JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(August 19-August 25, 2019)

Prepared by :-

ABHIJEET TUSHAR
ISHA ANUPRIYA
Research Scholars,
JUDICIAL ACADEMY JHARKHAND

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1. ***Association of Medical Super Speciality Aspirants and Residents and Others v. Union of India & Others , (2019 SCC OnLine SC 1055)***

Decided on : -19.08.2019

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

(While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity.)

Facts

The Association of Medical Super Speciality Aspirants and Residents had filed Writ Petition (Civil) No. 376 of 2018 seeking a writ of mandamus for quashing the compulsory bond conditions, as imposed in the super speciality courses by the States of Andhra Pradesh, Goa, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Orissa, Rajasthan, Tamil Nadu, Telangana and West Bengal respectively. A further direction was sought for returning the original mark-sheets, certificates and other documents retained by the respective State authorities after the completion of the concerned speciality courses.

Writ Petition (Civil) No. 946 of 2018 was filed challenging the Notification dated 10.06.2014 issued by the Government of West Bengal by which every post-graduate trainee was directed to execute an Indemnity Bond to serve the State Government for a period of three years after successful completion of postdoctoral/MD/MS course and for a period of two years after successful completion of the PG Diploma course. If the trainees failed to serve the State Government as mentioned above, they should be liable to recompense the State Government a penalty amount of Rs. 10 Lakhs for each defaulting year. The Appellants sought release of original documents without insisting on the payment of Rs. 30 Lakhs as envisaged by the Notification dated 10.06.2014.

Notifications issued by the Department of Health and Family Welfare, Government of West Bengal imposing the condition of execution of compulsory bond at the time of admission to post-graduate courses and super speciality courses were challenged in the High Court of Calcutta. Notification dated 31.07.2013 which was assailed in the High Court required the Appellant-doctors to work in the Multi-Speciality/Super Speciality Hospitals, Secondary and

Tertiary Level Hospitals in West Bengal for a period of one year after completion of their post-graduate and post-doctoral education in State Medical Teaching Institutions in West Bengal. Execution of bond at the time of admission to post-graduate courses and super Speciality courses, providing that they shall serve the State Government for a period of one year on successful completion of the courses, failing which they will be liable to recompense the State Government a penalty amount of Rs. 10 Lakhs, was made compulsory. Partially modifying the Notification dated 31.07.2013, the Government of West Bengal issued a Notification on 10.06.2014 by which the condition pertaining to one year service was increased to two years. The compensation in case of failure by the Doctors to serve in the State was enhanced to Rs. 30 Lakhs.

139 Doctors who had acquired Degree of Bachelor of Medicine and Bachelor of Surgery from various universities in the country challenged the aforementioned Notifications in the High Court. The Single Judge of the Calcutta High Court by a judgment dated 03.11.2017 upheld the Notification dated 31.07.2013. However, the Notification dated 10.09.2014 was held to be arbitrary and unreasonable. Aggrieved by the judgment of the Single Judge, the State of West Bengal filed an appeal before the Division Bench of the High Court. Some of the Writ Petitioners who were aggrieved by the judgment insofar as it related to the Notification dated 31.07.2013 being upheld also filed appeals. By the impugned judgment, a Division Bench of the Calcutta High Court held that both the Notifications dated 31.07.2013 and 10.09.2014 are neither unreasonable nor arbitrary. The Division Bench set aside the judgment of the Single Judge insofar as it related to the Notification dated 10.09.2014 being quashed.

The Appellants who were seeking admission to post-graduate courses in Armed Forces Medical College, Pune were required to execute a similar bond to serve in the Armed Forces Medical Services as Short Service Commission Officers for a period of five years on completion of the post-graduate courses. In case of failure to serve for five years, the Appellants were required to recompense the college with Rs. 25 Lakhs. The above condition was included in the brochure for admission to Post-Graduate Medical Courses for the year 2014-2015. A writ petition was filed in 2017 by Appellants who were admitted in the postgraduate courses in the year 2014-2015 challenging the validity of Clause 12 of the Information Bulletin which required them to serve for five years in the Armed Forces Medical Services. They sought a further direction for return of their original documents

without insisting on compulsory service condition. The Writ Petition was dismissed by a Division Bench of the Bombay High Court by judgment dated 02.04.2019 with costs quantified at Rs. 1 Lakh per petitioner. Aggrieved by the said judgment, SLP Nos. 10007 and 2387 of 2019 had been filed.

Observations and Decision

I.Jurisdiction of the State Government

The Apex Court observed that Entry 25 of List III of the 7thSchedule deals with education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject matter of compulsory bonds. Therefore, the States are free to legislate on the subject matter of medical bonds.

The Apex Court noted that Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State legislature has the power to legislate. The Notifications issued by the State Governments imposing a condition of execution of compulsory bonds at the time of admission to postgraduate courses and super Speciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory employment is not covered by any Central Legislation.

II. Violation of Fundamental Rights,

Article 14

(1) Arbitrariness

The Apex Court observed that the State Governments have taken into account the need to provide health care to the people and the scarcity of super specialists in their States. Consequently, a policy decision taken by the State Governments to utilize the services of

doctors who were beneficiaries of Government assistance to complete their education cannot be termed arbitrary.

(2) Reasonableness

On the point of reasonableness, the Apex Court noted that the Notifications issued by the State Governments imposing a condition of compulsory service and a default clause are per se not unreasonable. However, the period of compulsory service and the exit should be reasonable. The State Governments and the Armed Forces Medical College were directed to consider imposing the condition of compulsory service period of two years in default of which the Doctors shall recompense the Government by paying Rs. 20 Lakhs.

Article 19

On the ground of Article 19 challenge, the Apex Court noted that the compulsory bond executed by the Appellants is at the time of their admissions into post-graduate and super Speciality courses. Conditions imposed for admission to a medical college will not directly violate the right of an individual to carry on his profession. The right to carry on the profession would start on the completion of the course. At the outset, there is no doubt that no right inheres in an individual to receive higher education. Violation of a right guaranteed under Article 19(1)(g) does not arise in a case pertaining to admission to a college. The condition that is imposed has a connection with the professional activity of a doctor on completion of the course. However, the Appellants have, without any protest, accepted the admissions and executed the compulsory bonds.

Article 21

The Apex Court considered whether there is a conflict between the rights of the community and the rights of the Appellants. The Apex Court noted that the right that is claimed by the Appellants is to make an individual choice to carry on their profession which might be hindered by the decision of the Government. On the other hand, the basic idea behind the Government's decision is larger public interest. The judgment of the Apex Court in ***Sayyed Ratanbhai Sayeed (D) thr. LRs v. Shirdi Nagar Panchayat***[1] is to the effect that private

[1] (2016) 4 SCC 631

interest has to take a back seat when pitted against public interest. In ***Mr. X v. Hospital 'Z'***,[2] it was held that:

> "44….Moreover, where there is a clash of two Fundamental Rights, as in the instant case, namely, the appellant's right to privacy as part of right to life and Ms. 'Y's right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of court, for the reason that moral considerations cannot be kept at bay and the Judges are not expected to sit as mute structures of clay in the hall known as the courtroom, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day"."

While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity. The laudable objective with which the State Governments have introduced compulsory service bonds is to protect the fundamental right of the deprived sections of the society guaranteed to them under Article 21 of the Constitution of India.

Article 23

The Apex Court held that the Appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform 'forced labour', especially after the Appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidized education. By no means, the service rendered by the Appellants in Government hospitals would fall under the expression of 'forced labour'.

Article 23(2) of the Constitution enables the State Governments to require the Appellants to do compulsory service in the Government hospitals which is undoubtedly for the benefit of the public.

[2] (1998) 8 SCC 296

III. Contract of Personal Service

Section 14 of the Specific Relief Act, 1963 prohibits the enforcement of contracts of personal service. Specific performance of contract for personal service is not permissible under the Specific Relief Act, therefore, there cannot be a decree for specific performance of a contract of personal nature. The Apex court noted that none of the State Governments have made an attempt to enforce the contracts entered into by them with the Appellants through the service bonds.

IV. Restraint on Profession

The Apex Court opined that the conditions of compulsory bonds for admission to post-graduate and super-Speciality courses in government medical colleges were not in violation of Section 27 of the Indian Contract Act, 1872.

2. *Pramod Suryabhan Pawar v. State of Maharashtra and Another,(2019 SCC OnLine SC 1073)*

Decided on : -21.08.2019

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

(Consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action.)

Facts

According to the complainant, she and the appellant have known each other since 1998. She would speak to the appellant on the phone and met him regularly as early as 2004. In 2008 the appellant proposed marriage and assured her that their belonging to different castes would not be a hindrance. The appellant allegedly promised to marry the complainant after the marriage of his elder sister. On 23 January 2009 the appellant allegedly re-iterated his promise to marry her at the Patnadevi Temple in Chalisgaon;

The complainant completed her B.Sc. in Agriculture in 2002 and worked as a Junior Research Assistant. In 2007 she was selected as a Naib Tahsildar at Chalisgaon. In March 2009 she was appointed to the post of Assistant Sales Tax Commissioner at Mazgaon. The appellant would, it is alleged, come to meet her and lived with her in November 2009. During his visit, the complainant alleges that she refused to engage in sexual intercourse with the appellant, but "on the promise of marriage he forcibly established corporeal relationships";

The complainant alleges that throughout 2010, the appellant visited her on multiple occasions and they engaged in sexual intercourse. When the appellant was posted in Gadchiroli, the complainant visited the appellant multiple times over the course of 2011. Each of these visits lasted four to five days during which the complainant resided with the appellant and they engaged in sexual intercourse. During these visits the complainant enquired about marriage and the appellant responded in the affirmative. In December 2011 the appellant visited her and resided in her house for four days;

The appellant's elder sister was married on 5 February 2012. On 23 December 2012 the appellant visited her and forced her to engage in sexual intercourse. Afterwards, for the first time the appellant raised concerns about marrying her on the ground that their belonging to different castes would hinder the appellant's younger sister's marriage. In January 2013 the

complainant visited the appellant in Nagpur, and the appellant also subsequently visited her. On both occasions they engaged in sexual intercourse;

During these years she missed her menstrual periods on several occasions. In 2013-14 the complainant and appellant jointly visited the hospital multiple times to check whether she was pregnant. In June 2013 the appellant was posted in Navi Mumbai and used to spend his weekends residing at the complainant's house. They regularly engaged in sexual intercourse during this period. Beginning in January 2014 the appellant raised concerns about marrying the complainant on the ground of her caste. This led to heated arguments. However, the appellant used to regularly visit her house at Panvel until March 2015, each time engaging in sexual intercourse with her;

On 27 and 28 August 2015 and 22 October of 2015 the appellant sent the complainant certain WhatsApp messages. The complainant alleges that these messages were insulting and attacked her on the grounds of her caste. The messages stated:

> "You are bad for society. If shoe is kept on head, then head would get dirty. Reservation did not add any intelligence; You have got Govt. service with ease".

In November 2015 for the first time the complainant threatened to file a police complaint against the appellant. The appellant promised to marry her after the marriage of his brother. At this time also they engaged in sexual intercourse; and

On 9 March 2016 the appellant engaged in sexual intercourse with the complainant against her will. Subsequently, the complainant was apprised of the fact that the appellant was engaged to another woman. The appellant informed the complainant that the woman he was engaged to was demanding Rs. two lakhs to break of the engagement. On 28 March 2016 the appellant re-iterated his promise to marry the complainant and arranged for her to speak to the woman he had been engaged to, to assure the complainant that the appellant was no longer in a relationship with her. Subsequently the complainant became aware that the appellant had married on 1 May 2016. On 17 May 2016 she filed the FIR.

The appellant moved the High Court under Section 482 of the CrPC to quash the FIR dated 17 May 2016 for offences punishable under Sections 376, 417, 504 and 506(2) of the Indian Penal Code and Sections 3(1)(u), (w) and 3(2)(vii) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 (as amended by the Amendment Act, 2015). The High Court of Judicature at Bombay dismissed the application .

Observations and Decision

The Apex Court noted that under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary

jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and re-iterated by the Court. On this point , the Apex court referred to ***Inder Mohan Goswami* v. *State of Uttaranchal***.[3] The Apex Court also referred to ***State of Haryana* v. *Bhajan Lal***[4] wherein a detailed study of the situations where the court may exercise its extraordinary jurisdiction was conducted and a list of illustrative examples of where quashing may be appropriate was laid down.[5] The Apex Court noted that in deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As the Hon'ble Court noted in ***Dhruvaram Murlidhar Sonar* v. *State of Maharashtra*[6]:**

> "13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

In the present case, the primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her "consent", being premised on a "misconception of fact" (the promise to marry), stands vitiated. The Apex Court observed that it has repeatedly been held ***that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action***. The Apex Court on this point referred to *Dhruvaram Sonar* case in which it was observed:

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[3] (2007) 12 SCC 1

[4] 1992 Supp (1) SCC 335

[5] Relevant portion for the present case are as follows:

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

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

…

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

[6] 2018 SCC OnLine SC 3100

> "15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

Another judgment on this point was ***Kaini Rajan v. State of Kerala***[7].

The Apex Court noted that in the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, the Apex Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. On this point the Apex Court referred to ***Anurag Soni* v. *State of Chhattisgarh,***[8] ***Deepak Gulati* v. *State of Haryana,***[9] ***Yedla Srinivasa Rao* v. *State of Andhra Pradesh,***[10] ***Uday* v. *State of Karnataka***[11] and held that:

> "the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

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7 (2013) 9 SCC 113

8 (2019) SCC OnLine SC 509

9 (2013) 7 SCC 675

10 (2006) 11 SCC 615

11 (2003) 4 SCC 46

"25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. **Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant.** She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. **The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact.** On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. **They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love.** It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married…"

The Apex Court in the given fact situation noted that the appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred.

With respect to the offences under the SC/ST Act, the WhatsApp messages were alleged to have been sent by the appellant to the complainant on 27 and 28 August 2015 and 22 October 2015.[12] At this time, Sections 3(1)(u), (w) and 3(2)(vii) of the SC/ST Act as it stands today had not been enacted into the statute. These provisions were inserted by the (Prevention of Atrocities) Amendment Act 2015 which came into force on 26 January 2016. Therefore, the Apex Court noted that the messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged. The FIR dated 17 May 2016 was quashed.

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[12] Prior to the Amending Act, the relevant provisions of the statute (as it stood then) were as follows:

"**3.** (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe. -

…

(x) intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Schedule Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed; …"

3. *Sudru v. State of Chattisgarh, (2019 SCC OnLine SC 1084)*

Decided on : -22.08.2019

Bench :- 1. Hon'ble Mr. Justice Deepak Gupta
2. Hon'ble Mr. Justice B. R. Gavai

(The non-explanation or false explanation by appellant cannot be taken as a circumstance to complete the chain of circumstances to establish the guilt of the appellant. However, the false explanation can always be taken into consideration to fortify the finding of guilt already recorded on the basis of other circumstances.)

Facts

The marriage between the appellant and Janki Bai was solemnized seven years prior to the date of incident. They were having three issues from the wedlock. On 22.7.2000 the appellant had come home in a drunken condition and had a quarrel with Janki Bai. During the quarrel Janki Bai took her two children and went to the house of her brother-in-law. The appellant and their elder son Ajit remained in the house. On 23.7.2000 when she returned to the house, she saw that Ajit was lying on mat and his body was covered with a blanket. Upon removing blanket, she saw Ajit in dead condition. Blood was oozing from his mouth. She called her father-in-law Lakhmu. Injuries were seen on the neck of the deceased. An FIR came to be lodged in Police Station Dantewada by Janki Bai.

Upon completion of investigation, chargesheet came to be filed in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Court of Sessions Judge, Jagdalpur. The case was received on transfer by the Additional Sessions Judge, Jagdalpur, who conducted the trial. The Trial Court passed an order of conviction thereby, convicting the appellant for the offence punishable under section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs. 500/- and in default of payment of fine to further undergo R.I. for one year. Being aggrieved thereby, appeal was filed before the High Court of Chattisgarh at Bilaspur. The High Court dismissed the appeal. Hence, the appellant filed the present appeal in the Apex Court.

Observations and Decision

The Apex Court noted that in the present case all the witnesses who are related to the accused and the deceased have turned hostile including PW-1 Janki Bai, wife of the appellant and the mother of the deceased. However, it is settled principle of law, that such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence. The Apex Court referred to ***Bhajju* v. *State of M.P.***[13] wherein it has been held that:

[13] (2012) 4 SCC 327

> "36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party."

In the given fact situation, the Apex Court noted that from the evidence of PW1 Janki Bai, it can be safely held that there was a quarrel between PW-1 Janki Bai and appellant and after the quarrel, she went to the house of her brother-in-law with two younger children and that the deceased was left alone in the company of appellant and on the next day morning the deceased was found to be dead. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant (under section 106 of the Indian Evidence Act) to explain, as to what has happened in that night and as to how the death of the deceased has occurred. On this point the Apex Court referred to the decision in ***Trimukh Maroti Kirkan* v. *State of Maharashtra***,[14]:

> "In a case based on circumstantial evidence where no eye-witness account is available there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete."

While noting that the appellant had failed to discharge such burden as the defence taken in his statement under Section 313 of Cr.P.C., that the deceased has died due to ailment has been falsified by the medical evidence which points towards strangulation and the presence of finger marks on the neck of the deceased, the Apex Court held :

> "No doubt, that non-explanation or false explanation by appellant cannot be taken as a circumstance to complete the chain of circumstances to establish the guilt of the appellant. However, the false explanation can always be taken into consideration to fortify the finding of guilt already recorded on the basis of other circumstances."

The Apex Court also referred to ***Sharad Birdhichand Sarda* v. *State of Maharashtra***,[15] wherein it has been observed:

> "151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This

[14] (2006) 10 SCC 681
[15] (1984) 4 SCC 116

> is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court."

The Apex Court upheld the order of conviction.

4. *Saleem Ahmed v. State and Another, 2019 SCC OnLine SC 1047*

Decided on : -19.08.2019

Bench :- 1. Hon'ble Mr. Justice Abhay Manohar Sapre
2. Hon'ble Mr. Justice R. Subhash Reddy

(The filing of FIR after passing of the award by the Lok Adalat is wholly unjust and illegal.)

Facts

On 15.12.2014, the officials of the Enforcement Department of BSES Rajdhani Power Ltd.-respondent No. 2 inspected the electricity meter installed in the aforesaid house and found that the meter was not recording correct reading.On verification, the BSES made assessment in relation to the consumption of the electricity and accordingly sent a bill for theft for Rs. 97,786/- to the appellant and respondent No. 3 because he being in occupation of the house was found consuming the electricity supplied by the BSES. The case was accordingly registered against the appellant and respondent No. 3. On 27.02.2015, the BSES organized one Permanent Lok Adalat-I in Lower Courts at Delhi under the provisions of Legal Services Authorities Act, 1987 to settle their several recovery cases. The appellant's case was also fixed for settlement.

By order dated 27.02.2015, the case was settled at Rs. 83,120 against full and final payment of the aforesaid bill of Rs. 97,786 The appellant accordingly paid Rs. 83,120 to the BSES in terms of the order dated 27.02.2015 in three equal installments. Despite settlement of the case and receiving the payment, the BSES filed FIR against the appellant on 21.03.2015 under Section 135 of the Electricity Act. The appellant felt aggrieved by the registration of FIR against him and filed a petition under Section 482 of the Code of Criminal Procedure, 1973 in the High Court challenging its registration as being bad in law.

The High Court, by impugned order, dismissed the petition. Therefore, the present present appeal by way special leave by the appellant has been filed in the Apex Court.

Observations and Decision

The Apex Court allowed the appeal, set aside the impugned order, allowed the petition filed by the appellant under Section 482 of the Code and quashed the FIR. The Apex Court opined that once the dispute in relation to recovery of outstanding amount was finally settled between the parties (appellant and BSES) amicably in Lok Adalat resulting in passing of the award dated 27.02.2015 in full and final satisfaction of the entire claim, there was neither any

occasion and nor any basis to file FIR by the BSES against the appellant in respect of the cause which was subject matter of an award.

The remedy of the parties in such a case was only to challenge the award in appropriate forum in case they felt aggrieved by the award. The Apex Court was also of the view that if ***the BSES was so keen to file FIR against the appellant under the Electricity Act then either they should not have settled the matter through Lok Adalat or while settling should have put a condition in the award reserving therein their right to file FIR notwithstanding settlement of the dispute in question. This was, however, not done.***

Therefore, the Apex Court was of the considered view that ***the filing of FIR after passing of the award by the Lok Adalat was wholly unjust and illegal*** and the same was not permissible being against the terms of the award and also for want of any subsisting cause of action arising out of demand. Therefore, it was legally not sustainable.

5. *Durgabai Deshmukh Memorial Sr. Sec. School and Another v. J.A.J Vasu Sena and Another, (2019 SCC OnLine SC 1075)*

Decided on : -21.08.2019

Bench :- 1. Hon'ble Mr. Justice D.Y.Chandrachud
2. Hon'ble Mr. Justice Aniruddha Bose

(The mere continuation of the services of a probationer beyond the period of probation does not lead to a deemed confirmation in service. It is only upon the issuance of an order of confirmation by the appointing authority that probationer is granted substantive appointment in the post.)

Facts

The appellant is a Delhi administration aided school and a linguistic minority institution. Pursuant to an advertisement for the filling of various posts in the appellant school, the first respondent was appointed on probation to the post of PGT (English General) on 18 June 2008 for a duration of one year. The period of probation was extended belatedly on 11 February, 2010 for another year on the ground that the services of the first respondent were unsatisfactory. On 30 November 2011, the period of probation was extended by another year. On 22 May 2013, the Managing Committee of the society which conducts the school discharged the first respondent from service with effect from 30 June 2013.

The first respondent filed an appeal before the Delhi School Tribunal challenging her discharge with a prayer for reinstatement with consequential benefits and back wages. By its order dated 23 July 2015, the Tribunal allowed the appeal and set aside the order of discharge with a direction to the appellants to reinstate the first respondent with consequential benefits. Assailing the order of the Tribunal, the appellants filed a Writ Petition before the Delhi High Court.

The present appeal arises from a judgment of a Division Bench of the Delhi High Court dated 7 May 2018 setting aside the judgment of a Single Judge, in a Letters Patent Appeal. The Division Bench accepted the deemed confirmation of the services of the first respondent who was a probationer in the school of the appellants.

Allowing the appeal filed by the first respondent, the Division Bench held that under Rule 105(1) read with the first proviso of the Delhi School Education Rules 1973, the maximum period of probation permissible is two years. The High Court held that there is a deemed confirmation of the services of a probationer who is continued in service beyond the maximum period of probation, even without the issuance of an order of confirmation by the appointing authority. Aggrieved, the appellant school and the Andhra Education Society are in appeal before the Apex Court.

Observations and Decision

On 23 February 1990, the Delhi School Education (Amendment) Rules 1990 were notified. Clause 24 of the Amendment Rules 1990[16] amended Rule 105 of the 1973 Rules. By virtue of the Amendment Rules 1990:

(i) The words "with the prior approval of the Director" were inserted after the words "by another year" in the principal part of Rule 105. The prior approval of the Director was made mandatory where the period of probation is extended "by another year"; and

(ii) The first proviso granted an exemption to the appointing authority of minority institutions from seeking the prior approval of the Director for extending the period of probation "by another year".

The amending history of the 1973 Rules shows that the words "by another year" appearing in the principal part of Rule 105 has not been omitted. The Apex Court noted that the High Court has, in the present case and prior cases failed to take note of the correct provision as amended from time to time. Rule 105 of the 1973 Rules, as on date, reads thus:

> "105. Probation (1) Every employee shall, on initial appointment, be on probation for a period of one year which may be extended by the appointing authority **by another year** [with the prior approval of the Director] and the services of an employee may be terminated without notice during the period of probation if the work and conduct of the employee, during the said period, is not, in the opinion of the appointing authority, satisfactory:
>
> [Provided that the provisions of this sub-rule relating to the prior approval of the Director in regard to the extension of the period of probation **by another year** shall not apply in the case of an employee of a minority school:...]
>
> (2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation, as the case may be confirmed with effect from the date of expiry of the said period."

The Apex Court referred to the three judge Bench decision in ***High Court of MP* v. *Satya Narayan Jhavar***[17] wherein it was observed:

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[16] Clause 24 Reads thus:
"24. amendment of rule 105. - In rule 105 of the principal rules,-
(a) in sub-rule (1), **after the words "another year"**, the words "with the prior approval of the Director" **shall be inserted**;
(b) for the proviso to sub-rule (1), the following proviso shall be substituted, namely:—
"Provided that the provisions of this sub-rule relating to the approval of the Director in regard to the extension of the period of probation by another year, shall not apply in the case of an employee of a minority school:
Provided further that no termination from the service of an employee on probation shall be made by a school, other than a minority school, except with the previous approval of the Director."

"11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before the Apex Court, times without number in various decisions and there are three lines of cases on this point.

One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation.

The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed.

The last line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

The points of law that arose for determination in the present appeal were: (i) whether the words "by another year" appearing in the principal part of Rule 105(1) and in the first proviso to Rule 105(1) limit the total duration of permissible probation to two years; and (ii) whether the 1973 Rules require the issuance of an order of confirmation for a probationer to be confirmed in service.

The Apex Court then considered whether the words "by another year" appearing in Rule 105(1) and the first proviso of Rule 105 imply one additional year, or one year at a time without any limit. The Apex Court held:

> "The plain reading of the words "by another year" implies that the appointing authority of an institution may extend the period of probation by one additional year over and above the mandatory year of probation with the prior approval of the Director. Rule 105(1) of the 1973 Rules therefore stipulates a limitation on the total probationary period to two years. The first

[17] (2001) 7 SCC 161

> proviso stipulates that the prior approval of the Director shall not be required in the case of a minority institution."

Therefore, the words "by another year" in Rule 105(1) of the 1973 Rules restrict the maximum permissible period of probation to two years.

The Apex Court observed that ***Satya Narayan Jhavar*** enumerated three lines of cases. The third stipulates those cases where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer of issuing an order of confirmation for the purposes of confirmation. In such cases, there is no deemed confirmation of the services of a probationer on their continuation in service beyond the maximum period of probation.

The Apex Court held:

> "Admittedly, the appointment letter does not stipulate that the first respondent shall be confirmed upon the expiry of the probationary period. Rule 105(2) stipulates that an order of confirmation may be issued "if the work and conduct of an employee during the period of probation is found to be satisfactory". Rule 105(2) lays down a condition precedent to the issuance of an order of confirmation. It is only if the appointing authority is satisfied with the performance of the probationer that an order of confirmation may be issued. Rule 105(2) contains an explicit stipulation requiring the issuance of an order of confirmation by the appointing authority upon its assessment that the performance of the probationer has been satisfactory. *The mere continuation of the services of a probationer beyond the period of probation does not lead to a deemed confirmation in service. It is only upon the issuance of an order of confirmation by the appointing authority that probationer is granted substantive appointment in the post*."

Also, the Apex Court held:

> The continuation of the services of a probationer beyond the period permissible under the 1973 Rules defeats the salutary purpose underlying the limit stipulated on the period of extension that may be effected in the probationary period. Upon the expiry of the period of probation, the appointing authority is required by law to either confirm the services of the probationer or terminate their services. The continuation of the services of a probationer by the appointing authority under Rule 105 of the 1973 Rules beyond the maximum permissible period of probation, constitutes a violation of law.

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> The first respondent was continued as a probationer for nearly five years in contravention of Rule 105 of the 1973 Rules as well as the appointment letter dated 18 June 2008. There was no order of confirmation. Though the first respondent cannot claim a deemed confirmation of service without the issuance of an order of confirmation, the power of the Apex Court to do complete justice under Article 142 of the Constitution must be invoked in an appropriate manner. While there can be no deemed confirmation in the favour of the first respondent, the relief can be suitably moulded by an award of ex-gratia compensation. A teacher who has spent five valuable years of her life and may now be overaged to get suitable employment elsewhere must not be left in the lurch. A management which has defied the law must be put to terms, which we propose to do under Article 142."

Under Article 142 of the Constitution, the Apex Court ordered that the appellants shall pay over to the first respondent a sum of INR 5,00,000 within a period of four weeks from the date of receipt of a certified copy of the order, failing which the amount shall carry an interest of 9% per annum till the date of realisation.

6. *Shiv Kumar Jatia v. State of NCT of Delhi,(2019 SCC OnLine SC 1090)*

Decided on : -23.08.2019

Bench :- 1. Hon'ble Mr. Justice Abhay Manohar Sapre
2. Hon'ble Mr. Justice R. Subhash Reddy

(An individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused.)

Facts

At first instance on 17.10.2013, a case, on receipt of information that one Gaurav Rishi, got admitted in Fortis Hospital, Vasant Kunj, with the alleged history of fall from stairs, was registered for offence under Section 308 of IPC 1860. Subsequently, on investigation, it was found that the injured Gaurav Rishi fell from the terrace of 6thfloor to 4th floor of the hotel i.e. Hyatt Regency while he has joined two resident guests of the hotel who were American citizens. It is alleged that all three were having food and wine in club which was on the 6th floor and they were frequently going out on terrace for smoking. The terrace is adjacent to the lounge to which hotel permitted its guests for smoking.

It is the case of the prosecution that terrace was dark and there was no light on the terrace and hotel staff did not stop them from going there. Precisely it is the allegation that there was a lapse on the part of the hotel management in taking safety measures for the guests and they have allowed the guests to terrace area which was not safe. Referring to a copy of the RTI reply received from the office of Deputy Health Officer, South Delhi Municipal Corporation regarding Hyatt Regency, it is alleged that no health trade license was granted to the hotel for the terrace area adjoining 6th floor. Chargesheet further reveals that, Licensing Branch, Delhi Police, Delhi has issued license which was renewed upto 31.03.2015 in the name of P.R. Subramanian, who is also one of the accused in the case, authorising him to keep a place of public entertainment known as Hyatt Regency. Referring to the conditions of license for 4 star and above category issued under regulation 19 of the "Regulations for keeping places of public entertainment in Delhi 1980", it is the case of the prosecution that the Hyatt Hotel has not adhered to the conditions of license. Criminal negligence and illegal omission on part of the hotel management was alleged.

The appellants-accused have filed criminal misc. cases before the High Court of Delhi under Section 482 of Cr.P.C. seeking quashing of the impugned proceedings including the summoning order dated 16.05.2015 passed by the Metropolitan Magistrate, Patiala House Court, New Delhi. The said petitions are disposed of by the impugned common order dated 18.05.2018 by the High Court. High Court has opined that it is not appropriate to quash the

FIR, which was registered against the appellants-accused for offence under Sections 336 and 338 read with Section 32 of IPC and Section 4 of Cigarettes and Other Tobacco Products (Prohibition of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, COTPA, 2003).

Observations and Decision

The Apex Court held that no case is made out to proceed against the appellant-accused no. 2 for the alleged offences under Sections 336, 338 read with Section 32 of IPC and Section 4 of COTPA 2003. To attract the ingredients of Section 336, an act, done rashly and negligently, to endanger human life or personal safety are essential elements. There are no such ingredients to prosecute the appellant-accused no. 2. To attract Section 338 of IPC in addition to the above said acts, as required to prosecute for the offence under Section 336, additional ingredients of grievous hurt should be alleged and proved. The appellant-accused No. 2 who is the Managing Director of M/s. Asian Hotels (North) Limited, which is a public listed company, runs hotel Hyatt Regency, is neither the occupier nor the owner nor the licensee of the hotel. The injured person and other resident guests of the hotel, with whom he was having food and wine, insisted upon going to terrace area in question to smoke, despite there being another designated area in the hotel. M/s. Asian Hotels (North) Ltd., who is made accused no. 1 is the owner of the hotel. ***Merely because the appellant was holding position as Managing Director, in absence of specific allegations of negligence with the criminal intent, is not liable for prosecution.*** The accused no. 1 is the owner of the hotel and ***no individual can be made accused along with the company, unless there is sufficient evidence of his active role with criminal intent.***

The incident occurred only due to sheer negligence of the injured who walked out to the terrace for smoking and climbed on the parapet wall with the height of 2 feet 8 inches which was having additional fence of 1 foot 8 inches. The appellant-accused No. 4 was also out of country on the date of incident. Only on the ground that the appellant-accused no. 4 is a General Manager, he cannot be held vicariously liable, as he is not even the licensee of the hotel.

The Apex Court held:

> "The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by the Apex Court in the case of *Sunil Bharti Mittal*. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, the Apex Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving *mens rea*, it would normally be the intent and

> action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the Statute specifically provides for. It is further held by the Apex Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.**"**

On the application of ratio laid down in ***Sunil Bharti Mittal* v. *Central Bureau of Investigation,***[18] the Apex Court held that it is clear that ***an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused***.

In order to prosecute the appellants-accused for the offence under Section 4[19] of COTPA 2003 it was alleged that the terrace on the 6thFloor was open to the guests, despite knowing that terrace area was not a proper smoking area and was not properly lit and safe.

The Apex Court held that Section 4 of the COTPA obligates a hotel having 30 rooms or a restaurant with a seating capacity of 30 persons or more shall have a provision for separate smoking area. In the case on hand it is merely alleged that though the terrace was not notified as a smoking area, the injured and other resident guests of the hotel were allowed to smoke in the terrace area in the 6th Floor. It is the specific case of the appellants-accused that there is a separate smoking area at the lobby level of the hotel. In absence of making any allegations that hotel has not provided at all any smoking area in the entire hotel there is absolutely no reason or justification to prosecute the appellants-accused for the alleged offence under Section 4 of COTPA 2003.

The Criminal appeal filed by Shiv Kumar Jatia-accused no. 2 was allowed and the Criminal appeal filed by the accused No. 4 - Aseem Kapoor was partly allowed and Criminal appeals filed by Ms. Gauari Rishi was dismissed.

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[18] (2015) 4 SCC 609

[19]"**4. Prohibition of smoking in a public place.-**No person shall smoke in any public place:

> Provided that in a hotel having 30 rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made."

7. *Kut Energy Pvt. Ltd. and Others v. Authorized Officer, Punjab National Bank, Large Corporate Branch, Ludhiana and Others, (2019 SCC OnLine SC 1057)*

Decided on : -20.08.2019

Bench :- 1. Hon'ble Mr. Justice U.U. Lalit
2. Hon'ble Mr. Justice Vineet Saran

(The 'secured creditor' would be entitled to proceed only against the 'secured assets' mentioned in the notice under Section 13(2) of the SARFAESI Act.)

Facts

An agreement was entered into between the appellants and the Government of Himachal Pradesh on 26.05.2008 for setting up 24 MW "Kut Hydro Electric Project" in District Shimla. For commissioning the said Project, the appellants availed loan from the consortium of Punjab National Bank ('the Bank', for short), Corporation Bank and Central Bank of India. On 29.09.2015 the account of the appellant was declared NPA by the Bank. A demand notice was thereafter issued by the Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act", for short) on 15.03.2017. The amount due to the Bank as on 14.03.2017 was stated to be Rs. 106,07,91,644.26.

Soon thereafter, three proposals were made by the appellants in quick succession on 27.06.2017, 01.08.2017 and 19.08.2017 offering Rs. 84,87 and 90 crores respectively for One Time Settlement ("OTS", for short). On 22.08.2017 a possession notice under Section 13(4) of the SARFAESI Act was issued by the Bank in respect of the Project in question. On 29.08.2017 a sale notice was issued in terms of which the concerned properties were to be sold by e-auction on 06.10.2017 with a reserve price of Rs. 120 crores.

Immediately an application seeking interim relief being SA No. 481 of 2017 was moved by the appellants before the Tribunal, which prayer was rejected by the Tribunal by its order dated 06.10.2017. On 06.10.2017 itself, the e-auction was conducted by the Bank in which a bid was received from 2nd respondent for Rs. 120,00,11,000. This prompted the appellants to revise the OTS proposal to Rs. 140 crores. Such offer was made on 07.10.2017 and was followed by filing of CWP No. 2274 of 2017 before the High Court on 10.10.2017 challenging (i) The notices dated 15.03.2017 and 22.08.2017 (ii) Sale Notice dated 29.03.2017 and (iii) Order dated 06.10.2017 passed by the Tribunal refusing to grant interim relief.

The matter came up for preliminary hearing before the High Court on 11.10.2017 and the Counsel for the appellants submitted that in order to establish their *bona fides*, the appellants

were willing and ready to deposit a sum of Rs. 140 crores with the Bank. The submission was recorded and directions were issued by the High Court.[20]

On 31.10.2017 the Bank rejected the revised OTS proposal for Rs. 140 crores i.e. even before the sum of Rs. 140 crores was deposited by the appellants. The appellants, therefore, filed CMP No. 9618 of 2017 seeking modification of the aforementioned order dated 11.10.2017 stating *inter alia* that deposit of Rs. 100 crores be made subjection to the sanction of the settlement proposal. It may be noted here that as on the date the appellants had deposited a sum of Rs. 40 crores in keeping with the commitment of first three stages as set out in the order dated 11.10.2017.The Bank challenged the order dated 11.10.2017 by filing Special Leave Petition(C) Nos. 4898-4904 of 2018 in the Apex Court, submitting *inter alia* that the High Court ought not to have interfered in the matter while exercising writ jurisdiction, as alternate remedy was available to the appellants. The submission was accepted by the Apex Court and the appeals arising from SLP(C) Nos. 4898-4904 of 2018 were disposed of by the Apex Court.[21]

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[20] "Mr. B.C. Negi, learned Senior Advocate, states that without prejudice to the respective rights and contentions of the parties and subject to the outcome of the writ petition, pursuant to petitioners' request (Annexure P-18), which is pending consideration with the lead Consortium Bank, in order to establish their bona fides, petitioners are ready and willing to deposit a sum of Rs. 140 crores with the lead Consortium Bank (Punjab National Bank) in the following manner:—

(i) Rs. 3 crores already deposited along with communication, dated 7thOctober, 2017 (Annexure P-18);
(ii) Rs. 15 crores on or before 16th October, 2017;
(iii) Rs. 22 crores on or before 1st November, 2017 and
(iv) Rs. 100 crores on or before 11th December, 2017.

We direct that subject to the petitioners depositing a sum of Rs. 140 crores with the Punjab National Bank, in terms of their statement, no coercive action shall be taken against them, more so when they are still in the actual physical possession of the assets, which fact is not disputed before us. Also, such deposit shall be subject to further orders, which may be passed by the Court. Deposit with the bank shall be treated to be a deposit in the Registry of the Apex Court. Further, bank shall take a decision on the petitioners' request, dated 7thOctober, 2017 (Annexure P-18), which Mr. Ajay Kumar, learned Senior Advocate, states shall be taken within a period of four weeks from today. We further direct that in the event of petitioners' succeeding in the present petition and/or the bank agreeing with the petitioners' request, petitioners shall be liable to pay interest to the auction bidder on the amount already deposited pursuant to the auction. We further direct that till further orders, it shall not be obligatory on the auction purchaser to deposit the remaining balance amount.

We have not expressed any opinion with regard to the rights and claims of the State."

[21] "Heard learned counsel for the parties.
Delay condoned.
Leave granted.
The respondent is a debtor to the tune of Rs. 325,00,00,000/- (Rupees Three hundred Twenty Five crores only) and above. The Bank has rejected a One Time Settlement proposal to settle for a figure of Rs. 150,00,000/- (Rupees one hundred Fifty crores only), of which the debtor has deposited only Rs. 40,00,00,000/- (Rupees Forty crores only) till date. Meanwhile, an auction of the mortgaged property has already taken place, but, as no interim relief was granted by the Debt Recovery Tribunal by its order dated 06.10.2017, Respondent No. 5, who is the highest bidder, has paid 25% of the bid amount, after which sale confirmation has taken place by a letter dated 07.10.2017. We may hasten to add that on 18.10.2017, a cheque for the balance of 75% was furnished by respondent No. 5, but not encashed, and this was done again on 17.03.2018.

In a recent judgment delivered by one of us in *Authorised Officer, State Bank of Travancore* v. *Mathew K.C.* (2018) 3 SCC 85, we have cautioned against the High Court interfering in such matters in the writ

On 22.05.2018 the Bank filed CMP No. 4761 of 2018 in aforesaid CWP No. 2274 of 2017 seeking appropriation of amount of Rs. 40 crores deposited by the appellants in terms of the order dated 11.10.2017, against the dues of the appellants. On the other hand, CMP No. 5386 of 2018 was filed by the appellants on 29.05.2018 in said Writ Petition for refund of said amount of Rs. 40 crores. These applications were disposed of by the High Court by its judgment and order dated 19.03.2019.[22] These appeals arise out of the judgment and order dated 19.03.2019 passed by the High Court of Himachal Pradesh at Shimla.

Observations and Decision

The Apex Court referred to ***Axis Bank v. SBS Organics (P) Ltd***.[23] wherein the questions that arose for consideration was whether the money deposited, in order to maintain an appeal under Section 18 of the SARFAESI Act before the Debts Recovery Appellate Tribunal ('DRAT', for short) could be adjusted towards the amount due to the concerned bank and whether the concerned bank had a lien over the money so deposited. It was observed that the secured creditor was entitled to proceed "only against the secured assets" mentioned in the notice under Section 13(2) of the SARFAESI Act. The nature of pre-deposit in terms of Section 18 of the SARFAESI Act was considered and it was concluded that such deposit was neither a '*secured asset*' nor was a '*secured debt*' and in the circumstances, the prayer for refund

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jurisdiction. Such caution has unfortunately not been heeded in the present case. Given the facts of the present case, we, therefore, set-aside the impugned orders passed by the High Court. The appeals are allowed in the aforesaid terms.

Pending applications, if any, shall stand disposed of."

[22]"9. We have heard the learned counsel for the parties at a considerable length and gone through the record. So far as the prayer of the borrowers for the refund of the amount of Rs. 40.00 crores is concerned, we do not find any substance in the same. It is not a case where the entire loan liability, as determined by the Consortium of Banks, has been satisfied on appropriation of sale proceeds of secured assets. The lead Bank has already filed suit for the recovery of Rs. 129.47 crores, which is pending adjudication before the DRT. While the borrower/guarantors have a right to contest the bank's claim before the DRT, it is highly premature and presumptuous for the Apex Court to comment upon the likely outcome of those proceedings.

10. It goes without saying that if the bank's suit is decreed, fully or partially, the amount of Rs. 40.00 crores, deposited by the petitioners before the Apex Court, is liable to be adjusted/appropriated towards the decretal amount. However, in the event of dismissal of such suit, with a finding that the borrower or the guarantors are no longer under any liability, the amount so deposited by them can be refunded to them. Since all these issues are yet to be adjudicated by the DRT, we are of the view that the prayer made by the borrower/guarantors for refund of the amount is liable to be turned down and we order accordingly.

11. The prayer made by the bank, on the other hand, deserves to be accepted in part to the extent that let the amount of Rs. 40 crores lying deposited with the bank 'without any lien' be deposited with DRT, who in turn is directed to keep the same in a Nationalized Bank to fetch maximum rate of interest. The amount shall remain in FDRs till the decision of the suit filed by the lead Bank (Punjab National Bank). In case the suit is decreed and the decretal amount is more than Rs. 40.00 crores or the interest accrued thereupon, the DRT is directed to transfer the said amount in favour of the Punjab National Bank for adjustment towards loan liability. In the event of dismissal of the suit, the borrower/guarantors shall be at liberty to seek refund of the said amount from the DRT."

[23] (2016) 12 SCC 18

of amount in deposit was required to be allowed. Paragraphs 14, 21, 22 and 23 of the decision of the Apex Court in *Axis Bank* were as under:—

> **"14.** A conspectus of the aforesaid provisions shows that under the scheme of the SARFAESI Act, a secured creditor is entitled to proceed against the borrower for the purpose of recovering his secured debt by taking action against the secured assets, in case the borrower fails to discharge his liability in full within the period specified in the notice issued under Section 13(2) of the Act. It is the mandate of Section 13(3) of the Act that the notice issued under Section 13(2) should contain details of the amount payable by the borrower and also the secured assets intended to be enforced by the secured creditor in the event of non-payment of the dues as per Section 13(2) notice. Thus, the secured creditor is entitled to proceed only against the secured assets mentioned in the notice under Section 13(2). However, in terms of Section 13(11) of the Act, the secured creditor is also free to proceed first against the guarantors or sell the pledged assets. To quote:
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> "**13.(11)** Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (*a*) to (*d*) of sub-section (4) in relation to the secured assets under this Act."
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> .....
>
> **21**. The appeal under Section 18 of the Act is permissible only against the order passed by DRT under Section 17 of the Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. The partial deposit before DRAT as a precondition for considering the appeal on merits in terms of Section 18 of the Act, is not a secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre-deposit in favour of the secured creditor. If that be so, on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre-deposit, the same has to be allowed and the pre-deposit has to be returned to the appellant, unless the Appellate Tribunal, on the request of the secured creditor but with the consent of the depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or if there be any attachment on the pre-deposit in any proceedings under Section 13(10) of the Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002, or if there be any attachment in any other proceedings known to law.
>
> **22**. We are also unable to agree with the contention that the Bank has a lien on the pre-deposit made under Section 18 of the SARFAESI Act in terms of Section 171 of the Contract Act, 1872. Section 171 of the Contract Act, 1872 on general lien, is in a different context:
>
> "**171.** ***General lien of bankers, factors, wharfingers, attorneys and policy-brokers***.— Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a

right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

.....

23. Section 171 of the Contract Act, 1872 provides for retention of the goods bailed to the bank by way of security for the general balance of account. The pre-deposit made by a borrower for the purpose of entertaining the appeal under Section 18 of the Act is not with the bank but with the Tribunal. It is not a bailment with the bank as provided under Section 148 of the Contract Act, 1872. Conceptually, it should be an argument available to the depositor, since the goods bailed are to be returned or otherwise disposed of, after the purpose is accomplished as per the directions of the bailor."

In the given fact situation, the Apex Court held that the deposit of Rs. 40 crores in terms of the order of the High Court on 11.10.2017 was only to show the *bona fides* of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question and that is precisely why the High Court had directed that the deposit would be treated to be a deposit in the Registry of the High Court.

As laid down in *Axis Bank* case, ***the 'secured creditor' would be entitled to proceed only against the 'secured assets' mentioned in the notice under Section 13(2) of the SARFAESI Act.*** the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11.10.2017. Therefore, the Apex Court set aside the judgment and order dated 19.03.2019 passed by the High Court

8. *Tarun Jit Tejpal v. State of Goa, (2019 SCC OnLine SC 1053)*

Decided on : -19.08.2019

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

(Where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated for such infraction. Therefore, the aforesaid ground is not required to be considered at the stage of framing of the charge.)

Facts

The Investigating Officer had filed the chargesheet against the accused for the offences under section 354,354A,354B,341,342,376(2)(f) and 376(2)(k) of the IPC. That, thereafter, the trial Court has framed the charge against the appellant-original accused for the aforesaid offences, in exercise of its powers under section 227/228 of the CrPC. Framing of the Charge against the accused for the aforesaid offences was the subject matter before the High Court. By the impugned judgment and order, the High Court has dismissed the revision application and has confirmed the order passed by the Trial Court ordering to frame the charge against the accused for the aforesaid offences. Hence the appellant-original accused filed the present appeal before the Apex Court.

Decision and Observations

It was mainly contended on behalf of the Appellant that in the present case as the complainant and Investigating Officer are the same and therefore in view of the decision of the Court in the case of ***Mohan Lal* v. *State of Punjab***[24] . the entire criminal proceedings are vitiated and therefore the Appellant-original Accused is to be discharged. However, the Apex Court noted that in the subsequent decision in the case of ***Varinder Kumar v. State of Himachal Pradesh***[25] , a three Judge Bench of the Apex Court had an occasion to consider the decision of the Court in the case of *Mohan Lal* and it was held that the decision of the Court in the case of *Mohan Lal* shall be applicable prospectively, it is further held that all pending

[24] (2018) 17 SCC 627
[25] 2019 SCC OnLine SC 170

criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* shall continue to be governed by the individual facts of the case.

The Apex Court held :

> "We are bound by that decision. Therefore, we are of the opinion that the decision of the Apex Court in the case of Mohan Lal shall not be applicable to the facts of the case on hand as criminal prosecution has been initiated in the present case much prior to the decision in the case of the Mohan Lal . Therefore, the Appellant cannot be discharged at this stage on the aforesaid ground mainly that the Investigating Officer and the complainant/informant are the same the trial is vitiated, relying upon the decision of the Apex Court in the case of Mohan Lal. Even the decision of the Apex Court in the case of Bhagwan Singh, relied upon by the learned Counsel appearing on behalf of the Appellant-original Accused, also shall not be of much assistance to the Appellant at this stage. In the case of Bhagwan Singh[26] and after the trial the Apex Court held that as the complainant herself was the Investigating Officer, the case of the prosecution would not be free from doubt. It was the case after trial and not at the stage of framing of the charge. ***Where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated for such infraction. Therefore, the aforesaid ground is not required to be considered at this stage, namely, at the stage of framing of the charge***."

Then the Apex Court referred to ***State of T.N. v. N. Suresh Rajan***,[27] wherein the Court had an occasion to consider the scope of the proceedings at the stage of the framing of the charge under section 227/228 of the CrPC, ***State v. S. Selvi,***[28] where the Court has summarised the principles while framing the charge at the stage of section 227/228 of the CrPC, ***Mauvin***

[26] *Bhagwan Singh* v. *The State of Rajasthan*,(1976) 1 SCC 15
[27] (2014) 11 SCC 709
[28] (2018) 13 SCC 455

Godinho **v.** *State of Goa,*[29] and *Stree Atyachar Virodhi Parishad* **v.** *Dilip Nathumal Chordia*.[30]

Therefore, the Apex Court held that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court.

[29] (2018) 3 SCC 358
[30] (1989) 1 SCC 715