JUDICIAL ACADEMY JHARKHAND

SNIPPETS
OF
SUPREME COURT JUDGMENTS

(NOVEMBER 18 – NOVEMBER 30, 2019)

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1. *State of Madhya Pradesh v. Killu and Others, (2019 SCC OnLine SC 1488)*

Decided on : - 19.11.2019

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

For the application of the principle of *vicarious liability* under Section 149 IPC what is material to establish is that the persons concerned were members of an unlawful assembly, the common object of which was to commit a particular crime.

Facts

Accused/appellant No. 4, Khushiram, who is uncle [mousia] of the son of the deceased, had some enmity with Balaprasad Pathak [since deceased]. He along with other accused persons entered in the house of Balaprasad Pathak in the mid night [2 O'clock] of 23.05.2005. Deceased was sleeping with his family members. Accused/appellants namely; Khushiram and Himmu @ Hemchand were armed with axe, appellant Devendra was armed with Ballam and other two accused namely Killu @ Kailash and Kailash Nayak were armed with lathi. Two accused persons namely; Khushiram and Himmu @ Hemchand [appellants No. 2 and 4 in Cr. Appeal No. 2676/2008] inflicted injuries by axe on the person of deceased. Allegation against other accused persons is of exhortation. Deceased died on the spot. Report of the incident was lodged by (PW-5) Rameshwar Pathak. Police conducted investigation and filed charge-sheet. During trial, appellants abjured their guilt and pleaded innocence.

In due course, five accused were tried in connection with the murder of said Balaprasad Pathak for the offence punishable under Section 302 read with Section 149 IPC in Sessions before the First Additional Sessions Judge, Damoh, Madhya Pradesh. After considering the evidence on record, the Trial Court concluded that all the five accused were members of an unlawful assembly and had entered the house of the deceased on the fateful night with the common object of causing death of the deceased and as such, they were guilty of the offence punishable under Section 302 read with Section 149 IPC.

Insofar as accused Himmu @ Hemchand and Khushiram, who were armed with sharp cutting weapons, the High Court found that the Trial Court had rightly held the appellants guilty for commission of offence of murder. The High Court further found that the other three accused were stated to be armed with lathis and Ballam but there were no injuries which could be associated with lathis and Ballam. The High Court, therefore, gave benefit to the other three accused.

The present appeal had been filed by the State against the acquittals.

Observations and Decisions

The Hon'ble Court referred to the cases of ***Baladin v. State of Uttar Pradesh***[1] and ***Masalti v. State of Uttar Pradesh***[2] wherein it had been held as follows :-

> In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of s. 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by s.141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of *Baladin* assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence. is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by s.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.
>
> (emphasis by Court)

The Hon'ble Court further referred to the case of ***State of Maharashtra v. Ramlal Devappa Rathod***[3] wherein it had been held as follows :-

> **22.** We may at this stage consider the law of vicarious liability as stipulated in Section 149 IPC. The key expressions in Section 149 IPC are:
>
> (*a*) if an offence is committed by any member of an unlawful assembly;
> (*b*) in prosecution of common object of that assembly;
> (*c*) which the members of that assembly knew to be likely to be committed in prosecution of that object;
> (*d*) every person who is a member of the same assembly is guilty of the offence.
>
> This section makes both the categories of persons, those who committed the offence as also those who were members of the same assembly liable for the offences under Section 149 IPC, if other requirements of the section are satisfied. That is to say, if an offence is committed by *any person* of an unlawful assembly,

[1] AIR 1956 SC 181.
[2] (1964) 8 SCR 133.
[3] (2015) 15 SCC 77.

which the members of that assembly knew to be likely to be committed, *every member* of that assembly is guilty of the offence. The law is clear that *membership* of unlawful assembly is sufficient to hold such members vicariously liable.

Applying the principles enumerated in the aforementioned cases to the present appeal, the Hon'ble Court allowed the appeal and held as follows:-

13..... For the application of the principle of *vicarious liability* under Section 149 IPC what is material to establish is that the persons concerned were members of an unlawful assembly, the common object of which was to commit a particular crime. The fact that five persons were separately armed and had entered the house of the deceased during night time is clearly indicative that each one of them was a member of that unlawful assembly, the object of which was to commit the crime with which they came to be charged in question. The High Court was not justified in granting benefit to those three accused.

14. The presence of the respondents in the house of the deceased; the fact that they were armed; the fact that all of them had entered the house around midnight and further fact that two out of those five accused used their deadly weapons to cause the death of the deceased was sufficient to attract the principles of *vicarious liability* under Section 149 IPC.

15. The High Court was not justified in entertaining a doubt that it could not be ruled out that the respondents were merely named along with the other accused persons. There was absolutely no room for such doubt. The testimony of the eye witnesses namely the wife and the son, who were occupants of the same house, was quite clear and cogent.

2. *Rani Narasimha Sastry v. Rani Suneela Rani, (2019 SCC OnLine SC 1595)*

Decided on : - 19.11.2019

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

(Mere lodging of complaint or FIR cannot *ipso facto* be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty is meted on the husband and, therefore, if established, it can be a ground for divorce on the ground of cruelty)

Facts

This appeal has been filed by the appellant challenging the judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 05.01.2017 in Civil Miscellaneous Appeal No. 1279/2011. The appellant has filed O.P. No. 109/2007 in the Court of Principal Senior Civil Judge, R.R. District, L.B. Nagar under Section 13(1)(i-a) and (iii) of Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") praying for dissolution of the marriage with the respondent. The petition was filed basically on two grounds, namely, cruelty as well as mental illness of the respondent. In the petition the appellant appeared as PW-1 and one Upadhyayula Viswanadna Sarma has appeared as PW-2. Documents Ext.P1 to P.29 were filed. The respondent was examined as RW-1, one D. Nagabhushan Rao was also examined as RW-2. Documents Ext.R1 to R3 were filed by the respondent. The Trial Court framed following points for determination:

"12. Now the points that arises for determination are:

1) Whether the petitioner established and proved that the respondent treated the petitioner with cruelty?
2) Whether the petitioner established and proved that the respondent has been incurable unsound mind or has been suffering continuously or intermediately from mental disorder?
3) Whether there are sufficient grounds to grant decree of divorce as prayed by the petitioner?
4) To what relief?"

The Trial Court decided both point no. 1 and point no. 2 against the appellant and held that appellant failed to prove that he was treated with cruelty by respondent. With regard to second point Trial Court also held that evidence adduced by the appellant was not at all sufficient to come to conclusion that the appellant has established the alleged mental disorder of respondent. Resultantly, petition was dismissed on 05.09.2011 against which the appeal has been filed in the High Court. The appeal too has been dismissed by the High Court on 05.01.2017 against which this appeal has been filed.

The appellant submitted that he had made out a case for grant of dissolution of marriage on the ground of cruelty but the Court below erred in law in rejecting the application. He submitted that apart from various other instances, as mentioned in the application as well as in evidence, a case was set up by the appellant that false complaints have been filed by the respondent against the appellant and his family members and criminal cases have also been initiated which fully prove the cruelty on the part of the respondent. He submitted that FIR Criminal No. 148/2007 in which charge-sheet No. 672 of 2007 was submitted against the appellant and his sister-in-law on the basis of which charge under Section 498-A of Penal Code, 1860 (IPC) was framed and the appellant was tried by the Court of Metropolitan Magistrate, Cyberabad. It is submitted that the Court held the appellant not guilty of offence under Section 498-A IPC and he was acquitted which clearly establishes cruelty at the instance of the respondent.

Observations and Decision

On the ground of mental illness, the Hon'ble Court held as follows:-

> **10.** The petition filed by appellant for dissolution of marriage on the ground of cruelty and mental illness has been rejected by the Court below. With regard to second ground i.e. mental illness of the respondent, no serious efforts have been made to question the findings of the Court below which ground has rightly rejected by the Court below. The Court below has also observed that respondent is working as Sanskrit Lecturer, hence, there is no merit in the submission of the appellant that respondent is suffering from mental illness.

On the ground of cruelty, the Hon'ble Court referred to the case of ***Vijaykumar Ramchandra Bhate* v. *Neela Vijaykumar Bhate***[4] and held as follows :-

> **12.** This Court has laid down that averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. This Court in *Vijaykumar Ramchandra Bhate* v. *Neela Vijaykumar Bhate* has laid down following in paragraph 7:
>
> > "7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written

[4] (2003) 6 SCC 334.

> statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

13. In the present case the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are leveled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 14:

> 14.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty.

14. The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot *ipso facto* be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

3. *K.Meghachandra and Others v. Ningam Siro and Others, 2019 SCC OnLine SC 1494*

Decided on : 19.11.2019

Bench :- 1. Hon'ble Mr. Justice A.S.Bopanna
2. Hon'ble Mr. Justice Hrishikesh Roy

(The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in *N. R. Parmar* to the effect that the selected candidate cannot be blamed for the administrative delay.)

Issue

The issue, in this case, was whether direct recruits could be given notional seniority from the year 2005 i.e. the year when applications for direct recruitment were invited though appointment, after completing recruitment process, took place in August and November 2017. In the meantime, the promotees had already joined the promotion post in March 2007. The promotees were earlier appointees yet direct recruits were sought to be placed above them on the ground that they were appointed against vacancies of the year 2005.

Observations and Decision

The Hon'ble Court referred to several judgments[5] of the Supreme Court especially the judgment rendered in ***Union of India v. N.R. Parmar,* (2012) 13 SCC 340** and observed as follows :-

> **29.** Before proceeding to deal with the contention of the appellants' Counsel vis-à-vis the judgment in *N.R. Parmar*(Supra), it is necessary to observe that the Law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service… For example, in *J.C. Patnaik* (Supra) the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made.…

[5] *Jagdish Chandra Patnaik*' v. *State of Orissa,* (1998) 4 SCC 456; *Nani Sha* v. *State of Arunachal Pradesh,* (2007) 15 SCC 406; *State of Uttar Pradesh* v. *Ashok Kumar Srivastava,* (2014) 14 SCC 720; *Pawan Pratap Singh* v. *Reevan Singh,* (2011) 3 SCC 267; *Shankarsan Dash* v. *Union of India,* (1991) 3 SCC 47; *Suraj Prakash Gupta* v. *State of J&K,* (2000) 7 SCC 561; *ll India Judges Association* v. *Union of India*, (2002) 4 SCC 247.

30……. Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

31. We may also benefit by referring to the Judgment in *State of Uttar Pradesh* v. *Ashok Kumar Srivastava*. This judgment is significant since this is rendered after the *N.R. Parmar*(Supra) decision. Here the Court approved the ratio in *Pawan Pratap Singh* v. *Reevan Singh*, and concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service Rules. The Supreme Court held that seniority cannot be given for an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime…….

The decision in *N.R.Parmar* overruled

39. At this stage, we must also emphasize that the Court in *N. R. Parmar* (Supra) need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious in as much as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in *N. R. Parmar* (Supra) to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in *Shankarsan Dash* v. *Union of India*[4], where it was held even upon empanelment, an appointee does not acquire any right.

40. The Judgment in *N. R. Parmar* (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the *MPS Rules, 1965*. We also feel that *N.R. Parmar* (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in,*inter-alia*, *J.C. Patnaik* (Supra), *Suraj Prakash Gupta* v. *State of J&K*[5] and *Pawan Pratap*

Singh v. *Reevan Singh* (Supra). These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in *J.C. Patnaik*(Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in *N. R. Parmar*(Supra). Accordingly, the decision in *N.R. Parmar* is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.

4. *Baidyanath Yadav v. Aditya Narayan Roy and Others, 2019 SCC OnLine SC 1492*

Decided on : 19.11.2019

Bench :- 1. Hon'ble Mr. Justice Mohan M. Shantanagoudar
2. Hon'ble Mr. Justice Ajay Rastogi

(Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness)

Facts

The instant appeals pertain to the selection to two vacancies in the Indian Administrative Service ("the IAS") from amongst non-State Civil Service officers ("non-SCS officers") for the Selection Year 2014. The Appellant, Baidyanath Yadav, Respondent No. 1, Aditya Narayan Roy and Respondent No. 9 in SLP (C) No. 12370 of 2019, Ram Prakash Sahni ("Respondent No. 9"), belonged to the Bihar Agricultural Service. The Department of Agriculture, along with other departments, was invited to recommend the names of two officials to the State Screening Committee for selection of ten persons to be recommended to the Union Public Service Commission ("the UPSC") for final selection. The Selection Committee of the Department of Agriculture, headed by the Principal Secretary, in its meeting dated 07.08.2014, considered the names of four officials of the department, being the Appellant, Respondent No. 1, Respondent No. 9, and one Ravindra Kumar Verma, and recommended the names of the Appellant and Respondent No. 9. The recommendations were then placed before the minister concerned, who, vide order dated 11.08.2014, directed that Respondent No. 1's name may be recommended. As a consequence, the Agricultural Department forwarded three names to the State Screening Committee headed by the Chief Secretary, Bihar, placing Respondent No. 1's name at Serial No. 3. Before the State Screening Committee, in the list of seventeen recommendations received, the Appellant was mentioned at Serial No. 14, Respondent No. 9 at Serial No. 15, and Respondent No. 1 at Serial No. 16. The State Screening Committee, in its meeting dated 22.08.2014, recommended ten names for consideration to the UPSC, including the names of the Appellant and Respondent No. 9, but not Respondent No. 1. From this list, two officers were selected to the IAS by the UPSC, one of whom was the Appellant, the other being an official from another department.

Decision of the Tribunal

Respondent No. 1 approached the Central Administrative Tribunal, Patna Bench seeking the quashing of the Appellant's appointment, and directions for the Department of Agriculture to recommend Respondent No. 1's name to the State Screening Committee, for the State Screening Committee to recommend his name to the UPSC, for the UPSC to conduct a fresh assessment for his appointment, and for the order of his appointment to be issued in case of

favourable recommendations. The Tribunal dismissed Respondent No. 1's application, noting that the departmental minister's order dated 11.08.2014 did not contain any finding to the effect that Respondent No. 1 was the most meritorious candidate, or that gross injustice had occurred due to the non-inclusion of his name in the initial recommendation made by the Department of Agriculture. Thus, there was no illegality or mala fides in Respondent No. 1's name occurring at Serial No. 3 in the list forwarded to the State Screening Committee, contrary to his argument that his name should have occurred at the top since he was the most meritorious. The Tribunal further reasoned that even if Respondent No. 1's name had been at the top in this list, in the list prepared by the State Screening Committee he would still have figured only at Serial No. 14 instead of Serial No. 16, which was irrelevant, since the only pertinent aspect was that his name was considered along with other officials. The Tribunal dismissed Respondent No. 1's application noting that his case was based on conjectures about being selected if his name had been recommended to the UPSC committee, and that directing the State Screening Committee to recommend his name to the UPSC would amount to sitting in judgment over the evaluation of merit by the authorities.

Decision of the Patna High Court

The High Court set aside the order passed by the Tribunal, directing that the State Screening Committee recommend Respondent No. 1's name to the UPSC within two weeks, and that the UPSC thereafter consider his case objectively. Such consideration would also determine the fate of the Appellant, whose inclusion into the IAS cadre would not create any right in his favour until the decision of the UPSC on Respondent No. 1's name. For the purpose of the consideration of Respondent No. 1's name, the post would be considered to be vacant for the year 2014. After the State Screening Committee made its recommendation, the UPSC would be expected to hold an interview and evaluation of Respondent No. 1 preferably within a period of six weeks. This lead the Appellant and the State of Bihar to approach this Court by way of the instant appeals.

Observations and Decision of the Hon'ble Supreme Court

Regarding the scope of judicial review in matters of selection of candidates, the Hon'ble Court referred to the judgment rendered in ***M.V. Thimmaiah v. UPSC, (2008) 2 SCC 119*** wherein it had been held as follows :-

> "**21.** Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the

> selection of the candidates nor is the business of the court to examine each candidate and record its opinion…"

The Hon'ble Court further referred to the judgment of ***Union Public Service Commission v. M. Sathiya Priya, (2018) 15 SCC 796*** wherein it had been held as follows :-

> "**17.** The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters."
>
> (Emphasis by Court)

Regarding the effect of non-disclosure of reasons by the Selection Committee as being arbitrary and thus violative of the principles of natural justice, the Hon'ble Court held as follows :-

> **9.2** Moreover, we find ourselves in disagreement with the conclusion of the High Court that the decision of the State Screening Committee was arbitrary for non-disclosure of reasons. A catena of decisions of this Court has established that even the principles of natural justice do not require a duly constituted selection committee to disclose the reasons for its decision, as long as no rule or regulation obliges it to do so. In this regard, we may refer to the decision of this Court in *National Institute of Mental Health* (supra), which has also been subsequently affirmed in several cases, including *Union Public Service Commission* v. *Arun Kumar*

Sharma (supra). In *National Institute of Mental Health* (supra), the Court, following the decision in *R.S. Dass* v. *Union of India*, (1986) Supp SCC 617, observed as follows:

> "**7.** … In the first place, it must be noted that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative… Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass* v. *Union of India* [1986 Supp SCC 617 : (1987) 2 ATC 628] in which Capoor Case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : (1974) 1 SCR 797] was also distinguished.
>
> 8. … we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The 'fairness' or 'fair procedure' in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration…"

9.3 As there is no such requirement mandating the disclosure of reasons in the relevant rules, regulations and guidelines, there is no doubt in our minds that the procedure adopted by the State Screening Committee cannot be faulted.

Relying on the principles enumerated by the aforementioned decisions, the Hon'ble Court allowed the appeal and held :-

> **5.3** It can be concluded from the above that it was not for the High Court to address questions of comparative merit of the candidates, and neither is it appropriate for us to do the same. All we may look into is whether there was any serious violation of statutory rules, or any bias, mala fides or arbitrariness in the entire selection process. To address this question, it is essential to revisit the process prescribed for the selection of non-SCS officers to the IAS.

The Hon'ble Court further observed:-

> **11.** In any case, we find that the direction issued by the High Court directing the State Screening Committee to recommend Respondent No. 1's name to the UPSC

was completely without jurisdiction. Upon reaching a finding of arbitrariness in the selection process, the Court could at the most have issued a direction to the State Screening Committee to reassess the names of all candidates by giving due consideration to all relevant documents. As already observed above, it was not for the Court to sit in judgment over the merit of the candidates and substitute its reasoning for that of the Screening Committee. Be that as it may, in light of the above discussion, we conclude that there is no case to direct the reconsideration of the seventeen candidates before the Screening Committee, or to interfere with the appointments already made for the Selection Year 2014.

5. *Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Others, 2019 SCC OnLine SC 1493*

Decided on : 19.11.2019

Bench :- 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Mr. Justice Ajay Rastogi

(Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. However, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The courts in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating certain factors.)

Issue

A two-Judges Bench of the Hon'ble Supreme Court referred the following issue to be decided by a three-judges Bench and thus this issue came before the present bench:-

> "……
>
> *The papers to be placed before the Hon'ble Chief Justice of India for constitution of a three-Judge Bench* ***to look into the effect of our previous judgments as well as whether the language of Order VIII Rule 6A of the Civil Procedure Code is mandatory in nature."***
>
> (emphasis by Court)

Facts of the case

A dispute arose between the Petitioner (defendant no. 2) and Respondent No. 1 (plaintiff) concerning performance of agreement to sell dated 20.11.1987 and 04.10.1989. Respondent No. 1 (plaintiff) filed the suit for specific performance against the petitioner (defendant no. 2) on 02.05.2008. Petitioner (defendant No. 2) herein filed a written statement on 2.12.2008 and counter-claim on 15.3.2009, in the same suit. By order dated 12.05.2009, the trial court rejected the objections, concerning filing of the counter-claim after filing of the written statement and framing of issues. Order dated 15.05.2009 was challenged before the High Court, in Civil Revision No. 253 of 2009, the High Court allowed the same and quashed the counter-claim. Aggrieved by the aforesaid order of the High Court, the petitioner (defendant No. 2) herein approached the Division Bench of the Supreme Court, which referred the matter to a three-Judges Bench.

Observations and Decision

The Hon'ble Court formulated the following issues:-

1) Whether Order VIII Rule 6A of the CPC mandates an embargo on filing the counter-claim after filing the written statement?

2) If the answer to the aforesaid question is in negative, then what are the restrictions on filing the counter-claim after filing of the Written Statement?

Regarding the nuances of procedural justice, the Hon'ble Court observed as follows :-

> **7.** At the outset, there is no gainsaying that the procedural justice is imbibed to provide further impetus to the substantive justice. It is this extended procedural fairness provided by the national courts, which adds to the legitimacy and commends support of general public. On the other hand, we must be mindful of the legislative intention to provide for certainty and clarity. In the name of substantive justice, providing unlimited and unrestricted rights in itself will be detrimental to certainty and would lead to the state of lawlessness. In this regard, this Court needs to recognize and harmoniously stitch the two types of justice, so as to have an effective, accurate and participatory judicial system.

Regarding the scheme of the CPC especially those related to counter-claims, the Hon'ble Court observed as follows :-

> **12.** The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints. Order VIII Rule 6-G says that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim. As per Rule 8, any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off or counter-claim may be raised by the defendant or plaintiff, as the case may be, in his written statement. Rule 9 of Order VIII prohibits presentation of pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim, except by the leave of the Court, and upon such terms as the Court thinks fit; and the provision further stipulates that the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. This amendment with respect to subsequent pleadings was made to the CPC by way of Act 22 of 2002. At the cost of repetition, we may note the conditions for filing a counter-claim under Order VIII Rule 6A-
>
> i. Counter-claim can be for claim of damages or otherwise.
> ii. Counter-claim should relate to the cause of action, which may accrue before or even after filing the suit.
> iii. If the cause of action in the counter-claim relates to one accrued after filing of suit, it should be one accruing before filing of the written statement or the time given for the same.
>
> **13.** When we look at the whole scheme of Order VIII CPC, it unequivocally points out at the legislative intent to advance the cause of justice by placing embargo on the belated filing of written statement, set-off and counter-claim.

14. We have to take note of the fact that Rule 6A was introduced in the CPC by the Code of Civil Procedure (Amendment) Act of 1976 (Act No. 104 of 1976), and before the amendment, except in money suits, counter-claim or set-off could not be pleaded in other suits. As per the recommendation of the Law Commission of India, to avoid multiplicity of proceedings, the counter-claim by way of Rule 6A was inserted in the Civil Procedure Code. The statement of objects and reasons for enacting the Code of Civil Procedure (Amendment) Act, 1976 (Act No. 104 of 1976), were-

1) A litigant should get a fair trial in accordance with the accepted principles of natural justice.
2) Every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;
3) The procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

The Hon'ble Court referred to its judgments delivered earlier on Order VIII Rule 6 and held as follows :-

18. The time limitation for filing of the counter-claim, is not explicitly provided by the Legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counter-claim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order VIII Rule 6A. Having said so, this does not mean that counter-claim can be filed at any time after filing of the written statement. As counter-claim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the time-barred suits cannot be entertained under the guise of the counter-claim just because of the fact that the cause of action arose as per the parameters of Order VIII Rule 6A.

19. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filling of the counter-claim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counter-claim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter-claim, should adopt a balanced approach keeping in mind the object behind the amendment and to sub-serve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counter-claim after the

issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the CPC.

20. In this regard having clarified the law, we may note that the *Mahendra Kumar Case* (supra) needs to be understood and restricted to the facts of that case. We may note that even if a counter-claim is filed within the limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counter-claim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counter-claim is limited by various considerations based on facts and circumstances of each case. We may point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting counter-claim.

21. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counter-claim. This Court needs to recognize the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognized as well [refer to *Salem Advocate Bar Association Case* (supra)].

The Hon'ble Court summed-up its decision as follows :

22. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

i. Period of delay.
ii. Prescribed limitation period for the cause of action pleaded.
iii. Reason for the delay.
iv. Defendant's assertion of his right.
v. Similarity of cause of action between the main suit and the counter-claim.
vi. Cost of fresh litigation.
vii. Injustice and abuse of process.
viii. Prejudice to the opposite party.
ix. and facts and circumstances of each case.
x. In any case, not after framing of the issues.

6. *Chaitu Lal v. State of Uttarakhand, 2019 SCC OnLine SC 1496*

Decided on : 20.11.2019

Bench :- 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice Ajay Rastogi

(Attempt to commit Rape – Essentials)

Facts

The complainant-victim is the aunt of the accused-appellant. The accused-appellant had earlier also committed indecent behavior with the complainant-victim, which is the subject matter of another criminal proceeding. On 12.01.1991, the accused-appellant after seeing the complainant-victim alone took advantage of the same and attempted to molest her. On the same date at around 10:00 P.M while the complainant-victim along with her daughters was sleeping in her house, the accused-appellant entered into the house of the victim in a drunken state. While the complainant-victim was getting up from her bed, the accused-appellant pounced upon her making her fall into the bed. The accused-appellant thereafter lifted her petticoat, sat upon her and attempted to commit rape. Upon hearing the noise, the daughter of the complainant-victim (P.W.2) got up and beseeched the accused-appellant to let go of her mother. Upon hearing the commotion, certain other villagers interfered, accused-appellant ran away after threatening the complainant-victim. Thereafter, the complainant-victim narrated the entire incident to her husband, pursuant to which they approached the Court of the CJM to file the complaint on 16.01.1991.

The trial court, vide order dated 08.05.1992, convicted the accused-appellant for offence under Section 354, pursuant to which he was directed to undergo one-year rigorous imprisonment. He was further convicted for offence under Section 511 read with Section 376 IPC and was directed to undergo rigorous imprisonment for two years and to pay a fine of Rs. 200/-. Aggrieved, the accused-appellant approached the High Court in Criminal Appeal No. 144 of 2006. The High Court vide impugned judgment dated 27.03.2009 dismissed the appeal and upheld the order of conviction passed by the trial court. Aggrieved by the aforesaid dismissal, the accused-appellant approached this Court by way of present appeal.

Observations and Decision

Regarding the question as to what constitutes the offence of an attempt to commit rape, the Hon'ble Court relied on its decision on *Aman Kumar v. State of Haryana, (2004) 4 SCC 379* wherein it had been held as follows :-

> "**11.** In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part..."

The Hon'ble Court, relying on the principles governing the offence of attempt under Section 511 of the IPC, and discussing the judgment of ***Tarkeshwar Sahu v. State of Bihar (Now Jharkhand), (2006) 8 SCC 560***, further held as follows :-

> **9.** The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. In the present case, the accused-appellant pounced upon the complainant-victim, sat upon her and lifted her petticoat while the complainant-victim protested against his advancements and wept. The evidence of the daughter (P.W.2) also reveals that she pleaded with the accused-appellant to spare her mother. In the meantime, hearing such commotion, other villagers intervened and threatened the accused of dire consequences pursuant to which the accused ran away from the scene of occurrence. Here, the evidence of independent witness Sohan Lal (P.W.4) assumes significance in corroborating the events on the date of occurrence, wherein he has averred that at around 10:00 p.m, he heard noise coming from the house of complainant-victim, pursuant to which he saw the accused-appellant's wife holding his neck coming out from the house of the complainant-victim. P.W.-4 had also overheard the complainant-victim complaining that the accused-appellant was quarreling with her.
>
> **10.** Herein, although the complainant-victim and her daughter were pleading with the accused to let the complainant-victim go, the accused-appellant did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the accused-appellant would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.
>
> **11.** The counsel on behalf of the accused-appellant placed reliance upon the case of *Tarkeshwar Sahu* v. *State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560 to claim the benefit of acquittal for offence under Section 511 read with Section 376 of IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the accused-appellant in forcibly entering the house of the complainant-victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.

7. *Rekha Murarka v. State of West Bengal and Another (2019 SCC OnLine SC 1495)*

Decided on : 20.11.2019

Bench :- 1. Hon'ble Mr. Justice Mohan M. Shantanagoudar
2. Hon'ble Mr. Justice Deepak Gupta

(The extent to which a victim's counsel can participate in the prosecution of a case)

Facts

The Appellant herein is the widow of one Gyan Prakash Murarka ("the deceased"), who is alleged to have been stabbed and murdered by Respondent No. 2 herein on 16.01.2014. The Appellant is also said to have sustained serious injuries while trying to save her husband. Bowbazar Police Station Case No. 19 of 2014 came to be registered against Respondent No. 2 and on 18.12.2015, charges was framed against him for the commission of offences punishable under Sections 302 and 326 of the Penal Code, 1860. Respondent No. 2 pleaded not guilty and the trial began before the Sessions Court.

While the evidence was being recorded, the Appellant sought an expeditious trial of the case, which was allowed. Subsequently, on 10.07.2018, she filed another application under Section 301 read with the proviso to Section 24(8) of the Code of Criminal Procedure, 1973 ("the CrPC") praying for the following reliefs:

> "(a) to advance oral argument in support of question of law and fact only after the learned Public Prosecutor, if so required;
> (b) to raise objection in case any irrelevant question is put to any prosecution witness, if so required;
> (c) to examine the prosecution witnesses only after the learned Public Prosecutor, if so required;
> (d) to cross-examine the defence witnesses, if adduced, only after the learned Public Prosecutor, if so required;
> (e) to assist the process of justice in accordance with law;
> (f) pass such further or other order(s) and/or direction(s) as it may deem fit and proper."

The learned Additional District and Sessions Judge, Fast Track Court, Calcutta rejected the said prayer. This was done on the basis that the right of a victim or private individual to participate in the prosecution of a Sessions trial is restricted, and the prosecution is subject to the control of the Public Prosecutor. It was observed that Section 301 of the CrPC does not have an overriding effect over Section 225, which mandates that the prosecution be conducted by the Public Prosecutor. However, in view of Section 301(2) of the CrPC, the learned Judge gave permission to the de facto Complainant to furnish written arguments after the completion of the arguments of the prosecution.

This order was challenged before the Hon'ble High Court of Calcutta. Vide the impugned judgment, the High Court affirmed the order of the Sessions Judge, discussing the crucial role played by the Public Prosecutor in a Sessions trial. Alluding to Section 225 of the CrPC, it was held that the mandate therein that a Sessions trial *shall* be conducted by a Public Prosecutor is unequivocal and cannot be diluted by the proviso to Section 24(8), which allows the victim to engage a counsel to assist the prosecution. Drawing a distinction between *assisting* the prosecution and *conducting* it, the High Court took note of instances where allowing a free hand to the victim's counsel may hamper the prosecution's case and impact the fairness of the trial. In view of this, it was held that the request of the victim's counsel to cross-examine the defence witnesses after the Public Prosecutor could not be allowed. Accordingly, C.R.R. No. 2357 of 2018 was dismissed. Hence, this appeal.

Observations and Decision

Regarding the role of a prosecutor in a criminal case, the Hon'ble Court held as follows:-

> **12.** In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.
>
> *******
>
> **14.** From a reading of these provisions, it is clear that a Public Prosecutor is entrusted with the responsibility of conducting the prosecution of a case. That this is a crucial role is evident from conditions such as in Section 24(7), which stipulates a minimum legal experience of seven years for a person to be eligible to be a Public Prosecutor. It is further clear from a joint reading of Section 301 and the proviso to Section 24(8) that the two provisions are mutually complementary. There is no bar on the victim engaging a private counsel to assist the prosecution, subject to the permission of the Court.

Regarding the extent of the assistance of a victim's counsel, the Hon'ble Court held as follows:-

> **18.** The use of the term "*assist*" in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words "*co-ordinate with the prosecution*". However, a change was later proposed and in the finally adopted version, the words "*co-ordinate with*" were substituted by "*assist*". This change is reflective of an intention to only assign a

> supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

The Hon'ble Court discussed the right of the victims in assisting the prosecution and the dangers of jeopardizing a fair trial by over-exceeding the exercise of the right or by the improper exercise thereof and held as follows:-

> **21.** In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is *subject* to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points *through* the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.
>
> **22.** However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 of the CrPC or Section 165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in *Smt. Uma Saha* v. *State of Tripura* (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.

8. *N.Mohan v. R. Madhu (2019 SCC OnLine SC 1497)*

Decided on : 21.011.2019

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

An appeal under Section 96(2) CPC is a statutory right and the defendant cannot be deprived of the statutory right merely on the ground that earlier, the application filed under Order IX Rule 13 CPC as dismissed. However, when the defendant files an appeal under Section 96(2) CPC against an *ex-parte* decree and if the said appeal is dismissed, thereafter, he cannot file an application under Order IX Rule 13 CPC

Facts

The appellant-defendant is a businessman doing business of tea and real estate. Case of the respondent-plaintiff is that on 10.01.2015, the appellant approached the respondent-plaintiff for financial assistance for a sum of Rs. 45,00,000/- for the purpose of his business needs. The respondent lent him the sum of Rs. 45,00,000/- and there was no documentation for the same. According to the respondent, it was agreed that the said amount will be returned to the respondent with an interest of 18% per annum. The appellant agreed to return the said amount within two months; but the appellant did not pay the amount. On the other hand, the appellant is said to have issued two post-dated cheques to the respondent, one for an amount of Rs. 25,00,000/- and another for an amount of Rs. 20,00,000/-. When the said cheques were presented for collection on 10.03.2015, the same were returned with the endorsement that "payments stopped by the drawer". The respondent-plaintiff filed a civil suit being before the Additional District Judge, Tiruchirappalli. The said suit was decreed *ex-parte* on 09.10.2015.

The appellant-defendant filed an IA under Section 5 of the Limitation Act to condone the delay of 276 days in filing the petition under Order IX Rule 13 CPC to set aside the *exparte* decree. In the said application, the appellant stated that summons was sent to the appellant's old address at Trichy and the same was returned unserved and the *ex-parte* decree was passed on 09.10.2015. It was averred in the said application that the appellant had been residing in Chennai since January, 2014. The appellant alleged that when he went to attend a case in CC No. 240/2016 at Karur Court on 29.07.2016, he came to know about the passing of the *ex-parte* decree in OS No. 76 of 2015. Thereafter, the appellant took steps to set aside the *ex-parte* decree and filed application under Section 5 of the Limitation Act to condone the delay of 276 days in filing the petition under Order IX Rule 13 CPC to set aside the *ex-parte* decree. The said petition was dismissed by the Additional District Judge by order dated 04.01.2017. The appellant challenged the said order by filing revision being before the High Court. Rejecting the contention of the appellant that he had been residing in Chennai, the learned Single Judge dismissed the said revision being by order dated

08.02.2017. The SLP preferred against the said order also came to be dismissed by the Supreme Court by order dated 07.04.2017.

After the dismissal of the SLP by the Supreme Court, the appellant-defendant filed the first appeal challenging the decree passed in OS No. 76 of 2015 dated 09.10.2015 along with application praying to condone the delay of 546 days in filing the appeal. In the said application, the appellant raised the very same grounds that he is having residence at Chennai and that the summons was not served on him and that summons was taken to Trichy's address and thereafter, *ex-parte* decree was passed against him on 09.10.2015 and hence, prayed for condonation of delay. The High Court dismissed the application for condonation of delay on the ground that in the earlier proceedings under Order IX Rule 13 CPC, the appellant has stated the same reasons to set aside the *ex-parte* decree and that the reasons so stated by the appellant was not accepted by the trial court, High Court and the Supreme Court. Pointing out that the appellant has chosen belatedly to file the first appeal in time, the High Court has dismissed the application for condonation of delay of 546 days in filing the first appeal. Being aggrieved, the appellant has filed this appeal.

Observations and Decisions

The Hon'ble Court formulated the following issues :-

(i) After dismissal of the application filed under Order IX Rule 13 CPC for condonation of delay in filing the appeal, whether the appeal filed under Section 96(2) CPC against the *ex-parte* decree dated 09.10.2015 is maintainable?

(ii) Whether the time spent in the proceedings to set aside the ex-parte decree be taken as "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1908 so as to condone the delay in preferring the first appeal?

To answer the aforementioned issues, the Hon'ble Court referred to the judgments rendered in ***Bhanu Kumar Jain v. Archana Kumar (2005) 1 SCC 787, Deepal Girishbhai Soni v. United India Insurance Co. Ltd. (2004) 5 SCC 385, Chandravathi P.K. v. C.K. Saji (2004) 3 SCC 734, Neerja Realtors (P) Ltd. v. Janglu (Dead) Through Legal Representative (2018) 2 SCC 649,*** **and in** ***Bhivchandra Shankar More v. Balu Gangaram More (2019) 6 SCC 387*** and set aside the impugned judgment holding as follows:-

> **14.** The defendant against whom an *ex-parte* decree is passed, has two options. First option is to file an application under Order IX Rule 13 CPC and second option is to file an appeal under Section 96(2) CPC. The question to be considered is whether the two options are to be exercised simultaneously or can also be exercised consecutively. An unscrupulous litigant may, of course, firstly file an application under Order IX Rule 13 CPC and carry the matter up to the highest forum; thereafter may opt to file appeal under Section 96(2) CPC challenging the *ex-parte* decree. In that event, considerable time would be lost for the plaintiff. The question falling for consideration is that whether the remedies provided as simultaneous can be converted into consecutive remedies.
>
> **15.** An appeal under Section 96(2) CPC is a statutory right, the defendant cannot be deprived of the statutory right merely on the ground that earlier, the application filed

under Order IX Rule 13 CPC was dismissed. Whether the defendant has adopted dilatory tactics or where there is a lack of *bona fide* in pursuing the remedy of appeal under Section 96(2) of the Code, has to be considered depending upon the facts and circumstances of each case. In case the court is satisfied that the defendant has adopted dilatory tactics or where there is lack of *bona fide*, the court may decline to condone the delay in filing the first appeal under Section 96(2) CPC. But where the defendant has been pursuing the remedy *bona fide* under Order IX Rule 13 CPC, if the court refuses to condone the delay in the time spent in pursuing the remedy under Order IX Rule 13 CPC, the defendant would be deprived of the statutory right of appeal. Whether the defendant has adopted dilatory tactics or where there is lack of *bona fide* in pursuing the remedy of appeal under Section 96(2) of the code after the dismissal of the application under Order IX Rule 13 CPC, is a question of fact and the same has to be considered depending upon the facts and circumstances of each case.

16. When the defendant filed appeal under Section 96(2) CPC against an *ex-parte* decree and if the said appeal has been dismissed, thereafter, the defendant cannot file an application under Order IX Rule 13 CPC. This is because after the appeal filed under Section 96(2) of the Code has been dismissed, the original decree passed in the suit merges with the decree of the appellate court. Hence, after dismissal of the appeal filed under Section 96(2) CPC, the appellant cannot fall back upon the remedy under Order IX Rule 13 CPC.

9. *Shiv Sena and Others v. Union of India and Others, (2019 SCC OnLine SC 1502)*

Decided on : 26.11.2019

Bench :- 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice Ashok Bhushan
3. Hon'ble Mr. Justice Sanjiv Khanna

(Article 212 and scope of directions by the Court for "floor test")

Facts

There existed a pre-poll alliance between the Bharatiya Janata Party (for short "BJP") and Shiv Sena, who contested the Fourteenth Maharashtra Legislative Assembly elections jointly. On 24-10-2019, the results for the aforesaid elections were declared and no single party had the requisite majority in the House. On 9-11-2019, the Governor called upon the BJP to indicate its willingness to form the Government, being the single largest party with 105 seats. However, the BJP declined to form the Government on 10-11-2019, as the alliance with Shiv Sena allegedly broke down. Subsequently, the Governor invited Shiv Sena to form the Government. In this regard, Shiv Sena is said to have shown its willingness to stake a claim to form the Government, claiming to have support of the majority. However, the aforesaid endeavour was not fruitful either. Thereafter, the Governor's effort to seek the Nationalist Congress Party's (for short "NCP") willingness to stake a claim to form the Government was also not successful. Ultimately, the Governor recommended President's Rule on 12-11-2019, which was imposed by a Presidential Proclamation on the same day.

At 5.47 a.m., on 23-11-2019, the President's Rule was revoked in exercise of powers conferred by clause (2) of Article 356 of the Constitution. Thereafter, the Governor, by Letter dated 23-11-2019 invited Respondent 3 to form the Government. The oath of office and secrecy was administered accordingly to Respondents 3 and 4 at around 8.00 a.m. on 23-11-2019 at Raj Bhavan, Mumbai.

Aggrieved by the Governor's action in calling upon Respondent 3 to form the Government, the petitioners have approached this Court under Article 32 of the Constitution on 23-11-2019 with the following prayers:

(a) Pass an appropriate writ/order/direction declaring that action/order of the Hon'ble Governor dated 23-11-2019 inviting Shri Devendra Fadnavis to form the Government on 23-11-2019 as unconstitutional, arbitrary, illegal, void ab initio, and violative of Article 14 of the Constitution of India; and accordingly quash the same;

(b) Pass an appropriate writ/order/direction to the Hon'ble Governor to invite the alliance of Maha Vikas Aghadi comprising of Shiv Sena, Indian National Congress and the Nationalist Congress Party which has the support of more than 144 MLAs to form the Government under the leadership of Shri Uddhav Thackeray

Observations and Decision

The Hon'ble Court began the judgment in the following words :-

> **1.** There is no gainsaying that the boundaries between the jurisdiction of courts and parliamentary independence have been contested for a long time. [Erskine May, *Parliamentary Practice*, 25th Edn., 321 (2019).] However, there is a need and requirement for recognising institutional comity and separation of powers so as to tailor judicial interference in the democratic processes only as a last resort. This case pertains to one such situation, wherein this Court is called upon to adjudicate and maintain democratic values and facilitate the fostering of the citizens' right of good governance.

The Hon'ble Court referred to the decisions rendered in ***Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, 2019 SCC OnLine SC 1454*** to discuss the importance of constitutional morality by constitutional functionaries and further referred to the case of ***Union of India v.Harish Chandra Singh Rawat, (2016) 16 SCC 744*** wherein it had been held as follows:-

> "*30.* ... This Court, being the sentinel on the qui vive of the Constitution is under the obligation to see that the democracy prevails and not gets hollowed by individuals. The directions which have been given on the last occasion, were singularly for the purpose of strengthening the democratic values and the constitutional norms. The collective trust in the legislature is founded on the bedrock of the constitutional trust."

The Hon'ble Court after referring to the decisions of the Supreme Court in ***S.R. Bommai v. Union of India, (1994) 3 SCC 1*** and the opinions expressed in the *Sarkaria Commission* and in *Rajmannar Committee,* held as follows:-

> **20.** In a situation wherein, if the floor test is delayed, there is a possibility of horse trading, it becomes incumbent upon the Court to act to protect democratic values. An immediate floor test, in such a case, might be the most effective mechanism to do so.....

Regarding the Scope of Article 212 of the Constitution, the Hon'ble Court relied on the decision[6] of ***Jagdambika Pal v. Union of India, (1999) 9 SCC 95*** and of ***Anil Kumar Jha v. Union of India, (2005) 3 SCC 150,*** and held as follows:-

> **22.** Ex facie, Article 212 of the Constitution, relied on by the respondents, would have no application as it relates to validity of proceedings in the legislature of a State that cannot be called in question in any court on the ground of any alleged irregularity of procedure. Clause (2) states that no officer or member of the legislature of a State, in whom powers are vested by or under the Constitution for regulating the procedure, conduct of business or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect of exercise of those powers by him. Clause (2) has no application because no act of any officer or member of the legislature of the State has been made the subject-matter of the present petition before this Court. This Court, nearly two decades back,

[6] *See* also, *Chandrakant Kavlekar* v. *Union of India*, (2017) 3 SCC 758; *G. Parmeshwara* v. *Union of India*, (2018) 16 SCC 46

in *Jagdambika Pal* v. *Union of India* [*Jagdambika Pal* v. *Union of India*, (1999) 9 SCC 95] , had passed an order, after hearing counsel for the petitioner and the caveators, directing that a special session of the Uttar Pradesh Assembly will be summoned/convened after two days on 26-2-1998 with the following directions: (SCC p. 96, paras 1-3)

> "*1.* ... (*ii*) The only agenda in the Assembly would be to have a composite floor test between the contending parties in order to see which out of the two contesting claimants of Chief Ministership has a majority in the House.
>
> (*iii*) It is pertinently emphasised that the proceedings in the Assembly shall be totally peaceful and disturbance, if any, caused therein would be viewed seriously.
>
> (*iv*) The result of the composite floor test would be announced by the Speaker faithfully and truthfully.
>
> *2.* The result is expected to be laid before us on 27-2-1998 at 10.30 a.m. when this Bench assembles again.
>
> *3.* Ancillary directions are that this order shall be treated to be a notice to all the MLAs, leaving apart the notices the Governor/Secretariat is supposed to issue. In the interregnum, no major decisions would be made by the functioning Government except attending to routine matters, not much of any consequence."

The Hon'ble Court also issued the following directions:-

> **27.** We may note that in the present case, oath has not been administered to the elected members even though a month has elapsed since the declaration of election results. In such emergent facts and circumstances, to curtail unlawful practices such as horse trading, to avoid uncertainty and to effectuate smooth running of democracy by ensuring a stable Government, we are of the considered opinion that it is necessary to pass certain interim directions in this case. In this context, it is necessary and expedient to conduct the floor test as soon as possible to determine whether the Chief Minister, who was administered the oath of office, has the support of the majority or not. Since the elected members of the Legislative Assembly are yet to take oath as specified in Schedule III of the Constitution, and the Speaker is also yet to be elected, we request the Governor of the State of Maharashtra to ensure that a floor test be held on 27-11-2019. The following procedure is to be followed for conducting the floor test:
>
> 27.1 *Pro tem* Speaker shall be solely appointed for the aforesaid agenda immediately.
>
> 27.2 All the elected members shall take oath on 27-11-2019, which exercise should be completed before 5.00 p.m.
>
> 27.3 Immediately thereafter, the *pro tem* Speaker shall conduct the floor test in order to ascertain whether Respondent 3 has the majority, and these proceedings shall be conducted in accordance with law. The floor test will not be conducted by secret ballot.

27.4 The proceedings have to be live telecast, and appropriate arrangements are to be made to ensure the same.

10. *Karnataka State Pollution Control Board v. B.Heera Naik and Others, (2019 SCC OnLine SC 1528)*

Decided on : 26.11.2019

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

(Whether Commissioner of City Municipal Council and Chief Officers of City Municipal Council can be prosecuted under Section 48[7] of the Water (Prevention and Control of Pollution) Act, 1974?)

Issue

Whether Commissioner of City Municipal Council and Chief Officers of City Municipal Council can be prosecuted under Section 48 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "Act, 1974")?

By these appeals, the Karnataka State Pollution Control Board challenged the judgment of High Court of Karnataka by which applications under Section 482 Cr.P.C. filed by the respondents, who were working as Municipal Commissioner and Chief Officers of Municipal Council, were allowed and the proceeding initiated for their prosecution by appellant under the Act, 1974 has been quashed.

Observations and Decisions

The Hon'ble Court held that to bring the respondents within the purview of Section 48, it is essential to establish that they were the Head of the concerned Department. The Hon'ble Court held as follows :-

11. Section 48 of the Act, 1974 provides that "Where an offence under the Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly……". The heading of the section is "Offences by Government Departments". Section 48, thus, is attracted

[7] **48. Offences by Government Departments.--** Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

where the offence is committed by any Department of Government. The question to be answered, thus, is as to whether Commissioner of City Municipal Council or Chief Officer of City Municipal Council constituted under the Karnataka Municipalities Act, 1964 can be treated to be the Head of the Department of any Department of Government. ……

City and Town Municipal Councils, as per Section 10 of the Karnataka Municipalities Act, is "a body corporate". Similarly, under the Karnataka Municipal Corporations Act, 1976, the Municipal Corporations are constituted as Corporation by virtue of Section 10. The Hon'ble Court referring to the decision of ***Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489***, held :-

> **13.** The concept of creating body corporate and corporation to carry out the functions of the Government is a modern concept of the Government. The modern Governments have undertaken on themselves large functions touching the life of its citizens, inhabitants. The Scheme underlying the Constitution of India entrust and oblige the Governments to carry out different functions for achieving the constitutional objectives to secure justice, liberty equality and fraternity. .....

Tests for determining whether an incorporation is a Department of the Government:-

The Hon'ble Court held as follows:-

> **15.** The Scheme of the Act as delineated by above provision indicate that there are separate members to represent the Government in the Board, separate members to represent the local authorities functioning in the State and separate members to represent the companies or corporations owned, controlled or managed by the State Government. The Government, local authorities and companies or corporations owned, controlled or managed by the State Government are all different expressions used in the Act. Whether an institution is a corporation or a Department of the Government has to be found out from the Scheme under which it has been created. One of the tests to find out as to whether an institution is a Corporation or a Department of the Government is to enquire whether the undertaking functions as a responsible independent organisation and not as part of any Department of the State. Second test would be to see whether it is endowed with the capacity to contract obligations and of suing and being sued. Further, the power to possess, use and change a seal is incidental to a corporation and a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal. The Karnataka Municipalities Act, 1964 as noted above, provides for a Town and City Municipal Councils as a body corporate. The control of the State Government on the Municipality is provided in a separate chapter, i.e., Chapter XII. The Scheme of constitution of Municipal area and other provisions of Act, 1964 clearly indicate that Municipalities are not a Department of the Government.
>
> **16.** We may also notice the constitutional provisions of Part IXA, "the Municipalities" inserted by Constitution (Seventy Fourth) Amendment Act, 1992. Article 243P sub-clause (e) defines "Municipality" as an institution of self-Government constituted under Article 243Q. The Constitution also envisages Municipality as a body of self-Government. The provisions of the Act, 1964 and Act, 1974 makes it clear that City Municipal Council cannot be treated as Department of the State Government. After having found that City Municipal

Council is not Department of the Government - whether they are immuned from prosecution under Act, 1974 is the next question to be answered.

17. Chapter VII of the Act, 1974 deals with penalties and procedure. Section 41, which provides for punishment and penalty begins with phrase "whoever fails to comply.....". Similarly, Section 42, which deals with penalty for certain acts also begins with the expression "whoever". Similar expression is found in Sections 43, 44 and 45A, which begins with the word "whoever". The Act, 1974, thus, envisages conviction of any person, who contravenes and violates the provisions of the Act.

18. City Municipal Council and City Municipal Corporation are created or incorporated by the State and entrusted with the Municipal functions. One of the main functions entrusted to the Corporation is to ensure clean environment to the residents, to control pollution in a Municipal area, which is one of the duties of the Municipal Council and the Corporation.

***Offences by Municipal Corporations or Municipalities*:**

The Hon'ble Court referred to several judgments[8] and held as follows:-

19. When an offence is committed by City Municipal Council or Corporation, whether they can be prosecuted under the Act, 1974 and what is the procedure for initiating proceeding for prosecution of such bodies? Section 47 of the Act, 1974 in this context is relevant. Section 47 contains a heading "offences by companies". Section 47(1) is similar to Section 48. Whether the expression "companies" as used in Section 47 can include other corporate bodies including City Municipal Council and Corporation? The answer is to be found in the Explanation to Section 47, which provides as follows:—

"Explanation.-- For the purposes of this section-

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm."

20. In a Statute, the definition of an expression has to be found out in accordance with the context and Scheme of the enactment. The definition of company is contained in the Companies Act, 1956 in Section 3. The definition of company as contained in the Companies Act, 1956 is clearly not borrowed in the expression of company as used in Section 47 of Act, 1974. The company has been defined in Section 47 of Act, 1974 in a very wide and inclusive manner. Explanation states that "company" means "**any body corporate"**. Thus, all body corporates are included within the definition of company as per Section 47. There cannot be any dispute that City Municipal Council is a body corporate, which has been clearly provided under Section 10 of Act, 1964 as noted above.

The Hon'ble Court set aside the impugned order of the High Court and specifically referring to the decision of the Patna High Court in ***Arun Kumar Singh v. The State of Bihar,*** held as follows :-

[8] *Subhash Chandra* v. *Gulab Bai*, **(2016) 4 SCC 750;** *Hakam Singh* v. *Gammon (India) Ltd.*, **(1971) 1 SCC 286;** *Ranjit Narayan Haksar* v. *Surendra Verma*, 1995 MPLJ 21; *Aneeta Hada* v. *Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661

29. Patna High Court in **Criminal Misc. No. 7268 of 2005** - *Arun Kumar Singh* v. *The State of Bihar* while noticing Section 141 specifically the Explanation held that the definition of Company as given therein is wider than the definition of Company in the Companies Act and it includes any body corporate. Paragraphs 12 and 13 of the judgment is as follows:—

> "**12.** Then so far offence under Section 138 of N.I. Act, it is apt to refer, at first, the provisions of Section 141. Section 141 of the Act reads as follows:
>
> 141. Offences by companies.
>
> (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence;
>
> Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial Corporation owned or controlled by the Central Govt. or the State Govt., as the case may be, he shall not be liable for prosecution under this Chapter.
>
> (2) ...
>
> Explanation: For the purpose of this section.
>
> (a) "Company" means any body corporate and includes a firm or other association of individuals; and
>
> (b) "director", in relating to a firm, means a partner in the firm.
>
> 13. The Explanation (a) of the above section, therefore, is clear that the definition of Company as given therein is wider than the definition of Company in the Companies Act and it includes any body corporate. Section 5 of the Patna Municipal Corporation Act also shows that the Company is a body corporate. Therefore, there cannot be any doubt that Patna Municipal Corporation is a Company under the N.I. Act."

30. The above is correct interpretation of Explanation (a) by the Patna High Court. The Explanation of Section 47 of Act, 1974 and the Explanation (a) to Section 141 of the Negotiable Instruments Act are *pari materia*.

31. We, thus, looking to the purpose and object of Act, 1974, are of the opinion that Section 47 can be resorted to for offences by body corporate and Karnataka State Pollution Control Board by filing a complaint before the Magistrate for taking cognizance of offence under Section 49 did not commit an error.

11. *Gurjit Singh v. State of Punjab, (2019 SCC Online SC 1516)*

Decided on : 26.11.2019

Bench :- 1. Hon'ble Mr. Justice Navin Sinha
2. Hon'ble Mr. Justice B.R.Gavai

(Merely because an accused is found guilty of an offence punishable under Section 498-A of the IPC and the death has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of the IPC by employing the presumption under Section 113-A of the Evidence Act. Unless the prosecution establishes that some act or illegal omission by the accused has driven the deceased to commit the suicide, the conviction under Section 306 would not be tenable.)

Issue:-

Whether when the prosecution establishes cruelty under Explanation (b) of Section 498-A of the IPC and also establishes that the deceased committed suicide within seven years of the marriage, could the accused be also held guilty for the offence punishable under Section 306 of the IPC with the aid of Section 113-A of the Indian Evidence Act?

Observations and Decision

The Hon'ble Court referred to the provisions contained in Sections 107, 306, 498A of the Indian Penal Code and in Section 113A of the Indian Evidence Act. The Hon'ble Court also referred to several judgments[9] especially of the three-judges Bench in *Ramesh Kumar v. State of Chhattisgarh*[10] wherein it had been held as follows:-

> "12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband

[9] *State of W.B.* v. *Orilal Jaiswal*, (1994) 1 SCC 73; *K. Prema S. Rao* v. *Yadla Srinivasa Rao,* (2003) 1 SCC 217; *Hans Raj* v. *State of Haryana,* (2004) 12 SCC 257; *Pinakin Mahipatray Rawal* v.*State of Gujarat,* (2013) 10 SCC 48; *Mangat Ram* v. *State of Haryana,* (2014) 12 SCC 595; *Modinsab Kasimsab Kanchagar* v. *State of Karnataka,* (2013) 4 SCC 551; *hanu Ram* v. *State of Madhya Pradesh,* (2010) 10 SCC 353; *Satish Shetty* v. *State of Karnataka,* (2016) 12 SCC 759; *Narwinder Singh* v. *State of Punjab,* (2011) 2 SCC 47.

[10] (2001) 9 SCC 618.

or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says — "Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

13. The present case is not one which may fall under clauses secondly and thirdly of Section 107 of the Penal Code, 1860. The case has to be decided by reference to the first clause i.e. whether the accused-appellant abetted the suicide by instigating her to do so."

(emphasis by Court)

The Hon'ble Court, after referring to the aforementioned judgments and provisions of law, held for the present case as follows :-

19. The court, therefore, held that the ingredients to constitute an offence under Section 306 of the IPC were already found in the charge and as such no prejudice was caused to the accused therein, though no separate charge was framed under Section 306 of the IPC. Apart from that, the evidence on record established that when the letters concealed by the husband were discovered by the wife and handed over to the father and she was driven out of the house, this cruel conduct of the husband led the wife to commit suicide. It could thus be seen, that in the facts of the said case, the Court found that the conviction under Section 306 of the IPC could be recorded. It was found that, apart from the earlier acts of harassment for parting with the land which she had received in marriage as stridhana, there was an act of driving the deceased out of the house which had direct nexus with the deceased committing suicide.

******

27. It could thus be seen, that the view taken by the three-Judge Bench of this Court in the case of *Ramesh Kumar*(supra) that when a case does not fall under clause secondly or thirdly, it has to be decided with reference to the first clause, i.e., whether the accused has abetted the commission of suicide by intentionally instigating her to do so; has been consistently followed. As such, we are of the view that merely because an accused is found guilty of an offence punishable under Section 498-A of the IPC and the death has occurred within a period of seven years of the marriage, the accused cannot be automatically held guilty for the offence punishable under Section 306 of

the IPC by employing the presumption under Section 113-A of the Evidence Act. Unless the prosecution establishes that some act or illegal omission by the accused has driven the deceased to commit the suicide, the conviction under Section 306 would not be tenable.

****

33. Applying the aforesaid principles to the present case, we find that though the prosecution is successful in proving the case under Section 498-A of the IPC, we are of the view that the prosecution has failed to prove that the cruelty was of such a nature which left no choice to the deceased than to commit suicide. The prosecution has not been in a position to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide. We are of the view, that there is no material placed on record to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption.

34. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In the case of *Sanju Alias Sanjay Singh Sengar* v. *State of M.P.*[11] this Court found that there was time gap of 48 hours between the accused telling the deceased 'to go and die' and the deceased 'committing suicide'. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased.

35. Another aspect that needs consideration is that the cases wherein this Court has held that the conviction under Section 306 of the IPC was tenable though charge was only under Section 304-B of the IPC, it was found the charge specifically stated that the deceased was driven to commit suicide on account of cruelty meted out to the deceased. .....

36. It would thus be seen, that the charge does not state that the deceased was driven to commit suicide on account of the harassment meted out to the deceased. It also does not mention that the accused had abetted in commission of suicide by the deceased. In that view of the matter, we are of the considered view that the cases wherein conversion is held to be permissible are clearly distinguishable.

37. In the foregoing circumstances, the appeals are partly allowed. Conviction under Section 498-A of the IPC is maintained and the conviction under Section 306 of the IPC is set aside. The appellant is acquitted of the charge under Section 306 of the IPC.

(emphasis supplied)

12. *Hindustan Construction Company Limited v. Union of India, (2019 SCC OnLine SC 1520)*

Decided on : 27.11.2019

Bench :- 1. Hon'ble Mr. Justice R.F.Nariman
2. Hon'ble Mr. Justice Surya Kant
3. Hon'ble Mr. Justice V. Ramasubramanian

(The deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution of India)

Facts

The Writ Petitions seek to challenge the constitutional validity of Section 87 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act, 1996") as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 (hereinafter referred to as the "2019 Amendment Act") and brought into force with effect from 30.08.2019. They also seek to challenge the repeal (with effect from 23.10.2015) of Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as the "2015 Amendment Act") by Section 15 of the 2019 Amendment Act.

Decision and Observations

At the outset, the Apex court adverted to Section 36 of the Arbitration Act, 1996 and the judgments interpreting it[11] and stated as follows:

> **30.** Thus, the reasoning of the judgments in *NALCO* (supra), and *Fiza Developers and Intra-trade Pvt. Ltd.* (supra) being *per incuriam* in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly.[1] The fact that *NALCO* (supra) has been followed in *National Buildings Construction Corporation Ltd.* v. *Lloyds Insulation India Ltd.* (supra) does not take us any further, as *National Buildings Construction Corporation Ltd.* (supra) in following *NALCO* (supra), a per incuriam judgement, also does not state the law correctly. Thus, it is clear that the automatic-stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36 - even as originally enacted - is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a

[11] *Chloro Controls (I) Pvt. Ltd.* v. *Seven Trent Water Purification Inc.* (2013) 1 SCC 641, *National Aluminum Company Ltd. (NALCO)* v. *Pressteel & Fabrications (P) Ltd.* 2004 1 SCC 540, *National Buildings Construction Corporation Ltd.* v. *Lloyds Insulation India Ltd.* (2005) 2 SCC 367, *Fiza Developers and Inter-trade Pvt. Ltd.* v. *AMCI (India) Pvt. Ltd.* (2009) 17 SCC 796, *Leela Hotels Ltd.* v. *Housing and Urban Development Corporation Ltd.* (2012) 1 SCC 302

final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court.

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35. Given the fact that we have declared that the judgments in *NALCO* (supra), *National Buildings Construction Corporation Ltd.* (supra) and *Fiza Developers* (supra) have laid down the law incorrectly, it is also clear that the amended Section 36, being clarificatory in nature, merely restates the position that the unamended Section 36 does not stand in the way of the law as to grant of stay of a money decree under the provisions of the CPC.

Regarding the constitutional challenge to the 2019 Amendment Act, The Apex court was of the opinion that:

53. This now sets the stage for the examination of the constitutional validity of the introduction of Section 87 into the Arbitration Act, 1996, and deletion of Section 26 of the 2015 Amendment Act by the 2019 Amendment Act against Articles 14, 19(1)(g), 21 and Article 300-A of the Constitution of India. The Srikrishna Committee Report recommended the introduction of Section 87 owing to the fact that there were conflicting High Court judgments on the reach of the 2015 Amendment Act at the time when the Committee deliberated on this subject. ....

54. The Srikrishna Committee Report is dated 30.07.2017, which is long before this Court's judgment in the *BCCI case* (supra). Whatever uncertainty there may have been because of the interpretation by different High Courts has disappeared as a result of the *BCCI* judgment (supra), the law on Section 26 of the 2015 Amendment Act being laid down with great clarity. To thereafter delete this salutary provision and introduce Section 87 in its place, would be wholly without justification and contrary to the object sought to be achieved by the 2015 Amendment Act, which was enacted pursuant to a detailed Law Commission report which found various infirmities in the working of the original 1996 statute. Also, it is not understood as to how "uncertainty and prejudice would be caused, as they may have to be heard again", resulting in an 'inconsistent position'. The amended law would be applied to pending court proceedings, which would then have to be disposed of in accordance therewith, resulting in the benefits of the 2015 Amendment Act now being applied. To refer to the Srikrishna Committee Report (without at all referring to this Court's judgment) even after the judgment has pointed out the pitfalls of following such provision, would render Section 87 and the deletion of Section 26 of the 2015 Amendment Act manifestly arbitrary, having been enacted unreasonably, without adequate determining principle, and contrary to the public interest sought to be subserved by the Arbitration Act, 1996 and the 2015 Amendment Act. This is for the reason that a key finding of the *BCCI* judgment (supra) is that the introduction of Section 87 would result in a delay of disposal of arbitration proceedings, and an increase in the interference of courts in arbitration matters, which defeats the very object of the Arbitration Act, 1996, which was strengthened by the 2015 Amendment Act.

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57. Also, it is important to notice that the Srikrishna Committee Report did not refer to the provisions of the Insolvency Code. After the advent of the Insolvency Code on 01.12.2016, the consequence of applying Section 87 is that due to the automatic-stay doctrine laid down by judgments of this Court - which have only been reversed today by the present judgment - the award-holder may become insolvent by defaulting on its payment to its suppliers, when such payments would be forthcoming from arbitral awards in cases where there is no stay, or even in cases where conditional stays are granted. Also, an arbitral award-holder is deprived of the fruits of its award - which is usually obtained after several years of litigating - as a result of the automatic-stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic-stays of arbitral awards, exposing such award-holders to the rigors of the Insolvency Code. For all these reasons, the deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution of India.

13. *Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi), (2019 SCC OnLine SC 1522)*

Decided on : -27.11.2019

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Sanjiv Khanna

(A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby.)

Facts

The impugned judgment dated 7th January 2009 passed by the High Court of Delhi upholds conviction of Vinod Kumar Garg ('the appellant', for short) under Sections 7 and 13 of the Prevention of Corruption Act, 1988 ('the Act', for short) imposed by the Special Judge, Delhi vide judgment dated 27th March 2002. The appellant has been sentenced to undergo rigorous imprisonment for one and a half years, and fine of Rs. 1,000/- for each offence and in default of payment to undergo simple imprisonment for three months on both counts separately. The sentences have been directed to run concurrently. The appellant has challenged the conviction.

Decision and Observations

On the question of demand and payment of bribe for performance of public dutyor forbearance to perform such duty, the Apex Court referred to Section 20 of the Prevention of Corruption Act, 1988 and stated as follows:

> **14.** The statutory presumption under Section 20 of the Act can be confuted by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than for the motive or the reward under Section 7 of the Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.
>
> **15.** In the case at hand, the condition precedent to drawing such a legal presumption that the accused has demanded and was paid the bribe money has been proved and established by the incriminating material on record. Thus, the presumption under Section 20 of the Act becomes applicable for the offence committed by the appellant under Section 7 of the Act. The appellant was found in possession of the bribe money and no reasonable explanation is forthcoming that may rebut the presumption. Further, the recovery of the money from the pocket of the appellant has also been proved without doubt. We, therefore, hold that money was demanded and accepted not as a legal remuneration but as a motive or reward to provide electricity connection to Nand Lal (PW-2) for the shed.

Further, on the objections raised by the appellant against the sanction order, the Apex Court referred to *Mohd. Iqbal Ahmed v. State of A.P.*[12] and *State of Karnataka v. Ameerjan*[13] to

[12] (1979) 4 SCC 172

state that the requirement of law is the application of mind by the Sanctioning Authority on the material placed before it to satisfy itself of *prima facie* case that would constitute the offence. While rejecting the contention of the appellant, ***State of Maharashtra v. Mahesh G. Jain***[14] was relied upon in which following principles of law governing the validity of sanction were laid down:

> "14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
> 14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.
> 14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
> 14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
> 14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
> 14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.
> 14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

Regarding the validity of investigation, the Apex Court referred to ***Ashok Tshering Bhutia v. State of Sikkim***[15] wherein referring to earlier precedents it has been observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. The Apex Court concluded in para 25 of the judgment:

> 25. [...] Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.

[13] (2007) 11 SCC 273
[14] (2013) 8 SCC 119
[15] (2011) 4 SCC 402

14. R.R.Inamdar v. State of Karnataka, (2019 SCC Online SC 1603)

Decided on : 28.11.2019

Bench :- 1. Hon'ble Mr. Justice Dhananjaya Y. Chandrachud
2. Hon'ble Mr. Justice Ajay Rastogi

(There can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts. Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution.)

Facts

The appeal relates to the services of the appellant and the fifth respondent in an institution known as Sri Jagadaguru Annadaneshwari High School at Mundaragi, Gadag District of the State of Karnataka. The fifth respondent was appointed as a teacher on 2 November 1988 and is senior to the appellant, who was appointed on 1 December 1990. The appellant belongs to a Scheduled Caste. On the retirement of the then incumbent Lecturer in English on 31 March 2002, the post fell vacant. The appellant was promoted to the post on 28 September 2002 on the basis of roster points. The appointment of the appellant was approved by the Director of Pre-University Education on 28 September 2002. The fifth respondent challenged the approval initially by filing a writ petition before the Karnataka High Court. By an order dated 2 March 2005, the fifth respondent was relegated to the remedy of a revision before the Director of Pre-University Education, Bangalore. The revision and a further review came to be dismissed by the Director of Pre-University Education on 3 May 2006 and by the Commissioner on 23 February 2007. The Government of Kerala dismissed the appeal filed by the fifth respondent on 12 November 2008. The fifth respondent then moved the High Court in a writ petition under Article 226 which was allowed by a judgment of the learned Single Judge dated 1 October 2015. The learned Single Judge held that the post of Lecturer in English was a solitary post and in view of the law laid down by this Court in *State of Karnataka* v. *K Govindappa*[16], the post could not have been reserved. This view of the learned Single Judge was approved in a writ appeal by the Division Bench on 17 November 2015 which gave rise to the proceedings before this Court.

Observations and Decision

The Hon'ble Court referred to the decisions rendered in ***Post Graduate Institute of Medical Education and Research* v. *Faculty Association***[17], ***Dr. Chakradhar Paswan* v. *State of***

[16] (2009) 1 SCC 1.
[17] (1998) 4 SCC 1.

Bihar[18], *State of Uttar Pradesh* **v.** *Bharat Singh*[19], *Sanjeev Kumar* **v.** *State of Uttar Pradesh*[20] *and in State of Karnataka* **v.** *K Govindappa*[21], wherein it had been held as follows:-

> "While there can be no difference of opinion that the expressions "cadre", "post" and "service" cannot be equated with each other, at the same time the submission that single and isolated posts in respect of different disciplines cannot exist as a separate cadre cannot be accepted. **In order to apply the rule of reservation within a cadre, there has to be plurality of posts. Since there is no scope of interchangeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. In the absence of duality of posts, if the rule of reservation is to be applied, it will offend the constitutional bar against 100% reservation as envisaged in Article 16(1) of the Constitution.**"
>
> (emphasis by Court)

Regarding the present case, the Hon'ble Court held :-

> **9.** ..... The principle which has been enunciated by this Court is that there can be no reservation of a solitary post and that in order to apply the rule of reservation within a cadre, there must be a plurality of posts. Where there is no interchangeability of the posts in different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. If this principle were not to be followed, reservation would be in breach of the ceiling governed by the decisions of this Court. A circular, of the nature that has been issued by the State of Karnataka, cannot take away the binding effect of the decisions of this Court interpreting the policy of reservation in the context of Article 16(4).
>
> **10.** For the above reasons, we are of the view that the judgment of the High Court cannot be faulted and is consistent with the law which has been laid down by this Court.

However, owing to the facts and circumstances of the present case, the Hon'ble Court also passed the following observations, applicable to the present case only :-

> **11.** However, in the alternative, Mr. Bhat has submitted that the appellant has continued to work as a Lecturer in English since her appointment on 28 September 2002 and during the pendency of this appeal, she has been protected by an order of *status quo* since 16 February 2016. He stated that the management has submitted a proposal to the State of Karnataka for the appointment of the appellant to a second post which was not acceded to by the State of Karnataka.

[18] (1988) 2 SCC 214.
[19] (2011) 4 SCC 120.
[20] Civil Appeal Nos. 6385-6386 of 2010.
[21] (2009) 1 SCC 1.

12. We would request the State of Karnataka to consider afresh the request of the management for the creation of an additional post if such a request falls within the parameters of the rules or regulations of the State of Karnataka. This exercise be completed expeditiously and within a period of two months from the date of receipt of a certified copy of this order. In the event that it is not possible for the State of Karnataka to create another post under its rules and regulations, the State of Karnataka shall consider, in the alternative, the creation of a supernumerary post for such period until a substantive post is made available, having regard to the fact that the fifth respondent is due to attain the age of superannuation in approximately three years and seven months from today.

15. Deep Industries Limited v. ONGC Ltd. and Others, 2019 SCC OnLine SC 1602

Decided on : 28.11.2019

Bench :- 1. Hon'ble Mr. Justice Dhananjaya Y. Chandrachud
2. Hon'ble Mr. Justice Ajay Rastogi

(High Court's exercise of jurisdiction under Article 227 of the Constitution of India when it comes to matters that are decided under the Arbitration and Conciliation Act, 1996 - Though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction)

Issue

High Court's exercise of jurisdiction under Article 227 of the Constitution of India when it comes to matters that are decided under the Arbitration and Conciliation Act, 1996.

Observations and Decision

The Hon'ble Court referred to Sections 5 and 37 of the Arbitration and Conciliation Act which read as follows :-

> "**5.** Extent of judicial intervention.-Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."
>
> "**37.** Appealable orders.- (1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:—
>
> (a) refusing to refer the parties to arbitration under section 8;
>
> (b) granting or refusing to grant any measure under section 9;
>
> (c) setting aside or refusing to set aside an arbitral award under section 34.
>
> (2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.-
>
> (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
>
> (b) granting or refusing to grant an interim measure under section 17.
>
> (3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

The Hon'ble Court referred to the provisions of the Act and its aims and objects which primarily aim at speedy disposal of cases under the scheme of the Act *inter alia* keeping the interference of the Courts to the minimum. However, the Hon'ble Court also referred to the provisions of Article 227 and its scope and held as follows :-

14. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time limits set down for disposal of the arbitral proceedings themselves but time limits have also been set down for Section 34 references to be decided. Equally, in *Union of India* v. *Varindera Const. Ltd.*, dated 17.09.2018, disposing of SLP (C) No. 23155/2013, this Court has imposed the self-same limitation on first appeals under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.

15. Most significant of all is the non-obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)

16. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

(emphasis supplied)

For arriving at the aforesaid conclusion, the Hon'ble Court referred to several judgments[22] of the Court and held that the object of the Act is of minimizing judicial intervention and that this important object should always be kept in the forefront when a 227 petition is being disposed of against proceedings that are decided under the Act. the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a special act and a self contained code dealing with arbitration. It further held that the legislative policy qua the general revisional jurisdiction that is contained by the amendments made to Section 115 C.P.C. should also be kept in mind when High Courts dispose of petitions filed under under article 227. The legislative policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders.

[22] *BP & Co.* v. *Patel Engineering Ltd.*, (2005) 8 SCC 618; *Fuerst Day Lawson Limited* v. *Jindal Exports Limited*, (2011) 8 SCC 333; *Punjab Agro Industries Corporation Limited* v. *Kewal Singh Dhillon*, (2008) 10 SCC 128; *Nivedita Sharma* v. *Cellular Operators Association of India*, (2011) 14 SCC 337; *hansingh Nathmal* v. *Superintendent of Taxes*, AIR 1964 SC 1419; *Tek Singh* v. *Shashi Verma*, 2019 SCC OnLine SC 168;

16. *P. Gopalkrishnan alias Dileep v. State of Kerala and Another, (2019 SCC OnLine SC 1532)*

Decided on : -29.11.2019

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

(Contents of a memory card/pendrive –whether obligatory to furnish to the accused in terms of section 207 of the Cr.P.C.-Answered in affirmative, however, cases involving issues of privacy of complainant, the Court may be justified in providing only inspection thereof to the accused.)

Issue

Whether the contents of a memory card/pen-drive being electronic record as predicated in Section 2(1)(t) of the Information and Technology Act, 2000 (for short, 'the 2000 Act') would, thereby qualify as a "document" within the meaning of Section 3 of the Indian Evidence Act, 1872 (for short, 'the 1872 Act') and Section 29 of the Indian Penal Code, 1860 (for short, 'the 1860 Code')? If so, whether it is obligatory to furnish a cloned copy of the contents of such memory card/pen-drive to the accused facing prosecution for an alleged offence of rape and related offences since the same is appended to the police report submitted to the Magistrate and the prosecution proposes to rely upon it against the accused, in terms of Section 207 of the Code of Criminal Procedure, 1973 (for short, 'the 1973 Code')?

Decision and Observations

The Apex Court referred to Section 173(5), (6), (7) of the 1973 Code and stated as follows:

> **14.** Concededly, as regards the "documents" on which the prosecution proposes to rely, the investigating officer has no option but to forward "all documents" to the Magistrate alongwith the police report. There is no provision (unlike in the case of "statements") enabling the investigating officer to append a note requesting the Magistrate, to exclude any part thereof ("document") from the copies to be granted to the accused. Sub-Section (7), however, gives limited discretion to the investigating officer to forward copies of all or some of the documents, which he finds it convenient to be given to the accused. That does not permit him to withhold the remaining documents, on which the prosecution proposes to rely against the accused, from being submitted to the Magistrate alongwith the police report. On the other hand, the expression used in Section 173(5)(a) of the 1973 Code makes it amply clear that the investigating officer is obliged to forward "all" documents or relevant extracts on which the prosecution proposes to rely against the accused concerned alongwith the police report to the Magistrate

Then the Apex Court mentioned section 207 of the 1973 Code and was of the following opinion:

> **16.** As regards the statements, the first proviso enables the Magistrate to withhold any part thereof referred to in clause (iii), from the accused on being satisfied with the note and the reasons specified by the investigating officer as predicated in sub-Section (6) of Section 173. However, when it comes to furnishing of documents submitted by the investigating officer alongwith police report, the Magistrate can withhold only such document referred to in clause (v), which in his opinion, is "voluminous". In that case, the accused can be permitted to take inspection of the concerned document either personally or through his pleader in Court. In other words, Section 207 of the 1973 Code does not empower the Magistrate to withhold any "document" submitted by the investigating officer alongwith the police report except when it is voluminous. A fortiori, it necessarily follows that even if the investigating officer appends his note in respect of any particular document, that will be of no avail as his power is limited to do so only in respect of 'statements' referred to in sub-Section (6) of Section 173 of the 1973 Code.

The Apex Court was of the opinion that the Magistrate's duty under Section 207 at this stage is in the nature of administrative work, whereby he is required to ensure full compliance of the Section. On this point the Apex Court referred to ***Hardeep Singh* v. *State of Punjab*[23].** Relying on ***Sidhartha Vashisht@ Manu Sharma v. State (NCT of Delhi)*[24],** the Apex Court stated that "the furnishing of documents to the accused under section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution."

The Apex Court held that the video footage/clipping contained in such memory card/pen-drive being an electronic record as envisaged by Section 2(1)(t) of the 2000 Act, is a "document" and cannot be regarded as a material object. Also, a bare reading of the definition of evidence clearly encompasses within its fold documentary evidence to mean and include all documents including electronic records produced for the inspection of the Court. The Apex Court in para 43 of the judgment stated:

> **43.** It is crystal clear that all documents including "electronic record" produced for the inspection of the Court alongwith the police report and which prosecution proposes to use against the accused must be furnished to the accused as per the mandate of

[23](2014) 3 SCC 92

[24] (2010) 6 SCC 1, in para 219 of the judgment in this case, the Court has stated the following:

> "[…] As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code."

> Section 207 of the 1973 Code. The concomitant is that the contents of the memory card/pen-drive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pen-drive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.

Regarding the question whether parting of the cloned copy of the contents of the memory card/pen-drive and handing it over to the accused may be safe or is likely to be misused by the accused or any other person with or without the permission of the accused concerned, the Apex Court found it to be a peculiar case of intra-conflict of fundamental rights flowing from Article 21, that is right to a fair trial of the accused and right to privacy of the victim wherein it is imperative to adopt an approach which would balance both the rights. On this point the Apex Court referred to ***Asha Ranjan v. State of Bihar***[25] wherein it has been held that the "greater community interest" or "interest of the collective or social order" would be the principle to recognize and accept the right of one which has to be protected. Later, in ***Mazdoor Kisan Shakti Sangathan v. Union of India***[26], going by the dicta in ***Asha Ranjan v. State of Bihar***, it was stated that "the principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected."

Therefore, in para 55 of the judgment, the Apex Court concluded:

> **55.** In conclusion, we hold that the contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.

[25] (2017) 4 SCC 397.
[26] (2018) 17 SCC 324.