pradesh under Section 364 A of the Penal Code. The allegation is that the appellant received a call on his cell phone from an unknown number and the caller wished to speak to his son, claiming to be his teacher. The appellant's son who was about thirteen years old was studying in the eighth standard in a public school in Shikohabad. After calling back on the number, the appellant's son left his shop after a conversation, never to return. The victim is alleged to have been murdered after a demand for ransom. His body was allegedly found in a canal. The second respondent was arrested during the course of the investigation.

On 9 December 2015, the accused filed an application claiming to be a juvenile on the date of the incident under the Juvenile Justice (Care and Protection of Children) Act 2000. He submitted that on the date of the alleged offence he was sixteen years ten months and eleven days old. In support of the claim, he relied on a matriculation certificate issued by the Central Board of Secondary Education, Delhi reflecting his date of birth as 17 December 1998.

The Juvenile Justice Board allowed the application of the second respondent - accused and declared him to be a juvenile on the date of the alleged offence. The appellant instituted a criminal appeal before the Court of the Sessions Judge, Firozabad. The Sessions Judge remanded the case to the JJB for determination of the age of the second respondent upon medical examination. The Chief Medical Officer, Agra constituted a Medical Board which found that the age of the second respondent was about nineteen years. Aggrieved by the order of the Sessions Judge, the second respondent filed a revision before the High Court which was dismissed as withdrawn. He instituted a petition under Section 482 of the Code of Criminal Procedure 1973 which was disposed of by the High Court directing the early disposal of the pending application of the second respondent. On 1 July 2017, the JJB rejected the claim of juvenility on the basis of the medical report. The JJB also observed that the second respondent had filed an application for obtaining a driving license and an Aadhaar card in which he had declared his date of birth as 17 December 1995. On this basis, the JJB held that the second respondent was an adult on the date of the incident. The second

respondent filed an appeal against the order of the JJB before the Sessions Judge, Firozabad. The Sessions Judge rejected the appeal by an order dated 2 August 2017 observing, on the basis of the decision of the Supreme Court in ***Prag Bhati v. State of Uttar Pradesh***[15] that the credibility and authenticity of the documents depends upon the circumstances of each case and that in a case involving conflicting school certificates, a further inquiry would be required. The Sessions Judge also placed reliance on the decision of the Supreme Court in ***Ramdeo Chauhan alias Raj Nath v. State of Assam***[16].

Aggrieved by the decision of the Sessions Judge, the second respondent moved the High Court of Judicature at Allahabad in a Criminal Revision. The High Court allowed the revision and declared that on the date of the alleged offence, the second respondent was a minor. In coming to this conclusion, the High Court adverted to the provisions contained in Section 7 A of the Act of 2000 and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 as interpreted by the Supreme Court **in *Ashwani Kumar Saxena v. State of Madhya Pradesh***[17]. The High Court held that the matriculation certificate issued by the CBSE would have to be given precedence over any other evidence of the date of birth, having due regard to the provisions contained in Rule 12(3)(a). It held that the validity of the matriculation certificate issued by the CBSE had not been disputed but what was in dispute was the date of birth which was recorded in the certificate. The Court took notice of the fact that during the course of the investigation, the investigating officer had collected the driving licence, Aadhaar card, voter's ID and eighth standard mark sheets which indicated that the date of birth of the second respondent was 27 December 1995. The matriculation certificate indicated that the date of birth was 17 December 1998. According to the medical report, the second respondent was about nineteen years of age on 9 November 2016. Ultimately, in the view of the High Court, precedence would have to be given to the date of birth which was indicated in the matriculation certificate. The decision of the JJB, as affirmed in appeal by the Sessions Judge, was set aside and the claim of juvenility was allowed. The decision of the High Court was under challenge before the Supreme Court in the present case.

***Observations and Decision***

The Hon'ble Court referred to 7A[18] of the Act of 2000 and Rule 12 (3)[19] of the 2007 Rules. It also referred to the judgments of the Supreme Court rendered in ***Ashwani Kumar Saxena* v. *State of Madhya Pradesh***[20] wherein it had been held as follows:-

[15] (2016) 12 SCC 744.
[16] (2001) 5 SCC 714.
[17] (2012) 9 SCC 750.
[18] **7A. Procedure to be followed when claim of juvenility is raised before any court**.— (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

*"32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."*

* * * * * *

*"34. ...There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."*

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Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

[19] "**12 Procedure to be followed in determination of Age**.

……..

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

[20] (2012) 9 SCC 750.

The Hon'ble Court also referred to the the judgment rendered by a three-judges Bench of the Supreme Court in ***Abuzar Hossain alias Gulam Hossain* v. *State of West Bengal***[21], wherein it had been held as follows :-

> *"39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent."*

Based on the aforesaid decisions, the Hon'ble Court observed that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down. directing an inquiry is not the same thing as declaring the accused to be a juvenile. In the former the Court simply records a prima facie conclusion while in the latter a declaration is made on the basis of evidence. Hence the approach at the stage of directing the inquiry has to be more liberal. The Hon'ble Court also referred to the judgment of ***Prag Bhati* v. *State of Uttar Pradesh***[22]wherein it had been held as follows :-

> *"36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in Abuzar Hossain [Abuzar Hossain v. State of W.B., (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83], an enquiry for determination of the age of the accused is permissible which has been done in the present case."*

[21] (2012) 10 SCC 489.
[22] (2016) 12 SCC 744.

Based on the discussions made hereinabove, the Hon'ble Court allowed the appeal and set-aside the order of the High Court and held as follows :-

> ***25.*** *The above deposition indicates that the second respondent was admitted to Maa Anjani Senior Secondary School, Shikohabad in the fifth standard and was a student of the school until he completed his matriculation. The second respondent attended the Saket Vidyasthali, Jedajhal, Firozabad until the fourth standard. The school register and transfer certificate form of that school specifically contains an entry in regard to the date of birth of the second respondent as 17 December 1995. Mr. Ravindra Singh, learned senior counsel appearing on behalf of the second respondent has urged that the discrepancies which have been brought out in the course of the cross-examination of the former Manager of the school would indicate that there is a doubt in regard to the authenticity of that certificate. However, in our view, what must weigh against the second respondent's submission is that the date of birth which has been recorded in the certificate of the Saket Vidya Sthali completely matches the date of birth which was voluntarily disclosed by the second respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the originals of which were seized during the course of the investigation and have been produced before this Court, the date of birth is reflected as 17 December 1995. The driving license and the Aadhaar card are not standalone documents. The submission of the learned senior counsel that the date of birth in those documents may have been furnished by the accused to obtain an undue advantage cannot simply be accepted since it tallies with the date of birth indicated in the school records of Saket Vidya Sthali school. It is evident from the above analysis that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Shikohabad was the sole basis of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary School where the second respondent was a student from Class V to Class X is without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. On the other hand, there is a clear and unimpeachable evidence in the form of the date of birth which has been recorded in the records of Saket Vidya Sthali school which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence.* ***The High Court reversed the findings of the Sessions Judge purely on the basis of the matriculation certificate. For the reasons which we have indicated, the date of birth as reflected therein cannot be accepted as authentic or credible****. Once we come to the conclusion, as we have, that the date of birth of the second respondent is 17 December 1995, he was not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18 August 2015."*
>
> (Emphasis supplied)

## 7. *State Bank of India and Others v. Atindra Nath Bhattacharyya and Another, (2019 SCC OnLine SC 923)*

*Decided on* :- 25.07.2019

Bench :- 1. Hon'ble Mr. Justice L.Nageswara Rao
2. Hon'ble Mr. Justice Hemant Gupta

**("The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner.")**

***Facts***

The respondent was charge sheeted on December 28, 1999 containing 16 charges on the ground that while working as Chief Manager of Baghbazar Branch of the Bank from November 19, 1997 to September 9, 1998, he committed various irregularities pertaining to credit and local clearing instruments. The inquiry officer appointed conducted inquiry in respect of charges levelled against the respondent and submitted his report to the Appointing Authority which was also forwarded to the respondent. The Appointing Authority found huge irregularities on the part of the respondent and imposed punishment of removal on January 24, 2003. The appeal was dismissed by the Appellate Authority on April 19, 2005.

The respondent filed a writ petition before the High Court at Calcutta wherein, the order of punishment as affirmed by the Appellate Authority, was set aside by the Single Bench on the ground that the delinquent was not given any opportunity to show cause in respect of the nature and quantum of punishment.

The appellant did not challenge the said order but instead called the respondent for personal hearing in terms of the direction of the learned Single Judge. In response thereto, the respondent sent communication to the Bank that he has challenged the order passed by the learned Single Bench, therefore, the Bank should not proceed in respect of grant of opportunity of hearing. The appellant again called upon the respondent to appear for personal hearing but the respondent did not appear for personal hearing but sent communication to the Bank that the Bank should not proceed as he has filed an appeal. The appellant, once again, called upon the respondent for personal hearing but the respondent did not appear. Before the appeal preferred by the present respondent could be decided, an order of removal from service was passed on May 2, 2016 inter alia on the ground that the respondent has committed serious lapses which resulted to perpetration of frauds, such acts are in gross violation of extant norms of the Bank and resulted undue gain to third parties. The intra-court appeal preferred by the respondent was dismissed but the Court directed the appellant to grant another opportunity of hearing to the respondent to place his version

before the Appointing Authority. It is against this order that the Appellant approached the Supreme Court in the present case.

***Observations and Decision***

The Hon'ble Court referred to the recent judgment of the Supreme Court rendered in ***State Bank of India* v. *Mohammad Badruddin***[23] wherein it had been held as follows :-

> *"24. The previous punishments could not be subject matter of the charge sheet as it is beyond the scope of inquiry to be conducted by the Inquiry Officer as such punishments have attained finality in the proceedings. The requirement of second show cause notice stands specifically omitted by 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the noncommunication of the previous punishments in the show cause notice will not vitiate the punishment imposed."*

The Hon'ble Court, in the present case, finally allowed the appeal and held as follows :-

> ***"10.*** *The learned Single Bench has set aside the order of punishment as well as the penalty order directing the employer to serve a notice before imposing penalty. The respondent avoided availing the said opportunity when offered on March 24, 2016, April 7, 2016 and April 22, 2016.* ***Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is 'justice demands' that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice.*** *Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside.*
>
> ***11.*** *The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer has found ten charges proved whereas six charges have not been proved. Because of grave and serious allegations of financial irregularities, the order of removal cannot be said to be unjust.*
>
> ***12.*** *Even though, the judgment of the learned Single Bench finding fault with the order of removal as affirmed in the appeal, cannot be said to be justified in view of the judgment of this Court in the case of Mohammad Badruddin but since the Bank has not filed an appeal against such judgment, therefore, the correctness of the said judgment is not being examined in the present appeal which is directed against judgment of Division Bench of Calcutta High Court."* (Emphasis supplied)

[23] 2019 SCC OnLine SC 860.

## 8. *Sanjay Rajak v. State of Bihar, (2019 SCC OnLine SC 895)*

*Decided on* :- 22.07.2019

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice Navin Sinha

**(Failure of the police to recover the *corpus delicti* will not render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt.)**

***Facts***

The appellant assailed his sentence and conviction under Section 364(A) I.P.C to rigorous imprisonment for life. High Court acquitted the co-accused Balram convicted by the Trial Court. Consequently, the appellant has been acquitted of the charge under Section 120B I.P.C. The victim, according to the prosecution case was a school going child aged about 5-6 years. According to the allegations, he is said to have been kidnapped from the school by the co-accused Balram. The appellant and the co-accused were last seen together along with the victim. In their confessional statement both the accused disclosed that after kidnapping the child they had killed him and buried the corpse in the bed of river Saryu at Chhapra. The police did not make any effort to recover the body. The belongings of the deceased victim were recovered from the house of the appellant to which he offered no explanation.

***Observations and Decision***

The Apex Court held that it is not an invariable rule of criminal jurisprudence that the failure of the police to recover the *corpus delicti* will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behavior.

In the facts and circumstances of the present case, the failure of the police to recover the dead body is not much of consequence in the absence of any explanation by the appellant both with regard to the victim last being seen with him coupled with the recovery from his house of the belongings of the deceased.

The Apex Court then referred to *Rama Nand* v. *State of Himachal Pradesh*[24], *Sevaka Perumal* v. *State of Tamil Nadu*,[25] where the *corpus delicti* was not recovered but the conviction was upheld. In *Sevaka Perumal Case*, it was stated as follows:

> *"What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced"*

[24] (1981) 1 SCC 511
[25] (1991) 3 SCC 471

## 9. *Ude Singh and Others v. State of Haryana, (2019 SCC OnLine SC 924)*

*Decided on* :-25.07.2019

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

**(If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing.)**

***Facts***

The appellants Ude Singh, Manoj Kumar and Daulat Ram (accused Nos. 2 to 4) and one Hem Karan alias Hemla (accused No. 1-since deceased) were tried for the offence under Section 306/34 IPC on the allegations that they had abetted commission of suicide by the daughter of the complainant Pohap Singh (PW-1). The case of prosecution in the present matter has been that the accused persons, Hem Karan alias Hemla, Ude Singh, Manoj and Daulat Ram, were taunting the unmarried daughter (the deceased girl) of the complainant by addressing her as "wife", "*Chachi*" (aunt) and "*Bohoria*" (younger brother's wife); and the deceased girl had been complaining to her family about the indecent behaviour of the accused.

It was alleged that on 15.04.1996, when the wife of complainant and other witnesses returned to the village after completing their evidence in the criminal case against Hem Karan and Ude Singh, Hem Karan caught hold of the daughter of the complainant; dragged her into his house; pushed her; and verbally abused her and her family members. On returning home, daughter of the complainant narrated this incident to her mother and stated that she was unable to tolerate such continuous insults. It was also alleged that on the advice of village elders, no report of this incident was made, as it concerned the future and honour of an unmarried girl; however, the accused persons continued to taunt the girl on daily basis and, at all the times, the girl was only advised by her family to keep quiet. It was further alleged that on 05.05.1996, taunts of similar nature were made to the girl. Having heard all these taunts, daughter of the complainant became very upset and entered into altercation with the men. The victim girl once again complained to her mother and the complainant's elder brother Raj Kumar about the incident and while crying, stated that she had no right to live and would end her life as and when she would get the opportunity to do so. However, the very next day, i.e., on 06.05.1996 at about 9:00 a.m., daughter of the complainant was found dead, hanging by her neck. Her mother was the first to see her dead. The complainant, who was on duty, was informed through his nephew about his daughter's demise.

The trial Court held the accused guilty of the offence punishable under Section 306 read with Section 34 IPC and each one was awarded the punishment of rigorous imprisonment for a period of four years and fine of Rs. 300/- with default stipulations. In appeal by the accused, the High Court of Punjab and Haryana observed that the incident of 05.05.1996 was not a solitary one; that the incident that had occurred on 15.04.1996 was enough to malign the village girl; that the deceased was teased and harassed by the accused persons on several occasions; and that there was a consistent attempt on the part of the accused to hurt the girl of marriageable age. The High Court upheld the order of conviction but reduced the sentence to that of imprisonment for a period of two and half years on the ground that the accused had already faced 12 years of protracted trial.

***Observations and Decision***

The issues that arose for consideration in this case were as follows:

(i) Whether the accused persons are guilty of the acts and utterances attributed to them; and

(ii) If the answer to the question (i) is in the affirmative, as to whether such acts and utterances had only been of insult or intimidation or had been of instigation; and whether such acts and utterances amounted to abetment of suicide?

The Apex Court referred to ***Amalendu Pal* v. *State of W.B.***[26], wherein it has been held

> *"Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."*

The Apex Court elaborated that "abetment" involves a mental process of instigating a person in doing something. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

Further, the Apex Court held that ***in cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide***. The Apex Court stated that for the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the several decisions,[27] instigation means to goad, urge forward, provoke, incite or encourage to do an act.

If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. ***But, on the other***

[26] (2010) 1 SCC 707

[27] *Ramesh Kumar* v. *State of Chattisgarh*, (2001) 9 SCC 618; *Pawan Kumar* v. *State of Himachal Pradesh* : (2017) 7 SCC 780

***hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide.***

It was also observed by the Apex Court that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. ***Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing.*** Hence, each case is required to be dealt with on its own facts and circumstances.

Now coming to the question as to whether the accused persons were guilty of the actions and utterances imputed on them, the Apex Court held that the fact that they indeed did so and made such utterances is amply established in the testimony of the prosecution witnesses. It was also established beyond doubt that such utterances were not of a solitary or one-off incident but the accused, working in unison, had continuously made the imputed utterances towards the daughter of the complainant and continuously taunted the girl, who committed suicide next day after her last encounter with the accused.

In the given fact situation, the question that arose was as to whether such actions and utterances of the accused persons lead to the offence of abetment of suicide or only to the offence of insult and/or intimidation?

Having examined the record in its totality, the Apex Court was of the view that the actions and utterances of the accused, directed towards the deceased on continuous basis, had driven her to suicide; and accused persons were guilty of the offence of abetment of suicide.

Taking an overall view of the matter, the Apex Court was satisfied that the present one had not been a case of a mere eve-teasing, insult or intimidation but the continuous and repeated acts and utterances of the accused persons were calculated to bring disgrace to the village girl and to destroy her self-esteem; rather the acts and utterances were aimed at taking her to the brink of helplessness and to the vanishing point of tolerance. It had not been a case of mere intimidation or insult. The incessant intimidation and insult of the innocent girl had been of instigation; and such instigation clearly answers to the description of abetment of suicide. Therefore, in our view, the accused Nos. 1 and 3 have rightly been held guilty of offence of abetment of suicide.

The Apex Court also lamented the fact that the present case indeed represents a sordid state of affairs in relation to the young girl in the rural setting, whose honour and self-esteem got

brutally violated by none other but her own relatives, who found her to be the soft-target to settle their scores with her parents. The facts of this case lead only to the conclusion that the accused persons had intentionally, with their incessant acts and utterances, goaded the victim girl to commit suicide. She indeed committed suicide within few hours of her last and unbearable encounter with the accused. The acts and deeds of the accused in the evening of 05.05.1996 had been too proximate to the event of suicide by 9 a.m. in the morning of 06.05.1996.

## *10. U.C. Surendranath v. Mambally's Bakery, (2019 SCC OnLine SC 917)*

*Decided on* :-22.07.2019

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Mr. Justice A. S. Bopanna

**(For finding a person guilty of willful disobedience of the order under XXXIX Rule 2A C.P.C. there has to be not mere "disobedience" but it should be a "willful disobedience.)**

### *Facts*

The respondent-Mambally's Bakery filed a suit for permanent injunction restraining the appellant from passing off the goods by using respondent's trade mark "Mambally's Bakery" or any other trade mark deceptively identical or similar to the respondent's mark and also to restrain the appellant from wrongfully selling the product using the trade mark "Mambally's Bakery".

The Trial Court vide Order dated 04.11.2015 granted the interim injunction and the same was served upon the appellant on 09.11.2015. In the said suit, the Trial Court appointed an advocate Commissioner who inspected the appellant's shop on 07.11.2015 and submitted a report on 26,11.2015 wherein the Commissioner stated that the appellant is conducting the bakery and tea shop business and tea cakes and masala cakes are sold using respondent's trade mark "Mambally's Bakery". The Commissioner has also pointed out that a big hoarding with the name "Mambally's Bakery" has been displayed in front of the appellant's shop. Based on the Commissioner's report, the Trial Court came to the conclusion that there is a willful disobedience on the part of the appellant and directed that the appellant be sentenced to undergo imprisonment for one week.

Being aggrieved, the appellant preferred appeal before the High Court which came to be dismissed as the High Court affirmed the order of the Trial Court passed under Order XXXIX Rule 2A of the C.P.C. and also the sentence of imprisonment of one week imposed upon the respondent. The present appeal arose out of judgment and order passed by the High Court of Kerala.

### *Observations and Decision*

The Apex Court perused the impugned judgment and also the order of the Trial Court, and concluded that the Commissioner had inspected the appellant's premises on 07.11.2015; whereas the interim order was served on the appellant on 09.11.2015. On the date of inspection i.e. 07.11.2015 the Commissioner had noticed that all the tea cakes and masala cakes prepared were covered having trade mark "Mambally's Bakery". Since the interim

order was served on the appellant only on 09.11.2015 whatever was noticed by the Commissioner on 07.11.2015 cannot be in violation of the interim order, much less willful disobedience.

Also, at the request of the respondent, the Commissioner again inspected the appellant's shop on 20.11.2015. On his second visit, the Commissioner noted that the appellant was not using the mark of the respondent "Mambally's Bakery" for selling the tea cakes. However, the Commissioner noted that the hoarding "Mambally's Bakery" displayed in front of the appellant shop was not removed. In this regard, the appellant offered his explanation stating that since the hoarding was situated at height of 13 feet and also due to the scarcity of the labour force, he could not immediately remove the hoarding. Also, it was submitted that the appellant is 40% disabled and he was incapacitated from climbing up and removing the hoarding by himself.

The Apex Court held ***for finding a person guilty of willful disobedience of the order under XXXIX Rule 2A C.P.C. there has to be not mere "disobedience" but it should be a "willful disobedience".*** The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "willful disobedience". In the facts and circumstances of the case, the Apex Court did not find any "willful disobedience" on the part of the appellant warranting invoking Order XXXIX Rule 2A of the C.P.C. and sentencing the appellant to one week civil imprisonment.

The impugned order was set aside and the appeal was allowed.

## 11. *Prashanti Medical Services & Research Foundation v. Union of India, (2019 SCC OnLine SC 925)*

*Decided on: -25.07.2019*

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Abhay Manohar Sapre

**(In a taxing statute, a plea based on equity or/and hardship is not legally sustainable. The constitutional validity of any provision and especially taxing provision cannot be struck down on such reasoning. Also, once the action is held in accordance with law and especially in tax matters, the question of invoking powers under Article 142 of the Constitution does not arise)**

***Facts***

The appellant herein is the petitioner and the respondents herein are the respondents in the petition out of which this appeal arose. The appellant is a Charitable Trust registered under the provisions of the Bombay Public Trust Act, 1950. The appellant has set up a Heart Hospital in Ahmadabad. The commencement of the project of the appellant's hospital began in the year 2014 (05.05.2014). On 27.09.2014, the appellant filed an application under Section 35AC of the Income Tax Act, 1961 (hereinafter referred to as "the Act) to the National Committee for Promotion of Social and Economic Welfare, Department of Revenue, North Block, New Delhi (hereinafter referred to as "the Committee") for grant of approval to their hospital project as specified in Section 35AC of the Act so as to enable any "assessee" to incur expenditure by way of making payment of any amount to the appellant for construction of their approved hospital project and accordingly claim appropriate deduction of such payment from his total income during the previous year. Like the appellant, several persons, as specified in Section 35AC of the Act, also made applications to the Committee for grant of approval to their hospital projects.

A notification was issued by the Government of India on 07.12.2015 mentioning therein that the Committee has approved 28 projects as "eligible projects" under Section 35AC of the Act. The name of the appellant appeared at serial No. 10 in the notification dated 07.12.2015.

According to the appellant, they received amount by way of donation from several assesses during the years 2015-2016 and 2016-2017. These assesses then claimed deduction of the amount, which they had donated to the appellant for their hospital project, from their total income. As per the appellant, they received donations in three financial years from several assesses for their hospital project. The benefit of claiming deduction was, however, discontinued from the assessment year 2018-2019 by insertion of sub-section(7) in Section 35AC of the Act by the Finance Act, 2016 with effect from 01.04.2017.

It is this insertion of sub-section(7) in Section 35AC of the Act, which gave rise to filing of the petition by the appellant in the Gujarat High Court. The appellant in the petition questioned

the constitutional validity of sub-section(7) of Section 35AC of the Act *inter alia* on the ground that once the Committee granted an approval to the appellant's hospital project for a period of three financial years, the same could not be withdrawn qua the appellant on the strength of insertion of sub-section (7) in Section 35AC of the Act. In other words, the challenge was on the ground that subsection (7) of Section 35AC is essentially prospective in nature and, therefore, it will have no application to those projects which were approved by the Committee prior to insertion of sub-section(7), i.e., 01.04.2017. The challenge was also on the ground that the Revenue cannot apply sub-section (7) retrospectively and withdraw the benefits, whether fully or partially, which were approved to the appellant. It was, therefore, contended that the appellant and the assessees should be held entitled to avail of the full benefit for the three financial years in terms of the notification dated 07.12.2015. The High Court, in the impugned order, repelled the challenge and while upholding the pleas raised by the respondent(Revenue) dismissed the appellant's petition, which gave rise to filing of this appeal by the appellant after obtaining special leave from the Court.

***Observation and Decisions***

Section 35AC was inserted in the Act with effect from 01.04.1992 whereas sub-section (7), which is subject matter of the present appeal, was inserted in Section 35AC with effect from 01.04.2017. One of the main objects for which Section 35AC was enacted was to allow the assessees to claim deduction of the amount paid by them to the appellant for their project. The dispute herein was confined only to third financial year, i.e., 2017-2018 because for this year, the assessees were not allowed to claim deduction of the amount paid by them to the appellant on account of insertion of sub-section(7) in Section 35AC of the Act with effect from 01.04.2017.

The Apex Court held the view that sub-section (7) is prospective in its operation and, therefore, all the assessees were rightly allowed to claim deduction of the amount paid by them to eligible projects from their total income during two financial years, namely, 2015-2016 and 2016-2017. If sub-section (7) had been retrospective in its operation then the deduction for 2015-2016 and 2016-2017 too would have been disallowed. Admittedly, such is not the case

The Apex Court ruled that a ***plea of promissory estoppel is not available to an assessee against the exercise of legislative power and nor any vested right accrues to an assessee in the matter of grant of any tax concession to him***. In other words, neither the appellant nor the assessee has any right to set up a plea of promissory estoppel against the exercise of legislative power such as the one exercised while inserting sub-section (7) in Section 35AC of the Act (see-***Motilal Padampat Sugar Mills Co. Ltd.)***

Also, on the point raised by the appellant that if sub-section(7) had been held not applicable to the appellant's project then the appellant would have received much more amount than Rs. 3.84 crores during the financial year 2017-2018,the Apex Court opined that ***in a taxing***

***statute, a plea based on equity or/and hardship is not legally sustainable. The constitutional validity of any provision and especially taxing provision cannot be struck down on such reasoning.***

On the point urged by the appellant that the Apex Court may consider appropriate to invoke powers under Article 142 of the Constitution and allow the appellant to receive donation even for the third financial year in terms of the notification dated 07.12.2015 from their donors, the Apex Court rejected the submission on the following grounds:

First, in tax matter, *neither any equity nor hardship has any role to play while deciding the rights of any taxpayer qua the Revenue; Second, once the action is held in accordance with law and especially in tax matters, the question of invoking powers under Article 142 of the Constitution does not arise;* and third, the appellant's Donors were admittedly allowed to claim deduction of the amount paid by them to the appellant under Section 35AC during the two financial years 2015-2016 and 2016-2017. It is for all these reasons, the matter must rest there.

## 12. *Officer In-Charge, Sub-Regional Provident Fund Office and Another v. Godavari Garments Limited, (2019 SCC OnLine SC 903)*

*Decided on: -24.07.2019*

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Abhay Manohar Sapre

**(The definition of "employee" under Section 2(f) of the EPF Act 1952 is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages. Merely because the women workers were permitted to do the work off site, would not take away their status as employees)**

***Facts***

The Respondent Company is a subsidiary of the Marathwada Development Corporation, which is an undertaking of the Government of Maharashtra. It was covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act") with effect from 01.01.1979.

The main objective of the Respondent Company, as per its Memorandum of Association, was to encourage, promote, develop, set-up or cause to be set-up a readymade garments industry in the Marathwada Region, with a view to provide gainful employment to people possessing skills in stitching, tailoring, and allied activities, especially to women from the economically weaker sections of the Society.

The Respondent Company engaged women workers who were provided with cut fabric, thread, buttons, etc. to be made into garments at their own homes. The sewing machines used by the women workers were owned by them, and not provided by the Respondent Company.

On 12.03.1991, Appellant No. 1 - Officer In-Charge, Sub-Regional Provident Fund Office, issued a Show Cause Notice to the Respondent Company calling upon it to pay the Provident Fund contributions for the women workers. The Balance Sheet of the Respondent Company for the year 1988 - 89, revealed large debits towards salary and wages for direct and indirect workers, but the Respondent Company made a false statement that it had only 41 employees.

On 30.11.1992, Appellant No. 1 issued summons to the Respondent Company for personal hearing under Section 7-A of the EPF Act.

The representative of the Respondent Company appeared before Appellant No. 1, and contended that the women workers who were fabricating garments for the Respondent Company, were not their employees, and hence not covered by Section 2(f) of the EPF Act. Therefore, even though wages were paid to those women workers, the Respondent Company was not liable to pay Provident Fund contribution in respect of them.

The Provident Fund Officer - Appellant No. 1 vide Order dated 19.04.1993 held that the women workers engaged for stitching garments were covered by the definition of "employee" under

Section 2(f) of the EPF Act. An amount of Rs. 15,97,087/- was assessed towards Provident Fund dues of the Respondent Company for the period from November, 1979 to February, 1991. The Respondent Company was directed to pay the said amount within 7 days.

The Respondent Company challenged the aforesaid Order by filing W.P. No. 1615 of 1993 before the Bombay High Court.

The Bombay High Court, Aurangabad bench vide Final Judgment and Order dated 27.04.2012 allowed the Writ Petition filed by the Respondent Company, and set aside the Order dated 19.04.1993 passed by the Appellant No. 1. It was held that the Respondent Company had no direct or indirect control over the women workers. The conversion of cloth into garment could be done by any person on behalf of the women workers. Hence, the Respondent Company did not exercise any supervisory control over the women workers.

Aggrieved by the aforesaid Judgment, the present Civil Appeal has been filed by the Provident Fund Office.

***Observation and Decision***

The short issue which arises for consideration is whether the women workers employed by the Respondent Company are covered by the definition of "employee" under Section 2(f)[28] of the EPF Act or not.

The definition of "employee" under Section 2(f) of the EPF Act is an inclusive definition, and is widely worded to include any person engaged either directly or indirectly in connection with the work of an establishment.

In the present case, the women workers employed by the Respondent Company were provided all the raw materials, such as the fabric, thread, buttons, etc. from the Respondent - Employer. With this material, the women workers were required to stitch the garments as per the specifications given by the Respondent Company. The women workers could stitch the garments at their homes, and provide them to the Respondent Company. The Respondent Company had the absolute right to reject the finished product i.e. the garments, in case of any defects.

The mere fact that the women workers stitched the garments at home, would make no difference. It is the admitted position that the women workers were paid wages directly by the Respondent Company on a per-piece basis for every garment stitched.

[28] Section 2(f) of the EPF Act is set-out hereinbelow for ready reference:

*"(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person,--*

*(i) employed by or through a contractor in or in connection with the work of the establishment;*

*(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;"*

The issue in the present case was squarely covered by the decision of this Court in ***Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments***[29] wherein it was held as follows :-

> *"as the employer has the right to reject the end product if it does not conform to the instruction of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this Court is also present."*

On the issue where payment is made by piece-rate to the workers, would they be covered by the definition of "employee", the Supreme Court in ***Shining Tailors v. Industrial Tribunal II, U.P., Lucknow,***[30] held that:

> *"5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is made by piece rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractors. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece rate, If every piece rated workmen is an independent contractor, lakhs and lakhs of workmen in various industries where payment is correlated to production would be carved out of the expression 'workmen' as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workmen was the test of control and not the method of payment. Piece rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single minded devotion to increase production which would be beneficial both to the employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen. However, in the identical situation in Silver Jubilee Tailoring Housev. Chief Inspector of Shops and Establishments (1973) II LLJ 495 SC Methew, J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is shifted from and no longer rests exclusively or strongly upon the question of control. It was further observed that a search for a formula in the nature of a single test will not serve the useful purpose, and all factors that have been referred to in the cases on topics, should be considered to tell a contract of service. Approaching the matter from this angle, the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision. If these aspects are considered decisive, they are amply satisfied in the facts of this case. The Tribunal ignored the well laid test in law and completely misdirected itself by showing that piece rate itself indicates a relationship of independent contractor and error apparent on the record disclosing a total lack of knowledge of the method of payment in various occupations in different industries. The right of rejection coupled with the right to refuse work would certainly establish master servant relationship and both*

[29] (1974) 3 SCC 498.
[30] (1983) 4 SCC 464.

> *these tests are amply satisfied in the facts of this case. Viewed from this angle, the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant-employer was untenable and ought to have been overruled and we hereby overrule it.*" (Emphasis supplied)

The Hon'ble Court observed that the aforesaid judgments make it abundantly clear that the women workers employed by the Respondent Company are covered by the definition of "employee" under Section 2(f) of the EPF Act.

The EPF Act is a beneficial social welfare legislation which was enacted by the Legislature for the benefit of the workmen.[31] The Supreme Court in ***The Daily Partap v. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh***,[32] held that:

> *"9. … It has to be kept in view that the Act in question, is a beneficial social welfare legislation meant for the protection of weaker sections of society, namely, workmen who had to eke out their livelihood from the meagre wages they receive after toiling hard for the same."*

Hence, the provisions under the EPF Act have to be interpreted in a manner which is beneficial to the workmen.

In the present case, the women workers were certainly employed for wages in connection with the work of the Respondent Company. The definition of "employee" under Section 2(f) is an inclusive definition, and includes workers who are engaged either directly or indirectly in connection with the work of the establishment, and are paid wages.

In the present case, the women workers were directly engaged by the Management in connection with the work of the Respondent Company, which was set up as a ready-made garments industry in Marathwada. The women workers were paid wages on per-piece basis for the services rendered. Merely because the women workers were permitted to do the work off site, would not take away their status as employees of the Respondent Company.

In view of the aforesaid discussion, the judgment passed by the Bombay High Court vide the Impugned Order dated 27.04.2012, being contrary to settled law, was set aside by the Hon'ble Court.

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[31] *Regional Provident Fund Commissioner* v. *The Hooghly Mills Company Ltd.*, 2012 (1) SCALE 422.
[32] (1998) 8 SCC 90.

## 13. *West Bengal Central School Service Commission and Others v. Abdul Halim and Others,( 2019 SCC OnLine SC 902)*

*Decided on: -24.07.2019*

Bench :- 1. Hon'ble Ms. Justice R. Banumathi
2. Hon'ble Ms. Justice Indira Banerjee

**(The High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.)**

This appeal is against a final Judgment and order dated 27.6.2016 of a Division Bench of Calcutta High Court dismissing an appeal being FMA No. 3324/2015 filed by the Appellants against an order dated 19.4.2010 passed by the Single Judge allowing Writ Petition No. 21512(W) of 2009 filed by Respondent No. 1 inter alia cancelling the candidature, empanelment and selection of the Respondent No. 1 for the post of Assistant Teacher in Arabic (Pass) in Jiaruddintola High School, a Bengali medium school in District Malda in West Bengal, hereinafter referred to as "School".

In exercise of power conferred by Clause (d) of Sub-section (2) read with Sub-section (1) of Section 17 of the West Bengal School Service Commission Act, 1997 and in supersession of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2006, the Government of West Bengal framed the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 (hereinafter referred to as the "Rules"). Rule 5 of the Rules provides as follows:—

> *"**5. Additional essential qualification of candidate.-** A candidate willing to be selected as a Teacher in any School or Madrasah, having Bengali or English or Hindi or Nepali or Oriya or Santhali or Telegu or Urdu as the medium of instruction, must have Bengali or English or Hindi or Nepali or Oriya or Santhali or Telegu or Urdu, as the case may be, as first or second or third language at any of the Secondary or Higher Secondary or Graduation level-*
>
> *(a) at Secondary level or the Board or Board of Madrasah or equivalent; or*
>
> *(b) at Higher Secondary level of the Council or equivalent; or*
>
> *(c) at any subsequent higher level of education in that language paper."*

The said advertisement inter alia set forth the eligibility criteria for the teaching posts advertised. Pursuant to the aforesaid advertisement the Respondent No. 1 applied for the post of Assistant Teacher of Arabic in a Bengali medium school in the format prescribed. It appears that the Respondent No. 1 was educated outside the State of West Bengal and he did not have Bengali as a subject either at the Secondary level or at the Higher Secondary level or at the graduation or post graduation level.

According to Respondent No. 1 that he had successfully completed a one year Certificate Course in Bengali conducted by the University of Delhi, Department of Modern Indian Languages and Literary Studies

The Respondent No. 1 was asked to produce all documents in support of his eligibility in original, which he did, at the time of the personality test. The Respondent No. 1 was, thereafter, empanelled for the post of Assistant Teacher in Arabic on the basis of results of 9th Regional Level Selection Test (AT) 2008. The Appellant thereafter invited the Respondent No. 1 for counselling on 21.8.2009 for recommendation of his candidature for the post of Assistant Teacher in Arabic of the Pass category.

After counselling, while the Respondent No. 1 was awaiting appointment letter, he received an impugned communication cancelling his recommendation/empanelment and his selection to the School on the ground that he had opted for a Bengali medium school though he did not have Bengali as a subject either at the Secondary or the Higher Secondary or the graduation level.

The Respondent No. 1 filed Writ Petition No. 2151(W) of 2009 in Calcutta High court, challenging the impugned communication on the ground that he was eligible for the post, since he had successfully completed the Certificate Course in Bengali from the Delhi University.

The learned Single Judge allowed the writ petition ex parte. The Single Judge held that the Statement of Marks dated 9.5.2008, issued by the University of Delhi, showed that the Respondent No. 1 had successfully completed the Certificate Course in Bengali . The Single Judge further proceeded to hold that in view of Paragraph 2 of the advertisement referred to above and, in particular, the last Clause, which read "must have succeeded at any subsequent higher level of education in the language paper", the Respondent No. 1, who had passed Certificate Course in Bengali from University of Delhi, was justified in contending that the Commission had wrongfully cancelled his selection for the post of Assistant Teacher of Arabic in the school. The Single Judge, therefore, directed the Appellant No. 2 to offer appointment to the Respondent No. 1 within a week.

Being aggrieved by the judgment and order dated 19.4.2010 passed by the Single Judge, the Appellants filed an appeal being F.M.A.T. No. 1296 of 2010, later numbered as FMA 3324 of 2015, which was dismissed by impugned order dated 27.6.2016 which is under appeal.

The Division Bench rejected the argument advanced on behalf of the Appellants that a one year part time Certificate Course in Bengali from the University of Delhi was not a course contemplated in Rule 5(c) of the 2007 Rules. The Division Bench found that the Respondent No. 1 indisputably did not come under Rule 5(a) or Rule 5(b). The question was whether he came under Rule 5(c). The Division Bench answered the aforesaid question in favour of the Respondent No. 1 holding as follows:—

*"Since the Rules do not specifically state that Certificate Course is not a course which is subsequent to higher level of education and the respondent No. 1/writ petitioner fulfilled the parameters of Rule 5(c), the learned Single Judge was justified is passing the order impugned"*

The Division Bench, by its order under appeal, directed Appellant No. 2 to recommend Respondent No. 1 for appointment as Assistant Teacher of Arabic (pass) in Bengali to the school.

***Decision and Observations***

The Hon'ble Court observed that the Division Bench as also the Single Judge failed to appreciate that the question of eligibility of the Respondent No. 1 for the post of Assistant Teacher of Arabic, in terms of Paragraph 2 of the Advertisement and/or Rule 5(c) of the 2007 Rules, necessitates an enquiry into and determination of the factual issue of whether Bengali taught in the Certificate Course conducted by the Department of Modern Indian Languages and Literary Studies of the University of Delhi was of a level higher than the level of Bengali taught at the Higher Secondary level of the West Bengal Council of Higher Secondary Education or any equivalent Board.

A part time Certificate Course in a language, conducted by a University for graduates, is not necessarily of a level higher than the Higher Secondary level of the West Bengal Council of Higher Education or equivalent Board or for that matter, higher than the Secondary level of the West Bengal Board of Secondary Education or an equivalent Board.

A Certificate Course could very well be a basic course for graduates who are beginners in the language. The syllabus for the Certificate Course in Bengali shows that out of three papers of 100 marks each, in which candidates are tested there is one Oral Paper of 100 marks for 'Reading' 'Writing' and 'Conversation', which are generally tested at the primary or at best the middle school level. Moreover the Certificate Course is not meant for candidates who have studied Bengali earlier.

According to the Hon'ble Court, the reasoning of the Division Bench that the Single Bench was justified in allowing the writ petition, since the rules do not specifically state that the Certificate Course is not a course which is subsequent to higher level of education is patently misconceived. It is preposterous to expect that statutory rules for appointment of teacher in the State of West Bengal, would not only have to prescribe the minimum qualifications, but also specify which of the certificates issued by Boards or Universities all over the country could not be considered as of standard equivalent to the standard of Bengali taught by a University at the under graduate level.

The Hon'ble Court further observed that it is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to

ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.

The Hon'ble Court also observed that in any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in ***Satyanarayan v. Mallikarjuna reported in AIR 1960 SC 137***. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

According to the Hon'ble Court, the sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.

The Hon'ble Court observed that in entertaining and allowing the writ petition, the High Court lost sight of the limits of its extraordinary power of judicial review and in fact sat in appeal over the decision of the respondent No. 2.

According to the Hon'ble Court, in this case, it was not in dispute that the Respondent No. 1 who had been educated outside the State of West Bengal, did not have Bengali as a subject at

the Secondary, Higher Secondary, graduation or post graduation level. The interpretation of the last Clause of Paragraph 2 of the advertisement and/or Rule 5(c) of the Rules, which reads "must have succeeded in higher level of education in that language paper" by the authorities as success in the language paper at the graduation level or the post graduation level, or alternatively an examination in the language paper of a level which is equivalent to the level of the language as taught in the graduation level and not any part time course conducted by a University is a plausible if not possible interpretation which ought not to have been interfered with by the Writ Court.

The Hon'ble Court further observed that it cannot but take judicial notice of the fact that universities do not usually allow students to opt for a language subject at the graduation level if the subject was not cleared at the Higher Secondary level. As observed above documents annexed by the Respondent No. 1 reveals that candidates who have studied the language at some level before the graduate level are debarred from admission to the Certificate Course, which makes it obvious that the course is of elementary level. Significantly, the Respondent No. 1 did not produce any document or certificate of the Delhi University certifying that the certificate course in Bengali is of a standard equivalent to Bengali language at the post Higher Secondary level.

Therefore, the Supreme Court held that the judgment and order under appeal cannot be sustained and the same is set aside.

## *14. Nitika v. Yadwinder Singh & Ors., Criminal Appeal No.1096 of 2019*

*Decided on* :- 23.07.2019

Bench :- 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice Navin Sinha

**(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.)**

(ORIGINAL ORDER AS PASSED BY THE HON'BLE SUPREME COURT)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal has been filed against the judgment and order dated 10.08.2018 passed by the High Court of Himachal Pradesh, Shimla by which High Court has allowed the Cr.M.M.O. No.12 of 2015 filed by the respondents quashing the First Information Report on the ground that police at Nalagarh had no jurisdiction to enquire into the contents of first information report and as such there is no occasion for the High Court to go into the correctness of the allegation as well as sustainability of charge. In paragraph 44 of the judgment following has been observed by the High Court:

> "44. In the peculiar facts and circumstances of the case, as has been discussed above, this Court has arrived at a conclusion that Police at Nalagarh has/had no jurisdiction to enquire into the contents of FIR and as such there is no occasion for this Court to go into the correctness of the allegation as well as sustainability of charge, if any, framed against the petitioners. As has been noticed hereinabove, inherent power under Section 482 Cr.P.C., is to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 Cr.P.C. itself. True, it is, that it should be exercised ex debito justitiae to do real and substantial justice. Judgment referred to hereinabove nowhere suggests that power under Section 482 Cr.P.C. cannot be exercised by the Court at all, rather exercise of it would depend upon the facts of the case before it. Hon'ble Apex Court in the aforesaid judgment has held that inherent power should not be exercised to stifle a legitimate prosecution. But, what is legitimate prosecution depends upon facts of the particular case. In the case at hand, as has been, elaborately discussed hereinabove clearly suggests that Police at Nalagarh has/had no authority/jurisdiction to investigate into allegations contained in FIR, which admittedly took place at Jallandhar and as such Courts at Nalagarh

have/had no jurisdiction to continue with the proceedings, which are apparently based upon the investigation carried out by police at Nalagarh and as such same cannot be allowed to sustain. Since police at Nalagarh had no jurisdiction, as has/had been held hereinabove, proceedings if any pending before Courts at Nalagarh cannot be allowed to sustain."

Learned counsel for the appellant contends that the present case is fully covered by the three-Judge Bench Judgment of this Court in Rupali Devi Vs. State of Uttar Pradesh & Ors., 2019 (6) SCALE 96. This Court was dealing with a similar question pertaining to first information report under Section 498A of Indian Penal Code. This Court in paragraphs 14, 15 and 16 laid down following:

"14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. 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 illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or wellbeing, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. 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.

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."

Learned counsel for the appellant submits that his case is fully covered by law laid down by this Court in above paragraphs; the High Court has committed error in quashing the first information report.

Learned counsel for the respondents refuting the submissions of learned counsel for the appellant contents that this Court in paragraph 16 of the judgment has also clearly held that factual situation of each case shall be looked into and High Court in the present case has held that no cause of action arose within the jurisdiction of Nalagarh.

What this Court has laid down in paragraph 16 above clinches the issues. It was held by this Court that 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.

We are of the view that High Court in the present case has committed error in quashing the first information report. In result, we set aside the judgment of the High Court and direct that criminal proceedings shall proceed at Nalagarh and be taken to its logical end. However, looking to the fact that chargesheet/challan was already submitted on 12.12.2015, we request the Court concerned to proceed expeditiously in the matter.

The appeal is disposed of accordingly.