JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(January 06 – January 17, 2020)

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1. *Surinder Kumar v. State of Punjab, (2020 SCC OnLine SC 3)*

Decided on : -06.01.2020

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2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice B.R. Gavai

(Mere fact that the case of the prosecution is based on the evidence of official witnesses does not mean that same should not be believed.)

Facts

The appellant herein was convicted for the offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act, 1985'), vide the judgment dated 20.05.1999, passed by the Special Judge, Ferozepur, for offence under Section 18 of NDPS, 1985 and was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 1,00,000/- (Rupees One Lakh) in default of payment of the same, to undergo rigorous imprisonment for another period of one year. The High Court by impugned judgment dated 22.04.2008, dismissed the appeal filed by the appellant herein and confirmed the judgment and order of sentence dated 20.05.1999, passed by the Special Judge, Ferozepur. This Criminal Appeal is filed by the sole accused, aggrieved by the judgment dated 22.04.2008.

Decision and observations

The Apex Court stated that the mere fact that the case of the prosecution is based on the evidence of official witnesses does not mean that same should not be believed. On this point the Apex Court referred to ***Jarnail Singh* v. *State of Punjab***[1] wherein it has been held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. In the case of ***State, Govt. of NCT of Delhi* v. *Sunil,***[2] it was said that, "*It* is an archaic notion that actions of the Police Officer, should be approached with initial distrust…..At any rate, the Courts cannot start with the presumption that the police records are untrustworthy."

It was also contended on behalf of the appellant that on the basis of ***Mohan Lal v. State of Punjab***[3] that informant and investigator cannot be the same person. But in the subsequent judgment, in the case of ***Varinder Kumar* v. *State of Himachal Pradesh,***[4] it has been held that all pending criminal prosecutions, trials and appeals prior to law laid down in ***Mohan Lal v. State of Punjab***, shall continue to be governed by individual facts of the case.

[1] (2011) 3 SCC 521.
[2] (2001) 1 SCC 652
[3] (2018) 17 SCC 627.
[4] (2019) SCC OnLine SC 170

2. *Union of India and Others v. Ex. No. 3192684 W.Sep. Virendra Kumar, (2020 SCC OnLine SC 12)*

Decided on : -07.01.2020

Bench :- 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice Ajay Rastogi

(-After a final order was passed by the Court Martial on the basis of a full-fledged trial, it is not open to the Respondent to raise the ground of non-compliance of Rule 180 of Army Rules,1954 during the Court of Inquiry proceedings.

- The Tribunal does not have jurisdiction to direct re-trial on any other ground except that mentioned in Section 16(2)of the Army Act,1950. Non-compliance of Rule 180 cannot be a ground for ordering a re-trial.)

Facts

The Respondent was enrolled as a Soldier in 20 Jat Firing Team which was attached to the Jat Regimental Centre, Bareilly on 25.02.1999. A firing incident took place at around 8.45 a.m. on 02.10.2004, when the team was practicing firing at the Jat Regimental Centre. During the incident, Havildar Harpal and the Respondent sustained gunshot injuries. Havildar Harpal succumbed to the bullet injuries and the Respondent was admitted at the hospital due to injuries. A First Information Report was lodged at the Police Station, Sadar Cantonment, Bareilly. A preliminary investigation was initiated by the Staff Court of Inquiry as per the directions of the Station Headquarters, Bareilly which concluded on 25.11.2004.

The Respondent was kept in close arrest w.e.f. 27.11.2004 and was handed over to 7 Kumaon Regiment under the authority of Headquarters 49 Infantry Brigade. On 28.12.2004, the Respondent was tentatively charged with the murder of Havildar Harpal under Section 302 IPC read with Section 69 of the Army Act, 1950 (for short "the Act") and under Section 64(c) of the Act for attempting to commit suicide. 21 witnesses were examined in the summary of evidence and the Respondent was given an opportunity to cross-examine the witnesses, which he declined. He was given an opportunity to make additional statement, which was also declined. Further opportunity given to him to adduce evidence was also not availed by the Respondent. Summary of evidence concluded on 07.02.2005. Additional summary of evidence was also recorded, which was completed on 03.06.2005. The General Court Martial commenced on 28.11.2005, and the trial was concluded on 16.03.2006. The General Court Martial convicted the Respondent under Section 302 IPC for the murder of Havildar Harpal and for attempting to commit suicide. The Respondent was sentenced to suffer imprisonment for life and to be dismissed from service. The statutory complaint filed by the Respondent was rejected by the Chief of the Army Staff on 16.03.2007. The validity of the order of the General Court Martial dated 16.03.2006 and the order of the Chief of the Army Staff dated 16.03.2007, rejecting the statutory complaint were assailed before the Tribunal.

Though several grounds were taken before the Tribunal to challenge the order of the General Court Martial, the principal contention of the Respondent was non-compliance of Rule 180 of the Army Rules 1954. The Tribunal decided the petition by adverting to the contention relating to Rule 180.[5] It was held by the Tribunal that Rule 180 provides that a person against whom an inquiry is conducted to be present throughout the inquiry. As there was no doubt that the Respondent was denied permission to be present when statements of witnesses were being recorded before the Court of Inquiry, the Tribunal concluded that the entire trial against the Respondent is vitiated. The Tribunal set aside the order of the Court Martial and remitted the matter for de novo trial from the stage of Court of Inquiry in exercise of its power under Section 16 of the Armed Forces Tribunal Act, 2007.

Decision and Observations

The Apex Court observed that the only point considered by the Tribunal is Rule 180 and the effect of non-compliance of the said Rule. Regarding the scope of Rule 180, the Apex court referred to the following judgments:

***Lt. Col. Prithi Pal Singh Bedi* v. *Union of India*,[6] *Major G.S. Sodhi* v. *Union of India*,[7] *Union of India* v. *Major A. Hussain (IC-14827)*,[8] *Major General Inder Jit Kumar* v. *Union of India*,[9] *Union of India* v. *Sanjay Jethi*[10]**

On the basis of these judgments, the Apex court deduced the following:

(a) The proceedings of a Court of Inquiry are in the nature of a fact-finding inquiry conducted at a pre-investigation stage;

(b) The accused is entitled to full opportunity as provided in Rule 180;

(c) As a final order of conviction is on the basis of a trial by the Court Martial, irregularities at the earlier stages cannot be the basis for setting aside the order passed by the Court Martial;

[5] "Procedure when character of a person subject to the Act is involved.—Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."

[6] (1982) 3 SCC 140

[7] (1991) 2 SCC 382

[8] (1998) 1 SCC 537

[9] (1997) 9 SCC 1

[10] (2013) 16 SCC 116

(d) If the accused raises a ground of non-compliance of Rule 180 during the framing of charge or during the recording of summary of evidence, the authorities have to rectify the defect as compliance of the procedure prescribed in Rule 180 is obligatory.

In the present case, the Apex Court held:

> **13.** Though there is non-compliance of Rule 180 of the Army Rules in this case as the Respondent was not present during the recording of the statements of witnesses, it is clear from the record that the Respondent did not raise this ground either at the stage of framing of the charge, recording summary of evidence or during the Court Martial proceedings. ***After a final order was passed by the Court Martial on the basis of a full-fledged trial, it is not open to the Respondent to raise the ground of non-compliance of Rule 180 during the Court of Inquiry proceedings.*** Therefore, the Tribunal ought not to have remanded the matter back for a *de novo* inquiry from the stage of Court of Inquiry on the ground of infraction of Rule 180 of the Army Rules.
>
> (emphasis supplied)

Further, the Apex Court held:

> **15.** The power conferred on the Tribunal to direct re-trial by the Court Martial is only on the grounds mentioned in Section 16(2). The Tribunal is competent to direct re-trial only in case of evidence made available to the Tribunal was not produced before the Court Martial and if it appears to the Tribunal that the interests of justice requires a re-trial. The re-trial that was ordered by the Tribunal in this case is on the basis that the procedure prescribed in Rule 180 of the Army Rules has not been followed. ***The Tribunal does not have jurisdiction to direct re-trial on any other ground except that mentioned in Section 16(2). Non-compliance of Rule 180 cannot be a ground for ordering a re-trial.*** In addition, the Tribunal has competence only to order re-trial by the Court Martial. There is no power conferred on the Tribunal to direct the matter to be remanded to a stage prior to the Court Martial proceedings. Therefore, we are of the view that the order passed by the Tribunal directing a de novo inquiry from the stage of Court of Inquiry requires to be set aside.
>
> (emphasis supplied)

3. *Ramkhiladi and Another v. United India Insurance Company and Another, (2020 SCC OnLine SC 10)*

Decided on : -07.01.2020

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

(The deceased has to be a third party and cannot maintain a claim under Section 163A of the Motor Vehicles Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner)

Issue

Whether the deceased not being a third party to the vehicle No. RJ 02 SA 7811 being in the shoes of the owner can maintain the claim under Section 163A of the Act from the owner of the said vehicle?

Facts

In a vehicular accident which occurred on 02.10.2006, one Chotelal alias Shivram died who was travelling on motorcycle bearing registration No. RJ 02 SA 7811. As per the claimants, the accident occurred on account of rash and negligent driving of the driver of another motorcycle bearing registration No. RJ 29 2M 9223. The appellants filed a claim petition before the Motor Accident Claims Tribunal (hereinafter, the Tribunal) under Section 163A of the Motor Vehicles Act (hereinafter, the Act). The claim petition was preferred only against the owner of the motorcycle bearing registration No. RJ 02 SA 7811 and its insurance company. Neither the driver nor the owner or the insurance company of the vehicle bearing registration No. RJ 29 2M 9223 were joined as opponents in the claim petition.

An objection was raised by the respondent-insurance company-insurer of motorcycle bearing registration No. RJ 02 SA 7811 that as according to the claimants and even so stated in the FIR, the driver of the motorcycle bearing registration No. RJ 29 2M 9223 was rash and negligent and the claimants have not filed the claim petition against the owner of the said vehicle, the claim petition is required to be dismissed against the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811

The Tribunal held that even in absence of the driver, owner and the insurance company of another vehicle involved in an accident and whose driver was solely negligent, the application under Section 163A of the Act would be maintainable against the owner and the insurance company of the vehicle which was driven by the deceased himself, firstly on the ground that the deceased was in employment of the owner of the vehicle which was driven by him and secondly, in an application under Section 163A of the Act, the negligence is not required to be established and proved and it is enough to establish and prove that the deceased has died in a vehicular accident and while driving a vehicle.

Feeling aggrieved and dissatisfied with the Judgment and Award passed by the Tribunal holding the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 liable to pay the compensation, the respondent-insurance company-insurer of motorcycle bearing registration No. RJ 02 SA 7811 preferred an appeal before the High Court. By the impugned Judgment and Order, the High Court has allowed the said appeal and has quashed and set aside the Judgment and Award passed by the Tribunal and consequently has dismissed the claim petition on the ground that even as per the informant Vikram Singh, who lodged the FIR, the accident had occurred on account of rash and negligent driving by the driver of motorcycle bearing registration No. RJ 29 2M 9223, however, the claimants have not filed the claim petition against the owner of the said vehicle and in fact, the claim petition should have been filed by the claimants against the owner of vehicle bearing No. RJ 29 2M 9223 to seek compensation. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court, the original claimants have preferred the appeal.

Decision and Observations

The Apex Court placed reliance on *Ningamma* v. *United India Insurance Co. Ltd.*, (2009) 13 SCC 710 wherein the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. In that case it was observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Therefore, as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

The Apex Court held:

> **26**. [...] ***the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811***. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of *Dhanraj* (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a **third party** caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

> **27.** In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

Also, it was stated:

> 30.[...] In *Rajni Devi* (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of *Oriental Insurance Co. Ltd.* v. *Jhuma Saha*, (2007) 9 SCC 263; *Dhanraj* (supra); *National Insurance Co. Ltd.* v. *Laxmi Narain Dhut*, (2007) 3 SCC 700 and *Premkumari* v. *Prahlad Dev*, (2008) 3 SCC 193, it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of *Ashalata Bhowmik* (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs. 1 lakh as observed hereinabove.

4. *Purshottam Chopra and Another v. State (Govt. of NCT Delhi), (2020 SCC OnLine SC 6)*

Decided on : -07.01.2020

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

(Principles on the acceptability of dying declaration summed up- As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.)

Facts

In the present case, the appellants are accused of causing death of one Sher Singh by putting him on fire. There had been no eye-witness to the incident but the prosecution has relied upon two statements said to have been made by the deceased after the incident: one when he was admitted to the hospital with 100% burns and another when he was under treatment, respectively to a doctor and to a police officer. The Trial Court as also the High Court have accepted these statements as being his dying declarations wherein the appellants were named as the assailants. Therefore, the appellants stand convicted essentially on the basis of the dying declarations of the victim. The reliability of such dying declarations has been assailed in these appeals apart from other contentions concerning the surrounding factors.

By way of the appeals, the appellants have called in question the judgment and order dated 23.05.2011 in Criminal Appeal No. 121 of 1999 and Criminal Appeal No. 139 of 1999 whereby, the High Court of Delhi has affirmed the judgment and order dated 30.01.1999 in Sessions Case No. 2 of 1998 by the Additional Sessions Judge, Delhi; and has upheld the conviction of the appellants for the offence punishable under Section 302 read with Section 34 of Penal Code, 1860 ('IPC').

Decision and Observations

The Apex Court placed reliance on *Laxman* v. *State of Maharashtra*: (2002) 6 SCC 710 wherein the Constitution Bench has summed up the principles applicable as regards the acceptability of dying declaration in the following words:

> *"3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has*

always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

Also, in the case of ***State of M.P. v. Dal Singh,***[11] it has been pointed out that the law does not provide as to who could record dying declaration nor is there a prescribed format or procedure for the same. All that is required is the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. This Court also pointed out that as to whether in a given burn case, the skin of thumb had been completely burnt or if some part of it will remain intact, would also be a question of fact. The Apex Court then referred to ***State of Punjab* v. *Gian Kaur,***[12] ***Uka Ram* v. *State of Rajasthan,***[13] ***Dalip Singh* v. *State of Punjab,***[14] ***Gopal Singh* v. *State of Madhya Pradesh,***[15] **and** ***Thurukanni Pompiah* v. *State of Mysore***[16] and summed up the following principles on dying declaration :

79. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:—

i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

[11] (2013) 14 SCC 159
[12] AIR 1998 SC 2809
[13] JT 2001 (4) SC 472
[14] (1979) 4 SCC 332
[15] (1972) 3 SCC 268
[16] AIR 1965 SC 939.

ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement

vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

80. Applying the relevant principles to the facts of the present case, we have not an iota of doubt that the appellants have rightly been convicted on the basis of the statements of the victim Sher Singh, as recorded by PW-8 Dr. Sushma and PW-16 SI Rajesh Kumar.

5. *Myakala Dharmarajam and Others v. State of telangana and Another, (2020 SCC OnLine SC 11)*

Decided on : -07.01.2020

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

(Cancellation of Bail)

Facts

Respondent No. 2 in the present Appeals lodged a complaint which was registered under Sections 148, 120 B, 302 read with Section 149 of the Penal Code, 1860 (IPC) at Karimnagar Rural Police Station *vide* FIR No. 155 dated 19.04.2019. It was alleged in the complaint that the husband of Respondent No. 2, Bojja Thirupathi was the Chairman of the Fishermen Co-operative Society of Chamanapalli village, Karimnagar District. Members of the Society alone were permitted to carry out fishing activities in the tanks in Rajasamudram and Appanapalli villages. The membership of the Appellants in the Fishermen Co-operative Society was cancelled due to which they were not permitted to carry out fishing activities. Three years before the complaint the husband of Respondent No. 2 was attacked by the Appellants at the village Panchayat office and a criminal case was registered against the Appellants, which was pending. On 19.04.2019, the husband of Respondent No. 2 went to Chamanapalli village to inspect the tank. At about 5.00 pm, the Appellants attacked the husband of Respondent No. 2 with stones and he succumbed to the injuries.

The Appellants moved applications for bail before the Principal Sessions Judge, Karimnagar who summoned the case diary, statements of the witnesses and other connected records. The Principal Sessions Judge released the Appellants on bail by imposing conditions that the Appellants shall appear before the Karimnagar Rural Police Station on every alternative day between 10.00 am to 05.00 pm and shall not leave the territorial jurisdiction of the First Additional Judicial Magistrate, First Class, Karimnagar. Another condition was imposed that the Appellants shall not influence or tamper with the evidence.

Respondent No. 2 filed a petition for cancellation of bail under Section 439(2) Cr. P.C. before the High Court for the State of Telangana. . The High Court allowed the applications filed for cancellation of bail on the ground that the Principal Sessions Judge did not consider the material available on record before granting bail to the Appellants. The High Court further held that the criminal antecedents of the Appellants were not taken into account by the trial Court. That apart, the High Court accepted the submissions on behalf of Respondent No. 2 that the Appellants indulged in threatening the witnesses after being released on bail.

Decision and Observations

The Apex Court stated:

> **7.** In *Raghubir Singh* v. *State of Bihar* [(1986) 4 SCC 481], this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar

criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

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9. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant-Respondent No. 2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.

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11. After considering the submissions made on behalf of the parties and examining the material on record, we are of the opinion that the High Court was not right in cancelling the bail of the Appellants. The orders passed by the Sessions Judge granting bail cannot be termed as perverse. The complaint alleging that the Appellants were influencing witnesses is vague and is without any details regarding the involvement of the Appellants in threatening the witnesses. Therefore, the Appeals are allowed and the judgment of the High Court is set aside.

6. *M.E. Shivalingamurthy v. CBI, Bengaluru, (2020 SCC OnLine SC 5)*

Decided on : -07.01.2020

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

(The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC)

Facts

The charge-sheet came to be filed on the basis of a FIR dated 01.10.2011. The appellant was Director of Mines and Geology in the State of Karnataka at the relevant time. There was a partnership firm by the name M/s Associated Mineral Company ('AMC', for short). The offences are alleged to revolve around the affairs of the said firm. First accused is the husband of the second accused. They became partners of the firm (AMC) in 2009. Appellant was arrayed as the third accused.

There was reference in the charge-sheet to a conspiracy between the first accused and the second accused. It is alleged, *inter alia*, that they obtained an undated letter from one Shri K.M. Vishwanath, the Ex-Partner, which is after his retirement with effect from 01.08.2009 from the firm, which was addressed to the appellant, seeking directions to the Deputy Director of Mines and Geology, Hospet in Karnataka to issue the Mineral Dispatch Permit ('MDP' for short) to the new partners, viz., the first accused and the second accused.

It is further averred that the investigation revealed that the appellant marked the said letter to the Case Worker who put up the note seeking orders for referring the matter for legal opinion which was also approved and recommended by the Additional Director and put up to the appellant for orders. Appellant is alleged to have acted in pursuance to the criminal conspiracy and abused his official position with a dishonest and fraudulent intention to cheat the Government of Karnataka and knowingly made a false note in the file that he had discussed this matter with the Deputy Director (Legal) and directed Deputy Director, Mines and Geology, Hospet for issue of MDPs to the new partners, viz., the first accused and the second accused by violating Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act', for short) and Mineral Concession Rules, 1960 (hereinafter referred to as 'the Rules', for short).

There are various allegations regarding other accused. As far as appellant is concerned, it is alleged further in the charge-sheet that the acts of the accused, seven in number, including the third accused (appellant), constitutes criminal offences punishable under Sections 120B, 420, 379, 409, 447, 468, 471, 477A of the Penal Code, 1860 (hereinafter referred to as 'the IPC', for short) and Sections 13(2) and 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

The origin of this investigation is to be traced to an Order passed by the Apex Court dated 29.03.2011 in Special Leave Petition (Criminal) No. 7366-7367 of 2010 and connected matters ordering investigation into the illegalities into the matter of Mining Lease No. 2434 of AMC. The allegations include the allegation that the accused conspired to commit theft of Government property, i.e., mineral ore. They allegedly trespassed into the forest area and other areas of Bellary District: carried out illegal mining and transported it. Though, second accused (A2) to seventh accused(A7) filed applications under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC', for short) seeking discharge, by Order dated 08.10.2015, the Trial Court discharged the second accused and the appellant. It is this Order which has been set aside by the High Court by the impugned Order.

The appeal is directed against the Order of the High Court setting aside the Order passed by the Magistrate allowing the application filed by the appellant to discharge him.

Decision and Observations

The Apex Court referred to ***P. Vijayan v. State of Kerala***[17] wherein the legal principles applicable in regard to an application seeking discharge was summarized as follows:

> i. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.
>
> ii. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.
>
> iii. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.
>
> iv. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".
>
> v. It is open to the accused to explain away the materials giving rise to the grave suspicion.
>
> vi. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.
>
> vii. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

[17] (2010) 2 SCC 398

viii. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

The Apex court noted in para 15 of the judgment that the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the Cr.PC. Also, the expression, "*the record of the case*", used in Section 227 of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police. Also, the Apex Court stated that it is not open to the accused to rely on material by way of defence and persuade the court to discharge him. Therefore, applying the aforesaid principles in the present case, the Apex Court held as follows:

29. In this case, as already noticed, going by the statements made by the subordinates working in the Office of the appellant, on receipt of the letter from the erstwhile partners of AMC dated 26.12.2009, two of his subordinates, including the Additional Director, did recommend that the matter requires a legal opinion. The noting, which is undisputed in this case, made by the appellant, would appear to suggest that he had spoken to the Deputy Director (Legal). The prosecution case largely depends upon the statement of the Deputy Director (Legal) who takes a definite stand that no opinion was sought from him. A matter, under Rule 37 of the Rules, therefore, according to the prosecution case, which ought to have gone to the State Government for prior sanction, came to be dealt with by the appellant as Director of Mines. This led to the issue of MDPs. It is, no doubt, true that there may not be any other material to link the appellant with various other acts and omissions which have been alleged against the first accused in particular along with the fifth accused and other accused. However, the fact remains, if the defence of the appellant is not to be looked into, which included the practice obtaining in the past whenever the firm was reconstituted, and also the version of the appellant that he did in fact speak with the Deputy Director (Legal) and acted on his advice and further that this fact would be established if the Deputy Director (Legal) was questioned in his presence, they would appear to be matter which may not be available to the appellant to press before the court considering the application under Section 227 of the Cr.PC.

7. *Mahalakshmi v. Bala Venkatram (D) through LR and Another, (2020 SCC OnLine SC 9)*

Decided on : -07.01.2020

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

(Summarised principles on Subletting- Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.)

Facts

One Dr. Sanjeevi and his wife Mrs. Porkodi, the earlier owner of the suit premises in question had executed a power of attorney dated 01.11.2016 in the name of the appellant herein and in respect of the said property. That by way of rental agreement dated 23.05.2007, the appellant let out the premises in question to original respondent no. 1 herein - Bala Venkatram (now dead and represented through legal heirs) for running 'Best Mark Super Market' from June, 2007 to July, 2009 on a monthly rent of Rs. 11,000/-. That an advance amount of Rs. 1,00,000/- was paid by way of security.

The appellant - landlady filed an eviction suit on the ground of sub-letting as well as on the ground of arrears of rent against the respondents herein - original defendants - Bala Venkatram and another under Sections 10(2)(i), 10(2)(ii)(a)(b) and 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the 'Act') in the Court of District Munsiff, Pollachi.

According to the landlady the rent was initially paid by original defendant no. 1 - Bala Venkatram till October, 2007. It was the case on behalf of the landlady that upon default in payment of rent and noticing a change in the name as well as ownership of the shop in the tenanted premises from 'Best Mark Super Market' to 'Amutham Super Market', she made enquiries and discovered that not only there was a change in the name but a complete change of hand from original defendant - Bala Venkatram to respondent no. 2 - Shahu Hameed which also on the face of it was a gross breach of the rent agreement.

According to the landlady, the sub-letting was evident from the Certificate of Registration, Government of Tamil Nadu, Commercial Tax Department. Therefore, the landlady issued a legal notice to original defendant - Bala Venkatram pointing out the said breaches and called upon him to collect balance amount from the advance payment deposited after adjusting the arrears of rent and handover possession of the tenanted premises within 15 days failing which the appropriate legal action would be taken. There was no reply to the legal notice from respondent no. 1 - original defendant no. 1. Therefore, the landlady, the appellant herein, filed R.C.O.P. No. 4 of 2008 for decree of eviction on the ground of sub-letting and arrears of rent.

The learned Rent Controller dismissed the eviction petition. Aggrieved by the same, the landlady preferred R.C.A. No. 1 of 2012. That the learned Rent Control Appellate Authority allowed the appeal in part. The learned Rent Control Appellate Authority passed the eviction decree on the ground of sub-letting only and therefore allowed the petition filed under Sections 10(2)(i) and 10(2)(ii)(a)(b) of the Act. However, dismissed the petition filed under Section 10(2)(iii) of the Act - wastage & material alteration of the premises. That the original tenant - Bala Venkatram died. Therefore, the legal heirs of the original tenant - Bala Venkatram and the second respondent - sub-tenant preferred the revision application before the High Court. By the impugned judgment and order, the High Court has allowed the said revision application and has quashed and set aside the eviction order passed by the Rent Control Appellate Authority.

Feeling aggrieved and dissatisfied with the impugned Judgment and order passed by the High Court in quashing and setting aside the eviction decree on the ground of sub-letting, the landlady has preferred the present appeal.

Decision and Observations

The Apex Court stated that to constitute a sub-letting, there must be a parting of legal possession, i.e., possession with the right to include and also right to exclude others. Sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord.

Further, the Apex Court stated:

> 19. [...]When the eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. As held by this Court in the case of *Associated Hotels of India Limited* v. *S.B. Sardar Ranjit Singh*, AIR 1968 SC 933, if the landlord prima facie shows that the third party is in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. At the same time, as held by this Court in the case of *G.K. Bhatnagar* v. *Abdul Alim*, (2002) 9 SCC 516 and *Helper Girdharbhai* v. *Saiyed Mohmad Mirasaheb Kadri*, (1987) 3 SCC 538, where a tenant becomes a partner of a partnership firm and allows the firm to carry on business in the premises while he himself retains the legal possession thereof, the act of the tenant does not amount to sub-letting. It is further observed and held that however inducting the partner in his business or profession by the tenant is permitted so long as such partnership is genuine. It is further observed that if the purpose of such partnership is ostensible in carrying on business or profession in a partnership but the real purpose in sub-letting such premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting. After considering catena of decisions of this Court on sub-letting, in the case of *Celina Coelho Pereira* v. *Ulhas Mahabaleshwar Kholkar*, (2010) 1 SCC 217, this Court has summarised in paragraph 25 as under:
>
> > "25. The legal position that emerges from the aforesaid decisions can be summarised thus:
> >
> > (i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of

possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

20. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and on appreciation of evidence on record, we are of the opinion that there is no genuine partnership between respondent no. 1 and respondent no. 2. Respondent no. 1 has come out with a case of partnership only to get out from the allegation of sub-letting. The exclusive possession of the suit premises is with respondent no. 2. Respondent no. 2 is running the business in the suit premises as an owner. Sales Tax Certificate and the licence are in the name of respondent no. 2. The bank accounts are in the name of respondent no. 2 and respondent no. 2 is exclusively dealing with the bank accounts. Under the circumstances, a clear case of sub-letting has been made out. The High Court has committed a grave error in setting aside the decree of eviction on the ground of sub-letting.

8. *Vidya Devi v. State of Himachal Pradesh and Others, (2020 SCC OnLine SC 14)*

Decided on : -08.01.2020

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Ajay Rastogi

(To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Also, the State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens.)

Facts

The Appellant, almost 80 years old, was undisputedly the owner of land admeasuring about 3.34 Hectares comprised in Khata/Khatuni No. 105 min/127, Khasra No. 70 in Tika Jalari Bhaddirain, Mauja Jalari, Tehsil Nadaun, Dist. Hamipur, Himachal Pradesh.The Respondent-State took over the land of the Appellant in 1967-68 for the construction of a major District Road being the Nadaun - Sujanpur Road, a major District Road without taking recourse to acquisition proceedings, or following due process of law.The construction of the road was completed by 1975.

The Appellant, being an illiterate widow, coming from a rural background, was wholly unaware of her rights and entitlement in law, and did not file any proceedings for compensation of the land compulsorily taken over by the State.In 2004, some similarly situated persons whose lands had also been taken over by the Respondent-State for the same public purpose, filed CWP No. 1192 of 2004 titled *Anakh Singh* v. *State of Himachal Pradesh* claiming compensation before the High Court of Himachal Pradesh.The High Court vide Order dated 23.04.2007, allowed CWP No. 1192 of 2004, and directed the Respondent-State to acquire the lands of the Writ Petitioners under the Land Acquisition Act, 1894.Pursuant to the Order of the High Court in 2008, the Respondent-State initiated acquisition proceedings under the Land Acquisition Act, 1894 only with respect to the lands of the Writ Petitioners, and not the other land-owners whose lands had also been taken over.

The Appellant submits that she learnt of these proceedings in 2010, when she alongwith her two daughters filed C.W.P. No. 1736 of 2010 before the Himachal Pradesh High Court, praying that the State be directed to pay compensation for the land acquired in 1967-68; or, in the alternative, direct the State to initiate acquisition proceedings under the Land Acquisition Act, 1894.The Respondent-State filed its reply before the High Court, wherein it was admitted that the Department had used land in the ownership of the Appellant for the construction of the Nadaun - Sujanpur road, a major district road in 1967-68. The State had been in continuous possession of the property since 1967-68, i.e., for the last 42 years, and the title of the Respondent-State got converted into "adverse possession". It was submitted that the statutory remedy available to the Appellant was by filing a Civil Suit.

The State has further admitted that a Notification under Section 4 of the Land Acquisition Act had been issued in 2008 with respect to the land of Anakh Singh a neighbouring

landowner, whose land was similarly taken over for the same purpose. Furthermore, the Writ Petition was barred by laches, since the road was constructed in 1967-68, and metalled since 1975. The land was utilized by the Respondent-State after the Appellant and her predecessors-in-interest had verbally consented to the land being taken over without any objection.

The High Court vide the impugned Judgment and Order dated 11.09.2013 held that the matter involved disputed questions of law and fact for determination on the starting point of limitation, which could not be adjudicated in Writ proceedings. The Appellant was granted liberty to file a Civil Suit.Aggrieved, the Appellant filed a Review Petition against the Judgment and Order dated 11.09.2013 which was dismissed vide Order dated 13.05.2014.The Appellant has filed the present Appeals, to challenge the Judgment dated 11.09.2013 passed in the Writ Petition and Order dated 13.05.2014 passed in the Review Petition.

Decision and Observations

The Apex Court observed that the Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution. Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right[2] in a welfare State, and a Constitutional right under Article 300 A of the Constitution. The Apex Court stated that to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. On this point the Apex Court referred to the following decisions:

***Hindustan Petroleum Corporation Ltd.* v. *Darius Shapur Chenai*,[18] *N. Padmamma* v. *S. Ramakrishna Reddy*,[19] *Delhi Airtech Services Pvt. Ltd.* v. *State of U.P.*,[20] *Jilubhai Nanbhai Khachar* v. *State of Gojarat*,[21] *Tukaram Kana Joshi* v. *M.I.D.C.*[22]**

Further, the Apex court noted:

> **28.** We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to "adverse" possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

[18] (2005) 7 SCC 627.
[19] (2008) 15 SCC 517
[20] (2011) 9 SCC 354.
[21] 1995 Supp (1) SCC 596.
[22] (2013) 1 SCC 353.

29. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

30. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

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32. In the present case, the Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the Appellant.

9. *Surinder Singh Deswal and Others v. Virender Gandhi and Another, (2020 SCC OnLine SC 18)*

Decided on : -08.01.2020

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

- When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance.

-Section 143A has prospective application but Section 148 of the Negotiable Instruments Act has retrospective application

Facts

Appellant Nos. 1 and 2 are partners of appellant No. 3, M/s. Bhoomi Infrastructure Co., now known as GLM Infratech Private Limited. Respondent No. 1, Virender Gandhi, who was also a partner of the Firm retired with respect of which Memorandum of Understanding dated 30.11.2013 was entered into. A cheque No. 665643 dated 31.03.2014 drawn on Canara Bank amounting to Rs. 45,84,915/- was issued by the appellant to respondent No. 1 against the part payment of the retirement dues. Similarly, 63 other cheques were issued by the appellants in favour of respondent arising out of the same transaction. On 06.04.2015, respondent No. 1 deposited cheque No. 665643 in his Bank that is Karnataka Bank Ltd., Sector-11, Panchkula. The cheque was dishonoured and returned vide memo dated 07.04.2015 with the remarks "funds insufficient". Other 63 cheques were also dishonoured.

Respondent No. 1 sent the statutory demand notice under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "NI Act") on 06.05.2015. Complaints were filed by respondent No. 1 against the appellants under Section 138 of the NI Act before the Judicial Magistrate, Ist Class, Panchkula. In all 28 complaints were filed. The complaints were decided by Judicial Magistrate vide his judgment dated 30.10.2018 holding the appellant Nos. 1 and 2 guilty for the offence punishable under Section 138 of the NI Act, who were accordingly convicted. By order dated 13.11.2018 the appellants were sentenced to undergo imprisonment for a period of two years and to pay jointly and severally an amount equal to the amount involved in the present case i.e. cheque amount plus 1% of this amount as interest as well as litigation expenses.

Decision in Appeal

The appeal was filed by the appellants against the judgment dated 30.10.2018 and sentence dated 30.11.2018 in the Court of Sessions Judge, Panchkula. In the appeal the appellants had filed an application under Section 389 of Cr.P.C. for suspension of sentence. The learned trial

court has suspended the sentence of the appellants by order dated 13.11.2018 for 30 days. The Appellate Court vide order dated 01.12.2018 entertained the appeal and suspended the sentence during the pendency of the appeal, subject to furnishing of bail bond and surety bond in the sum of Rs. 50,000/- with one surety in the like amount and also subject to deposit of 25% of the amount of compensation awarded by the learned trial court in favour of the complainant. The appellants were directed to deposit the amount within four weeks by way of demand draft in the name of the Court.

The appellants were convicted in all 28 cases and the total amount to be deposited under the order of the Appellate Court was, in all cases, Rs. 9,40,24,999/-. The appellants preferred an application seeking extension of time to deposit the amount of 25% of the compensation amount. The learned Sessions Judge allowed the application on 19.12.2018 granting time to deposit the amount till 28.01.2019.

Decision of the High Court under Section 482, CrPC

The appellants filed an application under Section 482 Cr.P.C. seeking quashing of the part of the order dated 01.12.2018 passed by the learned Additional Sessions Judge, Panchkula, whereby the said Court has imposed a condition to deposit 25% of the amount of compensation while suspending the sentence.

The High Court vide its judgment dated 24.04.2019 dismissed the petition of the appellants under Section 482 Cr.P.C. and other connected petitions. The appellants preferred Special Leave Petition(Criminal) Nos. 4948-4975/2019 before the Supreme Court against the judgment dated 24.04.2019 of the Hight Court of Punjab and Haryana at Chandigarh.

The Apex Court vide its judgment dated 29.05.2019 dismissed the criminal appeals arising out of the SLPs(Criminal). Learned Additional Sessions Judge, Panchkula in view of the non-compliance of the order dated 20.07.2019 directed the appellants to surrender in the trial court within four days. The appellants were also not present when the case was taken by the Additional Sessions Judge on 20.07.2019. Another petition under Section 482 Cr.P.C. was filed by the appellants challenging the order dated 20.07.2019 passed by the Additional Sessions Judge. The 28 petitions under Section 482 Cr.P.C. filed by the appellants have been dismissed by the impugned judgment of the Punjab and Haryana High Court dated 10.09.2019. Aggrieved by the judgment, these appeals had been filed by the appellants.

Observations and Decision of the Hon'ble Supreme Court

Regarding the condition of the deposit of 25% of the amount as a condition in the suspension of sentence, the Hon'ble Court held :-

> **12.** This Court having already upheld the order of the Appellate Court dated 01.12.2018 suspending the sentence subject to deposit 25% of the amount of compensation any submission questioning the order of the Appellate Court directing the suspension of sentence subject to deposit of 25% of the compensation amount needs no further

> consideration. By dismissal of the criminal appeals of the appellants on 29.05.2019 by this Court the challenge stands repelled and cannot be allowed to be reopened.

It was the contention of the Appellants that that the Apex Court in Criminal Appeal No. 1160 of 2019 (*G.J. Raja* v. *Tejraj Surana*) decided on 30.07.2019 has held the provisions of Section 143A of NI Act to be prospective only that is to apply with respect to offence committed after insertion of Section 143A w.e.f. 01.09.2018. He submits that both Sections 143A and Section 148 inserted in NI Act by amendment Act 20 of 2018, hence Section 148 was not attracted in the present case which was only prospective and could have been utilised in offences which were committed after 01.09.2018. On this contention, the Hon'ble Court held:-

> **14.** Learned counsel for the appellant has placed reliance on the judgment of this Court dated 30.07.2019 in Criminal Appeal No. 1160 of 2019 (*G.J. Raja* v. *Tejraj Surana*). This Court in the above case was considering provisions of Section 143A of the N.I. Act which was inserted by the same Amendment Act 20 of 2018 by which Section 148 of the N.I. Act has been inserted. This Court took the view that Section 143A is prospective in nature and confined to cases where offences were committed after the introduction of Section 143A i.e. after 01.09.2018.....
>
> *********
>
> **16.** The Bench deciding *G.J. Raja's case* has noticed the judgment of this Court in the appellants' case i.e. *Surinder Singh Deswal's case* and has opined that the decision of this Court in *Surinder Singh Deswal's case* was on Section 148 of the N.I. Act which is a stage after conviction of the accused and distinguishable from the stage in which the interim compensation was awarded under Section 143A of the N.I. Act. When the Bench deciding *G.J. Raja's case* (supra) itself has considered and distinguished the judgment of this Court in appellants' own case i.e. *Surinder Singh Deswal's*, reliance by the learned counsel for the appellants on the judgment of this Court in *G.J. Raja's case* is misplaced.....
>
> **17.** In view of the above, the judgment of this Court in the case of *G.J. Raja* does not help the appellants.

Regarding the effect of non-compliance of condition of suspension of sentence on the continuance of the suspension, the Hon'ble Court held :-

> **19.**.....When suspension of sentence by the trial court is granted on a condition, non-compliance of the condition has adverse effect on the continuance of suspension of sentence. The Court which has suspended the sentence on a condition, after noticing non-compliance of the condition can very well hold that the suspension of sentence stands vacated due to non-compliance. The order of the Additional Sessions Judge declaring that due to non-compliance of condition of deposit of 25% of the amount of compensation, suspension of sentence stands vacated is well within the jurisdiction of the Sessions Court and no error has been committed by the Additional Sessions Judge in passing the order dated 20.07.2019.

20. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.

Applying the aforementioned principles, the Hon'ble Court dismissed the present appeal.

10. *Mohammed Siddique and Another v. National Insurance Company Ltd. and Others, (2020 SCC OnLine SC 24)*

Decided on : -08.01.2020

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

(The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence.)

Facts

The son of the appellants who was aged about 23 years, died on 7.09.2008 as a result of the injuries sustained in a road traffic accident that took place on 5.09.2008. It appears that the victim was one of the 2 pillion riders on a motor cycle and he was thrown off the vehicle when a car hit the motor cycle from behind. The Motor Accident Claims Tribunal found that the accident was caused due to the rash and negligent driving of the car. As against the said award, the Insurance Company filed a statutory appeal under Section 173 of the Motor Vehicles Act, 1988. The appeal was primarily on two grounds *namely* (i) that the deceased was guilty of contributory negligence inasmuch as he was riding on the pillion of the motor cycle with two other persons and (ii) that the employment and income of the deceased were not satisfactorily established.

On the first ground, the High Court held that though the motor cycle in which the deceased victim was riding was hit by the speeding car from behind, the deceased was also guilty of contributory negligence, as he was riding a motor cycle with two other persons. Therefore, the High Court came to the conclusion that an amount equivalent to 10% has to be deducted towards contributory negligence.

On the second issue, the High Court held that the employer did not produce any records to substantiate the quantum of salary paid to the deceased and that therefore the income of the deceased may have to be assessed only on the basis of minimum wages, payable to unskilled workers at the relevant point of time. Accordingly the High Court fixed the income of the deceased at the time of the accident as Rs. 3683/- per month, which was the minimum wages for unskilled workers at that time.

The High Court applied the multiplier of 14 instead of the multiplier of 18, on the basis of the ratio laid down by this Court in *UPSRTC* v. *Trilok Chandra*,[23] to the effect that the choice of the multiplier should go by the age of the deceased or that of the claimants, whichever is higher. As a result, the High Court took Rs. 3,683/- as the monthly income, allowed a deduction of 50% on the same towards personal expenses, applied a multiplier of 14 and arrived at an amount of Rs. 3,10,000/-. The award of Rs. 1,00,000/- towards loss of love and

[23] (1996) 4 SCC 362

affection granted by the Tribunal was confirmed by the High Court but the amount of Rs. 10,000/- each awarded towards funeral expenses and loss of Estate were enhanced to Rs. 25,000/- each.

The finding of the Tribunal was confirmed by the High Court, though with a rider that the victim was also guilty of contributory negligence, in as much as there were 3 persons on the motor cycle at the time of the accident, requiring a reduction of 10% of the compensation awarded. Thus, the High Court arrived at a total amount of Rs. 4,60,000. Aggrieved by the order of the High Court reducing the compensation awarded by the Motor Accident Claims Tribunal from the sum of Rs. 11,66,800 to Rs. 4,14,000, the parents of the deceased-accident victim have came up with the appeal.

Decision and Observations

The Apex Court noted that the High Court interfered with the award of the Tribunal, on 3 counts, namely (i) contributory negligence; (ii) monthly income of the deceased and (iii) the multiplier to be applied.

Regarding the 10% reduction towards contributory negligence, the Apex Court found it to be unjustified and stated the following in para 13 of the judgment:

> **13.** [...] ***The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence***. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. ***There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim***. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. ***It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked***. It is not the case of the insurer that the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that 2 persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on

> record. Nothing was extracted from PW-3 to the effect that 2 persons on the pillion added to the imbalance.
>
> **(emphasis supplied in original)**

Regarding the monthly income of the deceased, the Apex court stated that, " *As against the testimony of an employer supported by a certificate issued by him, the High Court ought not to have chosen a theoretical presumption relating to the minimum wages fixed for unskilled employment."*

And regarding the appropriate multiplier to be used, the Apex Court stated the following:

> **25.** However when *Reshma Kumari* v. *Madan Mohan* came up for hearing before a two member Bench, the Bench thought that the question whether the multiplier specified in the second schedule should be taken to be a guide for calculation of the amount of compensation in a case falling under section 166, needed to be decided by a larger bench, especially in the light of the defects pointed out in *Trilok Chandra* in the Second Schedule. The three member Bench extensively considered *Trilok Chandra* and the subsequent decisions and approved the Table provided in *Sarla Verma*. It was held in para 37 of the report in *Reshma Kumari* that the wide variations in the selection of multiplier in fatal accident cases can be avoided if *Sarla Verma* is followed.
>
> **26.** In *Munna Lal Jain*, which is also by a bench of three Hon'ble judges, the Court observed in para 11 as follows:
>
> *"**Whether the multiplier should depend on the age of the dependents or that of the deceased has been hanging fire for sometime: but that has been given a quietus by another three judge bench in Reshma Kumari.** It was held that the multiplier is to be used with reference to the age of the deceased. One reason appears to be that there is certainty with regard to the age of the deceased, but as far as that of dependents is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc. is to be taken."*

Therefore, the Apex Court held:

> **29.** Thus, we find that the High Court committed a serious error *(i)* in holding the victim guilty of contributory negligence *(ii)* in rejecting the evidence of PW-2 with regard to the employment and monthly income of the deceased and *(ii)* in applying the multiplier of 14 instead of 18. Therefore, the appeal is allowed and the impugned order of the High Court is set aside. The award of the Tribunal shall stand restored.

11. Union of India and Others v. G.Ramesh, (2020 SCC OnLine SC 136)

Decided on : -09.01.2020

Bench :- 1. Hon'ble Mr. Justice D.Y. Chandrachud
2. Hon'ble Mr. Justice Hrishikesh Roy

When once the selection process is complete and appointment had been made, that process comes to an end and if any vacancy arises on the appointee having joined the post leaves the same, it must be treated as a fresh vacancy and fresh steps in accordance with the appropriate rules should be taken.

Original ORDER of the Hon'ble Court

1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment and order of a Division Bench of the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh dated 8 February 2018.

4. The Superintendent of Post Offices, Hanamkonda issued a notification on 4 November 2013 inviting applications for conducting a departmental examination to the cadre of postman. The result of the examination was declared on 20 December 2013. A candidate by the name of G Vijender was declared to be selected and was posted as a postman. The respondent was second in the order of merit in the Select List. Upon receiving a complaint that G Vijender had obtained selection by adopting fraudulent means, the employee was placed under suspension on 24 January 2014. The respondent moved the Central Administrative Tribunal at Hyderabad seeking a direction for being posted in place of G Vijender. The Tribunal dismissed the Original Application as premature. G Vijender was dismissed from service after a departmental enquiry on 29 April 2016. The respondent filed an Original Application before the Tribunal in which an order was passed on 25 November 2016 to consider his request in accordance with the rules. Following this order, the representation of the respondent to appoint him as a postman was rejected, upon which he moved the Tribunal afresh. The Tribunal, by its order dated 9 November 2017, came to the conclusion that the respondent had a right to be appointed to the post of postman and that upon the dismissal of the candidate who had been duly selected and appointed, the respondent ought to be appointed. This order of the Tribunal has been affirmed by the High Court while dismissing a writ petition filed by the appellants.

5. Mr. Vikramjit Banerjee, learned Additional Solicitor General has relied upon a decision of a two-judge Bench of this Court in *Thrissur District Co-operative Bank Limited* v. *Delson Davis P*[2002 (2) SLR 410]. The Additional Solicitor General submitted that once the process of selection had been completed with the appointment of G Vijender, the Select List stood exhausted. Hence, the subsequent dismissal of the appointed candidate from service would not result in the revival of the Select List. Hence, it was urged that both the Tribunal and the

High Court have erred in coming to the conclusion that the respondent had a vested right to appointment.

6. On the other hand, it has been urged on behalf of the respondent by Mr. M. Venkanna, learned counsel, that the candidate who had been appointed had secured his appointment through fraudulent means and, hence, the appointment was void *ab initio*. Learned counsel submitted that it was, strictly speaking, not necessary for the Department to hold a departmental enquiry and a simple order of termination with a notice to show cause would have sufficed. Hence, it was urged that it was the respondent, who was second in the order of merit, who should have been appointed.

7. The facts, as they have emerged on record indicate that the selection process which was initiated in pursuance of the notification dated 4 November 2013 culminated in the order of appointment of G Vijender. Subsequently, his services came to be terminated following the order of dismissal upon the conclusion of the disciplinary enquiry. Once a candidate had been selected upon the conclusion of the selection process and was appointed to the post, the Select List stood exhausted. There was one vacancy. The subsequent dismissal from service of the appointed candidate in 2016 would not either revive the Select List or result in the appointment of the respondent.

8. This principle emerges from the judgment of this Court in **Thrissur District Co-operative Bank Limited** where it was held:

> "When once the selection process is complete and appointment had been made, that process comes to an end and if any vacancy arises on the appointee having joined the post leaves the same, it must be treated as a fresh vacancy and fresh steps in accordance with the appropriate rules should be taken. This view is fortified by the judgment of this Court in *State of Punjab* v. *Raghubir Chand Sharma* [JT 2001 (9) SC 266]"

9. Adopting the above view, we have come to the conclusion that the impugned orders of the Tribunal and the High Court cannot be sustained. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 8 February 2018. In consequence, the Original Application filed by the respondent seeking appointment to the post of postman shall stand dismissed. There shall be no order as to costs.

12. *Shilpa Mittal v. State of NCT of Delhi and Another, (2020 SCC OnLine SC 20)*

Decided on : -09.01.2020

Bench :- 1. Hon'ble Mr. Justice Deepak Gupta
2. Hon'ble Mr. Justice Aniruddha Bose

(An offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. Offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the JJ Act,2015)

Issue

"Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?"

Facts

The factual background is that a juvenile 'X' is alleged to have committed an offence punishable under Section 304 of the Indian Penal Code, 1860 (IPC for short) which offence is punishable with a maximum punishment of imprisonment for life or up to 10 years and fine in the first part and imprisonment up to 10 years or fine, or both in the second part. No minimum sentence is prescribed.

The deceased in the motor vehicle accident was the brother of the appellant herein. The juvenile at the time of occurrence was above 16 years but below 18 years. The Juvenile Justice Board vide order dated 04.06.2016 held that juvenile 'X' has committed a heinous offence, and, therefore should be tried as an adult. The appeal filed to the Children's Court was also dismissed on 11.02.2019. Thereafter, the juvenile 'X', through his mother approached the High Court of Delhi, which vide order 01.05.2019 held that since no minimum sentence is prescribed for the offence in question, the said offence did not fall within the ambit of Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015. This order is under challenge in this appeal.

Decision and Observations

The Apex Court mentioned the definition of 'Petty offences' ,'Serious offences' and 'Heinous offences'. 'Petty offences' have been defined under Section 2(45) to mean offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to 3 years. 'Serious offences' means offences for which punishment under any law is imprisonment between 3-7 years. 'Heinous offences' have been defined to mean offences for which the minimum punishment under any law is imprisonment for 7 years or more. Section 14 of the Act of 2015 lays down the procedure to be followed by the Juvenile Justice Board

while conducting an enquiry regarding a child in conflict with law under these different categories and of particular concern is sub-section (5)(d), (e) and (f) according to which the inquiry for serious offences has to be disposed of by following the procedure for trial in summons cases under the Code of Criminal Procedure, 1973 (Cr.PC for short). As far as heinous offences are concerned if the child is below 16 years then the procedure prescribed for serious offences is to be followed; but if the child is above 16 years then assessment in terms of Section 15 has to be made.

It is pertinent here to note the contention on behalf of the appellant as given in para 22 of the judgment:

> **22.** It is contended by Mr. Siddharth Luthra, that if the definitions of offences, i.e., petty, serious and heinous are read literally then there is one category of offences which is not covered by the Act of 2015. He submits that petty offences are those offences where the punishment is up to 3 years, serious offences are those where the maximum punishment is of 7 years, and as far as heinous offences are concerned, if the definition is read literally, then these are only those offences which provide a minimum sentence of 7 years and above. He submits that this leaves out a host of offences falling within the 4th category. The 4th category of offences are those where the minimum sentence is less than 7 years, or there is no minimum sentence prescribed but the maximum sentence is more than 7 years. He has submitted a chart of such offences. It is not necessary to set out the chart in-extenso but we may highlight a few of these offences. Some of these offences relate to abetment but they also include offences such as those under Section 121A, 122 of IPC, offences relating to counterfeiting of currency, homicide not amounting to murder (as in the present case), abetment to suicide of child or innocent person and many others. He submits that it could not have been the intention of the Legislature to leave out these offences and they should have been in some category at least. The submission of Mr. Luthra is that if from the definition of 'heinous offences', the word 'minimum' is removed then all offences other than petty and serious would fall under the heading of 'heinous offences'. He submits that if the 4th category of offences is left out it would result in an absurdity which could not have been the intention of the Legislature. He further submits that applying the doctrine of surplusage, if the word 'minimum' is removed then everything will fall into place.

The Apex court however, was of the following opinion:

> **33.** In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'.
>
> **34.** No doubt, as submitted by Mr. Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is

an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

35. We may add that the High Courts of Bombay[*Saurabh Jalinder Nangre* v. *State of Maharashtra*, 2019 (1) Crimes 253 (Bom)],Patna[Criminal (SJ) No. 1716 of 2018 titled *Rajiv Kumar* v. *State of Bihar*. Judgment dated 18.09.2018], and Punjab and Haryana [CRR 1615 of 2018 titled *Bijender* v. *State of Haryana*, judgment dated 21st May, 2018], have taken a view that the category of 'heinous offences' cannot include offences falling within the 4th category. No contrary view has been brought to our notice. We see no reason to take a different view.

Therefore, the Apex Court held:

38. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

39. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

13. Anuradha Bhasin v. Union of India and Others (2020 SCC OnLine SC 25)

Decided on : -10.01.2020

Bench :- 1. Hon'ble Mr. Justice N.V.Ramana
2. Hon'ble Mr. Justice R.Subhash Reddy
3. Hon'ble Mr. Justice B.R.Gavai

- An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only and must adhere to the principle of proportionality and must not extend beyond necessary duration.

- Any order suspending internet under the Suspension Rules is subject to judicial review based on the parameters set out herein.

- Discussed the scope of Section 144, CrPC

Background

The genesis of the issue starts with the Security Advisory issued by the Civil Secretariat, Home Department, Government of Jammu and Kashmir, advising the tourists and the Amarnath Yatris to curtail their stay and make arrangements for their return in the interest of safety and security. Subsequently, educational institutions and offices were ordered to remain shut until further orders. On 04.08.2019, mobile phone networks, internet services, landline connectivity were all discontinued in the valley, with restrictions on movement also being imposed in some areas.

On 05.08.2019, Constitutional Order 272 was issued by the President, applying all provisions of the Constitution of India to the State of Jammu and Kashmir, and modifying Article 367 (Interpretation) in its application to the State of Jammu and Kashmir. In light of the prevailing circumstances, on the same day, the District Magistrates, apprehending breach of peace and tranquillity, imposed restrictions on movement and public gatherings by virtue of powers vested under Section 144, Cr.P.C. Due to the aforesaid restrictions, the Petitioner in W.P. (C) No. 1031 of 2019 claims that the movement of journalists was severely restricted and on 05.08.2019, the Kashmir Times Srinagar Edition could not be distributed. The Petitioner has submitted that since 06.08.2019, she has been unable to publish the Srinagar edition of Kashmir Times pursuant to the aforesaid restrictions.

Aggrieved by the same, the Petitioners (Ms. Anuradha Bhasin and Mr. Ghulam Nabi Azad) approached this Court under Article 32 of the Constitution seeking issuance of an appropriate writ for setting aside or quashing any and all order(s), notification(s), direction(s) and/or circular(s) issued by the Respondents under which any/all modes of communication including internet, mobile and fixed line telecommunication services have been shut down or suspended or in any way made inaccessible or unavailable in any locality. Further, the Petitioners sought the issuance of an appropriate writ or direction directing

Respondents to immediately restore all modes of communication including mobile, internet and landline services throughout Jammu and Kashmir in order to provide an enabling environment for the media to practice its profession. Moreover, the Petitioner in W.P. (C) No. 1031 of 2019 also pleaded to pass any appropriate writ or direction directing the Respondents to take necessary steps for ensuring free and safe movement of reporters and journalists and other media personnel. Lastly, she also pleaded for the framing of guidelines ensuring that the rights and means of media personnel to report and publish news is not unreasonably curtailed.

Issues

I. Whether the Government can claim exemption from producing all the orders passed under Section 144, Cr.P.C. and other orders under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 [hereinafter "**Suspension Rules**"]?

II. Whether the freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business over the Internet is a part of the fundamental rights under Part III of the Constitution?

III. Whether the Government's action of prohibiting internet access is valid?

IV. Whether the imposition of restrictions under Section 144, Cr.P.C. were valid?

V. Whether the freedom of press of the Petitioner was violated due to the restrictions?

Decision and Observations

Regarding the ***production of orders***, the Apex Court referred to ***Ram Jethmalani v. Union of India,***[24] in which the obligation of the State to disclose information particularly in a writ petition which dealt with the protection of fundamental rights was dealt with. Further, the Apex Court stated that "*that there are two separate types of reasoning that mandates us to order production of the orders passed by the authorities in this case. First, Article 19 of the Constitution has been interpreted to mandate right to information as an important facet of the right to freedom of speech and expression…..Second, there is no dispute that democracy entails free flow of information.*"

The Apex Court stated:

> **20.** As a general principle, on a challenge being made regarding the curtailment of fundamental rights as a result of any order passed or action taken by the State which is not easily available, the State should take a proactive approach in ensuring that all the relevant orders are placed before the Court, unless there is some specific ground of privilege or countervailing public interest to be balanced, which must be specifically claimed by the State on affidavit. In such cases, the Court could determine whether, in the facts and

[24] (2011) 8 SCC 1

> circumstances, the privilege or public interest claim of the State overrides the interests of the Petitioner. Such portion of the order can be redacted or such material can be claimed as privileged, if the State justifies such redaction on the grounds, as allowed under the law.
>
> **21.** In the present case, while the State initially claimed privilege, it subsequently dropped the claim and produced certain sample orders, citing difficulty in producing all the orders before this Court. In our opinion, this is not a valid ground to refuse production of orders before the Court.

Regarding the ***Fundamental rights and the restrictions*** thereupon, it was contended by the petitioners that the impugned restrictions have affected the freedom of movement, freedom of speech and expression and right to free trade and avocation. In that context the Apex Court considered the freedom of expression over the medium of internet and in paragraph 29 stated as follows:

> 29.[….] In this context, we may note that this Court, in a catena of judgments, has recognized free speech as a fundamental right, and, as technology has evolved, has recognized the freedom of speech and expression over different media of expression. Expression through the internet has gained contemporary relevance and is one of the major means of information diffusion. ***Therefore, the freedom of speech and expression through the medium of internet is an integral part of Article 19(1)(a) and accordingly, any restriction on the same must be in accordance with Article 19(2) of the Constitution.***
>
> (emphasis supplied)

In para 30 of the judgment, the Apex Court stated that ***"the freedom of trade and commerce through the medium of the internet is also constitutionally protected under Article 19(1)(g), subject to the restrictions provided under Article 19(6)."*** However, the Apex Court was quick to add that "***none of the counsels have argued for declaring the right to access the internet as a fundamental right and therefore we are not expressing any view on the same."***

Regarding the limitations, the Apex Court stated ***:***

> **36.** The study of aforesaid case law points to three propositions which emerge with respect to Article 19(2) of the Constitution. (i) Restriction on free speech and expression may include cases of prohibition. (ii) There should not be excessive burden on free speech even if a complete prohibition is imposed, and the government has to justify imposition of such prohibition and explain as to why lesser alternatives would be inadequate. (iii) Whether a restriction amounts to a complete prohibition is a question of fact, which is required to be determined by the Court with regard to the facts and circumstances of each

case. [refer to *State of Gujarat* v. *Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534].

37. The second prong of the test, wherein this Court is required to find whether the imposed restriction/prohibition was least intrusive, brings us to the question of balancing and proportionality. These concepts are not a new formulation under the Constitution. In various parts of the Constitution, this Court has taken a balancing approach to harmonize two competing rights. In the case of *Minerva Mills Ltd.* v. *Union of India*, (1980) 2 SCC 591 and *Sanjeev Coke Manufacturing Company* v. *Bharat Coking Coal Ltd.*, (1983) 1 SCC 147, this Court has already applied the balancing approach with respect to fundamental rights and the directive principles of State Policy.

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49. It goes without saying that the Government is entitled to restrict the freedom of speech and expression guaranteed under Article 19(1)(a) if the need be so, in compliance with the requirements under Article 19(2). It is in this context, while the nation is facing such adversity, an abrasive statement with imminent threat may be restricted, if the same impinges upon sovereignty and integrity of India. The question is one of extent rather than the existence of the power to restrict.

50. The requirement of balancing various considerations brings us to the principle of proportionality. In the case of *K.S. Puttaswamy (Privacy-9J.)* (supra), this Court observed:

> "**310...** Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law..."

51. Further, in the case of *CPIO* v. *Subhash Chandra Aggarwal*, 2019 SCC OnLine SC 1459, the meaning of proportionality was explained as:

> "**225...** It is also crucial for the standard of proportionality to be applied to ensure that neither right is restricted to a greater extent than necessary to fulfil the legitimate interest of the countervailing interest in question..."

In para 63 of the judgment, the Apex Court mentioned the **theories of proportionality** as developed by the **German Federal Constitutional Court**.[25] The aforesaid test was contrasted with its Canadian Counterpart also known as the **Oakes Test**.[26]

[25] 63. [...] The aforesaid doctrine lays down a four pronged test wherein, first, it has to be analysed as to whether the measure restricting the rights serves a legitimate goal (also called as legitimate goal test), then it has to be analysed whether the measure is a suitable means of furthering this goal (the rational connection stage), next it has to be assessed whether there existed an equally effective but lesser restrictive alternative remedy (the necessity test) and at last, it should be analysed if such a measure had a disproportionate impact on the right-holder (balancing stage). One important feature of German test is the last stage of balancing, which determines the outcome as most of the important issues are pushed to the balancing stage and the same thereby dominates the legal analysis. Under this approach, any goal which is legitimate will be accepted; as usually a lesser

In *Modern Dental College & Research Centre v. State of Madhya Pradesh*,[27] the doctrine of proportionality (in line with the German approach) was expounded in the following terms:

> *"60.* ... a limitation of a constitutional right will be constitutionally permissible if:
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> (*i*) it is designated for a **proper purpose**;
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> (*ii*) the measures undertaken to effectuate such a limitation are **rationally connected** to the fulfilment of that purpose;
>
> (*iii*) the measures undertaken are **necessary** in that there are **no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation**; and finally
>
> (*iv*) there needs to be a proper relation **("proportionality stricto sensu" or "balancing")** between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

The Apex court then stated:

> **73.** Taking into consideration the aforesaid analysis, Dr. Sikri, J., in *K.S. Puttaswamy (Retired)* v. *Union of India*, (2019) 1 SCC 1 (hereinafter "*K.S. Puttaswamy* (Aadhaar 5J.)") reassessed the test laid down in *Modern Dental College Case* (supra) which was based on the German Test and modulated the same as against the tests laid down by Bilchitz. Therein this Court held that:
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> > **"157.** In *Modern Dental College & Research Centre [Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353], four sub-components of proportionality which need to be satisfied were taken note of. These are:

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restrictive measure might have the disadvantage of being less effective and even marginal contribution to the goal will suffice the rational connection test

(emphasis supplied)

[26] 64. […]This doctrine of proportionality is elaborately propounded by Dickson, C.J., of the Supreme Court of Canada in *R.* v. *Oakes*, (1986) 1 SCR 103 (Can) SC, in the following words (at p. 138):

> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom" … Second … the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test"… Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance"… The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."
>
> *(emphasis supplied)*

[27] (2016) 7 SCC 353

(*a*) A measure restricting a right must have a legitimate goal (legitimate goal stage).

(*b*) It must be a suitable means of furthering this goal (suitability or rational connection stage).

(*c*) There must not be any less restrictive but equally effective alternative (necessity stage). (d) The measure must not have a disproportionate impact on the right-holder (balancing stage).

158. This has been approved in *K.S. Puttaswamy [K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1] as well. Therefore, the aforesaid stages of proportionality can be looked into and discussed. **Of course, while undertaking this exercise it has also to be seen that the legitimate goal must be of sufficient importance to warrant overriding a constitutionally protected right or freedom and also that such a right impairs freedom as little as possible**. This Court, in its earlier judgments, applied German approach while applying proportionality test to the case at hand. We would like to proceed on that very basis which, however, is tempered with more nuanced approach as suggested by Bilchitz. This, in fact, is the amalgam of German and Canadian approach. We feel that the stages, as mentioned in *Modern Dental College & Research Centre* [*Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353] and recapitulated above, would be the safe method in undertaking this exercise, with focus on the parameters as suggested by Bilchitz, as this projects an ideal approach that need to be adopted."

(emphasis supplied)

77. In view of the aforesaid discussion, we may summarize the requirements of the doctrine of proportionality which must be followed by the authorities before passing any order intending on restricting fundamental rights of individuals. In the first stage itself, the possible goal of such a measure intended at imposing restrictions must be determined. It ought to be noted that such goal must be legitimate. However, before settling on the aforesaid measure, the authorities must assess the existence of any alternative mechanism in furtherance of the aforesaid goal. The appropriateness of such a measure depends on its implication upon the fundamental rights and the necessity of such measure. It is undeniable from the aforesaid holding that only the least restrictive measure can be resorted to by the State, taking into consideration the facts and circumstances. Lastly, since the order has serious implications on the fundamental rights of the affected parties, the same should be supported by sufficient material and should be amenable to judicial review.

INTERNET SHUTDOWN

86. It must be noted that although substantive justice under the fundamental rights analysis is important, procedural justice cannot be sacrificed on the altar of substantive justice. There is a need for procedural justice in cases relating to restrictions which impact individuals' fundamental rights as was recognized by this Court in the case of *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248 and the *K. S. Puttaswamy (Privacy-9J.) case* (supra).

87. The procedural mechanism contemplated for restrictions on the Internet, is twofold: first is contractual, relating to the contract signed between Internet Service Providers and the Government, and the second is statutory, under the Information Technology Act, 2000, the Criminal Procedure Code, 1973 and the Telegraph Act. In the present case, we are concerned only with the statutory scheme available, particularly under the Telegraph Act, and we will therefore confine our discussion mostly to the same. However, as it would be apposite to distinguish between the different statutory mechanisms, we would touch upon these cursorily.

88. Section 69A of the Information Technology Act, 2000 read with the Information Technology (Procedures and Safeguards for Blocking for Access of Information by Public) Rules, 2009 allows blocking of access to information. This Court, in the *Shreya Singhal case* (supra), upheld the constitutional validity of this Section and the Rules made thereunder. It is to be noted however, that the field of operation of this section is limited in scope. The aim of the section is not to restrict/block the internet as a whole, but only to block access to particular websites on the internet. Recourse cannot, therefore, be made by the Government to restrict the internet generally under this section.

89. Prior to 2017, any measure restricting the internet generally or even shutting down the internet was passed under Section 144, Cr.P.C., a general provision granting wide powers to the Magistrates specified therein to pass orders in cases of apprehended danger.....

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91. The position has changed since 2017, with the passage of the Suspension Rules under Section 7 of the Telegraph Act. With the promulgation of the Suspension Rules, the States are using the aforesaid Rules to restrict telecom services including access to the internet.

92. The Suspension Rules lay down certain safeguards, keeping in mind the fact that an action under the same has a large effect on the fundamental rights of citizens. It may be mentioned here that we are not concerned with the constitutionality of the Suspension Rules, and arguments on the same were not canvassed by either side. As such, we are limiting our discussion to the procedure laid down therein.....

93. Rule 2(1) specifies the competent authority to issue an order under the Suspension Rules, who in ordinary circumstances would be the Secretary to the Ministry of Home Affairs, Government of India, or in the case of the State Government, the Secretary to the Home Department of the State Government. The sub-rule also provides that in certain "unavoidable" circumstances an officer, who is duly authorised, not below the rank of a Joint Secretary, may pass an order suspending services. The two provisos to Rule 2(1) are extremely relevant herein, creating an internal check as to orders which are passed by an authorised officer in "unavoidable" circumstances, as opposed to the ordinary mechanism envisaged, which is the issuing of the order by the competent authority. The provisos together provide that the orders passed by duly authorised officers in "unavoidable" circumstances need to be confirmed by the competent authority within twenty-four hours, failing which, as per the second proviso, the order of suspension will cease to exist. The confirmation of the order by the competent authority is therefore essential, failing which the order passed by a duly authorised officer will automatically lapse by operation of law.

94. Rule 2(2) is also extremely important, as it lays down twin requirements for orders passed under Rule 2(1). First, it requires that every order passed by a competent authority under Rule 2(1) must be a reasoned order. This requirement must be read to extend not only to orders passed by a competent authority, but also to those orders passed by an authorised officer which is to be sent for subsequent confirmation to the competent authority. The reasoning of the authorised officer should not only indicate the necessity of the measure but also what the "unavoidable" circumstance was which necessitated his passing the order. The purpose of the aforesaid rule is to integrate the proportionality analysis within the framework of the Rules.

96. The second requirement under Rule 2(2) is the forwarding of the reasoned order of the competent authority to a Review Committee which has been set up under the Suspension Rules, within one working day. The composition of the Review Committee is provided under Rule 2(5), with two distinct review committees contemplated for the Union and the State, depending on the competent authority which issued the order under Rule 2(1). Rule 2(6) is the final internal check under the Suspension Rules with respect to the orders issued thereunder. Rule 2(6) requires the concerned Review Committee to meet within five working days of issuance of the order suspending telecom services, and record its findings about whether the order issued under the Suspension Rules is in accordance with the provisions of the main statute, viz., Section 5(2) of the Telegraph Act.

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100. Keeping in mind the wordings of the section, and the above two pronouncements of this Court, what emerges is that the prerequisite for an order to be passed under this sub-section, and therefore the Suspension Rules, is the occurrence of a "public emergency" or for it to be "in the interest of public safety". Although the phrase "public emergency" has not been defined under the Telegraph Act, it has been clarified that the meaning of the phrase can be inferred from its usage in conjunction with the phrase "in the interest of public safety" following it. The *Hukam Chand Shyam Lal case* (supra) further clarifies that the scope of "public emergency" relates to the situations contemplated under the sub-section pertaining to "sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence".

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102. The second requirement of Section 5(2) of the Telegraph Act is for the authority to be satisfied that it is necessary or expedient to pass the orders in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states or public order or for preventing incitement to the commission of an offence, and must record reasons thereupon. The term 'necessity' and 'expediency' brings along the stages an emergency is going to pass through usually. A public emergency usually would involve different stages and the authorities are required to have regards to the stage, before the power can be utilized under the aforesaid rules. The appropriate balancing of the factors differs, when considering the stages of emergency and accordingly, the authorities are required to triangulate the necessity of imposition of such restriction after satisfying the proportionality requirement.

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104. It must be noted that although the Suspension Rules does not provide for publication or notification of the orders, a settled principle of law, and of natural justice, is that an order, particularly one that affects lives, liberty and property of people, must be made available. Any law which demands compliance of the people requires to be notified directly and reliably. This is the case regardless of whether the parent statute or rule prescribes the same or not. We are therefore required to read in the requirement of ensuring that all the orders passed under the Suspension Rules are made freely available, through some suitable mechanism. [See *B.K. Srinivasan* v. *State of Karnataka*, (1987) 1 SCC 658]

105. The above requirement would further the rights of an affected party to challenge the orders, if aggrieved. Judicial review of the orders issued under the Suspension Rules is always available, although no appellate mechanism has been provided, and the same cannot be taken away or made ineffective. An aggrieved person has the constitutional right to challenge the orders made under the Suspension Rules, before the High Court under Article 226 of the Constitution or other appropriate forum.

106. We also direct that all the above procedural safeguards, as elucidated by us, need to be mandatorily followed. .....

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108. Lastly, we think it necessary to reiterate that complete broad suspension of telecom services, be it the Internet or otherwise, being a drastic measure, must be considered by the State only if 'necessary' and 'unavoidable'. In furtherance of the same, the State must assess the existence of an alternate less intrusive remedy. Having said so, we may note that the aforesaid Suspension Rules have certain gaps, which are required to be considered by the legislature.

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111. The learned Solicitor General has apprised the Bench that the authorities are considering relaxation of the restrictions and in some places the restrictions have already been removed. He also pointed that the authorities are constantly reviewing the same. In this case, the submission of the Solicitor General that there is still possibility of danger to public safety cannot be ignored, as this Court has not been completely apprised about the ground situation by the State. We believe that the authorities have to pass their orders based on the guidelines provided in this case afresh. The learned Solicitor General had submitted, on a query being put to him regarding the feasibility of a measure blocking only social media services, that the same could not be done. However, the State should have attempted to determine the feasibility of such a measure. As all the orders have not been placed before this Court and there is no clarity as to which orders are in operation and which have already been withdrawn, as well as the apprehension raised in relation to the possibility of public order situations, we have accordingly moulded the relief in the operative portion.

ORDER UNDER SECTION 144

After discussing the principles related to the provision of Section 144 laid down through various judgments[28], the Hon'ble Court summarized the position of Section 144 as follows :-

> **150.** Before parting we summarise the legal position on Section 144, Cr.P.C as follows:
>
> **i.** The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.
>
> **ii.** The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.
>
> **iii.** An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.
>
> **iv.** While exercising the power under Section 144, Cr.P.C. the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter apply the least intrusive measure.
>
> **v.** Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.

FREEDOM OF PRESS

The Hon'ble Court discussed the principles related to the freedom of press and the constitutionally permissible restrictions that can be imposed on the exercise thereof enunciated through various judgments[29] and evaluated the contentions of the petitioners on the principle of "**chilling effect**".Applying the aforesaid principle of "chilling effect" to the present case, the Hon'ble Court held as follows :-

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[28] *State of Bihar* v. *Kamla Kant Misra*, (1969) 3 SCC 337; *State of Karnataka* v. *Dr. Praveen Bhai Thogadia*, (2004) 4 SCC 684; *Ram Manohar Lohia* v. *State of Bihar*, AIR 1966 SC 740; Ramlila Maidan Incident, In re, (2012) 5 SCC 1; *Acharya Jagdishwaranand Avadhuta* v. *Commr. of Police, Calcutta*, (1983) 4 SCC 522; *Gulam Abbas* v. *State of Uttar Pradesh*, (1982) 1 SCC 71; *Mohd. Gulam Abbas* v. *Mohd. Ibrahim*, (1978) 1 SCC 226; *tate of Bihar* v. *Kamla Kant Misra*, (1969) 3 SCC 337; *Babulal Parate* v. *State of Bombay*, AIR 1960 SC 51; *Madhu Limaye* v. *Sub-Divisional Magistrate, Monghgyr*, (1970) 3 SCC 746

[29] *Clapper* v. *Amnesty Int'l, USA*, 568 U.S. 113 (2013), *Laird* v. *Tantum*, 408 U.S. 1 (1972); *Rustom Cavasjee Cooper* v. *Union of India*, (1970) 1 SCC 248; *A.K Gopalan* v. *State of Madras*, AIR 1950 SC 27; *Weiman* v. *Updgraff*, 344 U.S. 183; *Bennett Coleman* v. *Union of India*, (1972) 2 SCC 788, *Indian Express* (supra), *Sakal Papers (P) Ltd.* v. *Union of India*, [1962] 3 SCR 842;

162. In this context, one possible test of chilling effect is comparative harm. In this frame-work, the Court is required to see whether the impugned restrictions, due to their broad-based nature, have had a restrictive effect on similarly placed individuals during the period. It is the contention of the Petitioner that she was not able to publish her newspaper from 06-08-2019 to 11-10-2019. However, no evidence was put forth to establish that such other individuals were also restricted in publishing newspapers in the area. Without such evidence having been placed on record, it would be impossible to distinguish a legitimate claim of chilling effect from a mere emotive argument for a self-serving purpose. On the other hand, the learned Solicitor General has submitted that there were other newspapers which were running during the aforesaid time period. In view of these facts, and considering that the aforesaid Petitioner has now resumed publication, we do not deem it fit to indulge more in the issue than to state that responsible Governments are required to respect the freedom of the press at all times. Journalists are to be accommodated in reporting and there is no justification for allowing a sword of Damocles to hang over the press indefinitely.

CONCLUSION

The Hon'ble Court, after making the aforementioned discussions, issued following directions in the present case:-

163. In this view, we issue the following directions:

a. The Respondent State/competent authorities are directed to publish all orders in force and any future orders under Section 144, Cr.P.C and for suspension of telecom services, including internet, to enable the affected persons to challenge it before the High Court or appropriate forum.

b. We declare that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g). The restriction upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution, inclusive of the test of proportionality.

c. An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017. Suspension can be utilized for temporary duration only.

d. Any order suspending internet issued under the Suspension Rules, must adhere to the principle of proportionality and must not extend beyond necessary duration.

e. Any order suspending internet under the Suspension Rules is subject to judicial review based on the parameters set out herein.

f. The existing Suspension Rules neither provide for a periodic review nor a time limitation for an order issued under the Suspension Rules. Till this gap is filled, we

direct that the Review Committee constituted under Rule 2(5) of the Suspension Rules must conduct a periodic review within seven working days of the previous review, in terms of the requirements under Rule 2(6).

g. We direct the respondent State/competent authorities to review all orders suspending internet services forthwith.

h. Orders not in accordance with the law laid down above, must be revoked. Further, in future, if there is a necessity to pass fresh orders, the law laid down herein must be followed.

i. In any case, the State/concerned authorities are directed to consider forthwith allowing government websites, localized/limited e-banking facilities, hospitals services and other essential services, in those regions, wherein the internet services are not likely to be restored immediately.

j. The power under Section 144, Cr.P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger. However, the danger contemplated should be in the nature of an "emergency" and for the purpose of preventing obstruction and annoyance or injury to any person lawfully employed.

k. The power under Section 144, Cr.P.C cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.

l. An order passed under Section 144, Cr.P.C. should state the material facts to enable judicial review of the same. The power should be exercised in a bona fide and reasonable manner, and the same should be passed by relying on the material facts, indicative of application of mind. This will enable judicial scrutiny of the aforesaid order.

m. While exercising the power under Section 144, Cr.P.C., the Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality and thereafter, apply the least intrusive measure.

n. Repetitive orders under Section 144, Cr.P.C. would be an abuse of power.

o. The Respondent State/competent authorities are directed to review forthwith the need for continuance of any existing orders passed under Section 144, Cr.P.C in accordance with law laid down above.

14. National Insurance Company Limited v. Birender and Others, (2020 SCC OnLine SC 28)

Decided on : -13.01.2020

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

"It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only."

Facts

The claim petition was filed by the respondent Nos. 1 and 2 herein, who are the major sons of Smt. Sunheri Devi (deceased). The deceased was on her way to attend the office of Tehsildar, Uchana (where she was working as a Peon) from Dharoli Khera village on 20.10.2014 at about 9.00 a.m., travelling as a pillion rider on a motorcycle bearing No. HR-32-G-8749. At that time, a dumper/tipper bearing registration No. HR-56-A-3260 coming from the opposite direction, being driven in a rash and negligent manner, collided with the motorcycle, resulting in fatal injuries sustained to the deceased to which she succumbed.

The respondent Nos. 1 and 2 claimed an amount of Rs. 50,00,000/- (Rupees fifty lakhs only) along with interest at the rate of 12% per annum on the assertion that the deceased was earning Rs. 28000/- per month (Rs. 21000/- as salary and Rs. 7000/- as family pension of her husband), she was hale and healthy and was the only bread earner of her entire family and that they were largely dependant upon her income and have also been deprived of her love and affection. The appellant disputed the claim and pleaded that the accident did not occur with the offending vehicle (the dumper/tipper) or due to fault of its driver, and that the respondent Nos. 1 and 2 were majors and not dependant upon the deceased and as such not entitled for any compensation. Further, the vehicle in question was being plied in contravention of terms and conditions of the insurance policy and the driver was not holding a valid and effective driving licence. Resultantly, the insurance company-appellant was not liable to pay compensation.

Decision of the MACT

After analysing the evidence on record, the Tribunal held that the accident of the deceased occurred due to rash and negligent driving of the offending vehicle. The Tribunal further noted that the driver and the owner of offending vehicle have placed on record the driving licence of the driver, valid insurance policy, public carrier permit and the registration certificate of the offending vehicle and the appellant having failed to lead any evidence to prove that the terms and conditions of the insurance policy were violated, cannot be

absolved of its liability. The Tribunal also noted that though the respondent Nos. 1 and 2 were major and earning hands, the fact that they were legal heirs of the deceased and have been deprived of the pecuniary benefits through the deceased cannot be denied.

Having decided the above issues in favour of the respondent Nos. 1 and 2, the Tribunal while determining the quantum of compensation took note of the gross monthly salary of the deceased as on September, 2014, which according to her service record was Rs. 23,123/- and the net take home salary was Rs. 16,918/-. The Tribunal did not consider the family pension for computation, as the deceased was getting it in her own right as widow and the same could not be reckoned. Her date of birth was 1.4.1967 and date due for retirement was 31.3.2027, for which multiplier of '13' was applied. The deduction towards personal expenses was kept at 50% as the respondent Nos. 1 and 2 were major and earning hands. Thus, the loss of dependency was determined at Rs. 17,15,532/-. In addition, an amount of Rs. 25,000/- was awarded on account of funeral expenses, etc. and the total compensation was computed at Rs. 17,40,532/- along with interest at the rate of 9% per annum from the date of institution of petition. The driver, owner and insurer of the offending vehicle were held jointly and severally liable.

Decision of the High Court

Against the award passed by the Tribunal, cross appeals were preferred being F.A.O. No. 1341 of 2016 (O&M) filed by the appellant and F.A.O. No. 4023 of 2016 (O&M) filed by the respondent Nos. 1 and 2. The appellant (insurance company) primarily contended that the respondent Nos. 1 and 2 are not entitled to compensation for loss of dependency as they are major and earning and also because the family of the deceased was entitled to receive financial assistance under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short, 'the 2006 Rules'). The respondent Nos. 1 and 2 contended that being major and also earning by itself cannot be regarded as ineligibility to claim compensation. Further, the Tribunal has wrongly assessed loss of dependency on take-home salary instead of the drawing salary and without considering the family pension received by the deceased had she been alive. They further claimed that the deduction of personal expenses should be one-third (1/3rd) instead of 50%.

The High Court by considering the monthly salary for computing compensation as Rs. 23,123/-, benefits of future prospects at 30%, applying a multiplier of '13' and deduction for personal expenses at 50% held that the respondent Nos. 1 and 2 were entitled to loss of dependency qua loss of income at Rs. 23,44,672/-. The High Court, in addition, while considering the loss of dependency qua loss of pension by taking monthly pension at Rs. 7,000/-, applying a multiplier of '13' and deduction for personal expenses at 50%, held that Rs. 5,46,000/- would be payable towards this head. The compensation under conventional heads was also increased from Rs. 25,000/- to Rs. 30,000/-. Therefore, the total compensation payable was determined as Rs. 29,20,672/-. The High Court further noted that financial assistance available to the family of the deceased, under the 2006 Rules would be Rs.

33,29,712/- and deducted 50% of the said amount from compensation whilst relying upon a judgment of the same High Court in *New India Assurance Co. Ltd.* v. *Ajmero*. The High Court then deducted that amount of Rs. 16,64,856/- from the compensation amount of Rs. 29,20,672/- determined by it. Resultantly, the High Court reduced the compensation awarded by the Tribunal to the extent of Rs. 4,84,716/- and gave liberty to the appellant to recover the excess amount, if already paid.

Appeals before the Supreme Court

One appeal was preferred by the appellant on the ground that the High Court ought to have deducted the entire amount of financial assistance under the 2006 Rules, instead of deducting only 50% thereof. Reliance was placed on the judgment of this Court in *Reliance General Insurance Co. Ltd.* v. *Shashi Sharma*. It is urged that claim for loss of dependency is unavailable to the respondent Nos. 1 and 2 in the facts of the present case, they being major sons of the deceased who were married and also gainfully employed. Reliance is placed on *Manjuri Bera (Smt)* v. *Oriental Insurance Co. Ltd*. It is urged that the respondent Nos. 1 & 2 may be entitled only to compensation under conventional heads as held in *National Insurance Company Limited* v. *Pranay Sethi*.

Another appeal was preferred by the respondent Nos. 1 and 2, primarily on the ground that the High Court erred in deducting 50% of the amount from compensation instead of one-third (1/3rd). Further, deduction of 50% amount of the financial assistance receivable under the 2006 Rules on the assumption that the respondent Nos. 1 and 2 are eligible therefor is a manifest error. Reliance is also placed on the decision of the High Court in *Ajmero* (supra). It is urged that the High Court ought to have considered that the respondent Nos. 1 and 2 were dependant on the deceased and that they have been deprived of her love and affection and income and thus entitled to compensation as claimed in the original application in that regard.

Issues before the Supreme Court

The principal issues were as follows:—

(i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short, 'the Act')?

(ii) Whether such legal representatives are entitled only for compensation under the conventional heads?

(iii) Whether the amount receivable by the legal representatives of the deceased under Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short, 'the 2006 Rules') is required to be deducted as a whole or only portion thereof?

Decision and Observation

Regarding the first and second issues the Hon'ble Court analysed the Scheme under Section 166 of the Motor Vehciles Act and also the decision rendered in ***Manjuri Bera (Smt) v. Oriental Insurance Co. Ltd***.[30] particularly Paragraph 15 and held as follows :-

> **15.** In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.
>
> **16.** It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/- and Rs. 1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.

Third Issue :

Regarding the third issue, the Hon'ble Court, referred to the following observation of the High Court:-

> **18.** The learned Judge of the High Court has, however, after adverting to the decision of the same High Court in *Ajmero* (supra), went on to observe that 50% of the amount receivable by the legal representatives of the deceased towards financial assistance under the 2006 Rules is required to be deducted from the compensation amount. In the relied upon decision, the same learned Judge had occasion to observe as follows:—
>
> > "... **However, perusal of the judgment would reveal that the Court has not adverted to the issue that had the Rules of 2006 extending assistance to family of a deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay.** As per the settled position in law, the pensionary benefits available to family of a deceased employee are not amenable for deduction for computing loss of dependency. There is nothing on record suggestive of the fact that in addition to compassionate assistance under the Rules, family of the

[30] (2007) 10 SCC 643.

deceased is being paid pension till the age of superannuation. Rather Rule 5(2) of the 2006 Rules specifically denies family pension as per normal rules..."

(emphasis supplied by Court)

The Hon'ble Supreme Court expressed its disagreemebnt with the view taken by the Hon'ble High Court and referring to the judgment rendered in ***Reliance General Insurance Co. Ltd. v. Shashi Sharma***[31], held as follows :-

19. The view so taken by the High Court is not the correct reading of the decision of three-Judge Bench of this Court in *Shashi Sharma* (supra) for more than one reason. First, this Court was conscious of the fact that under Rule 5(2) of the 2006 Rules, the family pension receivable by the family would be payable, however, only after the period, during which the financial assistance is received, is completed. In that context, in paragraph 24 of the reported decision, the Court clearly noted that the amount towards family pension cannot be deducted from the claim amount for determination of a just compensation under the Act. Further, the High Court has erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee. That is in the teeth of the scheme of the 2006 Rules, in particular Rule 5(2) thereof. The said Rules provide for financial assistance on compassionate grounds, as also, other benefits to the family members of the deceased employee and as a package thereof, Rule 5(2) stipulates that the family pension as per the normal rules would be payable to the family members only after the period of delivery of financial assistance is completed. The validity of this provision is not put in issue. Suffice it to say that the view taken by the High Court in *Ajmero* (supra) is a departure from the scheme envisaged by the 2006 Rules, in particular, Rule 5(2). That cannot be countenanced.

20. As a matter of fact, in the present case, the High Court committed manifest error in assuming that the respondent Nos. 1 and 2 would be eligible to receive financial assistance under the 2006 Rules. The eligibility to receive such financial assistance has been spelt out in Rule 3 of the 2006 Rules read with the provision of Pension/Family Pension Scheme, 1964. It appears that major sons and married daughters are not included in the definition. However, we need not dilate on that aspect in the present proceedings any further. It has come in the evidence of Gobind Singh, Clerk in SDM Office (PW-1) that the legal representatives of the deceased have not submitted any request for getting financial assistance till he had deposed. Indeed, respondent No. 1, who had entered the witness box, did depose that they had applied for getting salary of their deceased mother. The fact remains that there is no clear evidence on record that respondent Nos. 1 and 2 are held to be eligible to get financial assistance or in fact, they are getting such financial assistance under the 2006 Rules. The High Court, therefore, instead of providing for deduction of the amount receivable by the legal representatives of the deceased on this count (under the 2006 Rules), from the compensation amount, should have independently determined the compensation amount and ordered payment thereof subject to legal representatives of the deceased filing affidavit/declaration before the executing Court that they have not received nor would they claim any amount towards financial assistance under the 2006 Rules, so as to become entitled to withdraw the entire compensation amount.

[31] (2016) 9 SCC 627.

Regarding the amount of compensation, the Hon'ble Court referred to the decision of the Apex Court in ***National Insurance Company Limited* v. *Pranay Sethi***[32] and ***Sarla Verma (Smt.)* v. *Delhi Transport Corporation***[33] and observed that if the dependant family members are 2 to 3, as in this case, the deduction towards personal and living expenses of the deceased should be taken as one-third (1/3rd). In other words, the deduction towards personal expenses to the extent of 50% is excessive and not just and proper considering the fact that the respondent Nos. 1 and 2 alongwith their respective families were staying with the deceased at the relevant time and were largely dependant on her income. The Hon'ble Court calculated the compensation as follows:-

> **25.** Considering the above, respondent Nos. 1 and 2 would be entitled for compensation to be reckoned on the basis of loss of dependency, due to loss of gross salary (less tax amount, if any) of the deceased and future prospects and deduction of only one-third (1/3rd) amount towards personal expenses of the deceased. As regards the multiplier '13' applied by the Tribunal and the High Court, the same needs no interference. As a result, on the facts and in the circumstances of this case, the amount payable towards compensation will have to be recalculated on the following basis:—
>
> > Loss of dependency due to loss of income calculated at Rs. 31,26,229.60/- [(Rs. 23,123/- × 12 × 13) + (30% future prospects) - (1/3rd deduction for personal expenses)]. In addition, the claimants would be entitled for a sum of Rs. 70,000/- towards conventional heads in terms of dictum in paragraph 59.8 of *Pranay Sethi* (supra). Thus, a total sum of Rs. 31,96,230/- (Rupees thirty-one lakhs ninety-six thousand two hundred thirty only), as rounded off, is payable to the claimants.

Regarding the interest and payment of the compensation, the Hon'ble Court fixed the rate of interest as 9% and held as follows :-

> **26.** However, this amount alongwith interest at the rate of 9% per annum from the date of filing of the claim petition till payment, will be payable subject to the outcome of the application made by the respondent Nos. 1 and 2 to the competent authority for grant of financial assistance under the 2006 Rules. If that application is allowed and the amount becomes payable towards financial assistance under the said Rules to the specified legal representatives of the deceased, commensurate amount will have to be deducted from the compensation amount alongwith interest component thereon. The respondent Nos. 1 and 2, therefore, can be permitted to withdraw the compensation amount only upon filing of an affidavit-cum-declaration before the executing Court that they have not received nor would claim any amount towards financial assistance under the 2006 Rules and if already received or to be received in future on that account, the amount so received will be disclosed to the executing Court, which will have to be deducted from the compensation amount determined in terms of this order. The compensation amount, therefore, be paid to the respondent Nos. 1 and 2 subject to the above and upon giving an undertaking before the executing Court to indemnify the insurance company (appellant) to that extent.

[32] (2017) 16 SCC 680.
[33] (2009) 6 SCC 121.

15. *National Commission For Protection of Child Rights and Others v. Dr. Rajesh Kumar and Others , (2020 SCC OnLine SC 27)*

Decided on : -13.01.2020

Bench :- 1. Hon'ble Mr. Justice Deepak Gupta
2. Hon'ble Mr. Justice Aniruddha Bose

(There is no ouster of jurisdiction of any Commission under the CPCR Act. The only constraint placed by Section 13(2) of the Commissions for Protection of Child Rights Act, 2005 is that if the State Commission has already started an inquiry, the National Commission should naturally refrain from inquiring into the matter. This, however, does not mean that the National Commission cannot go into the other larger questions which may have led to the specific incidents of violation of child rights which need to be inquired into. There must be mutual cooperation between the Commissions and the object behind the Act and the best interests of children must be kept in mind. Such matters must not be entangled in jurisdictional or procedural disputes.)

Facts

News reports were published sometime in February, 2017 indicating that a child-care institution based in Jalpaiguri in West Bengal had indulged in large scale trafficking of children. The NCPCR took cognizance of these reports on 03.03.2017 and two members of the NCPCR went to Jalpaiguri on 07.03.2017. They requested the State officials to provide them some information which, according to the NCPCR, was not provided. They finally summoned the Additional Director General of Police (ADGP), Criminal Investigation Department (CID), West Bengal (Respondent no. 1 herein) to appear before the NCPCR. This gentleman, instead of appearing before the NCPCR, chose to file a writ petition challenging the jurisdiction of the NCPCR to summon him. The High Court, by the impugned order dated 29.08.2017, stayed the direction of the NCPCR mainly on the ground that since the State Commission had taken cognizance of the matter on 24.02.2017, the NCPCR had prima facie no jurisdiction.

Issue :-

The following three questions arose for decision in this case:

(i) Whether the matter in hand was pending before the West Bengal Commission for Protection of Child Rights before the NCPCR took cognizance on 03.03.2017 and started inquiry on 07.03.2017?

(ii) Whether Section 13(2) of the CPCR Act places the two Commissions (the NCPCR and the State Commissions) in water-tight compartments where they oust the jurisdiction of each other?

(iii) Whether in a case which has inter-State or international ramifications the jurisdiction, if any, of the NCPCR can be ousted?

Observations and Decisions

The Hon'ble Court began the judgment with the following expression:-

> It's so sad! We start with a lament because institutions set up to protect children have virtually forsaken them in a fight over their so called jurisdictions.

Formation of National and State Commissions for the Protection of Child Rights:-

2. India is a signatory to the United Nations Convention on the Rights of the Child, 1989 which makes it obligatory upon the signatory States to take all necessary steps to protect the rights of the children as set out in the Convention. The Government of India enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. This was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the JJ Act').

3. It was felt expedient to enact a law constituting special commissions to protect the rights of children. Parliament enacted the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as 'the CPCR Act'). The CPCR Act envisages the constitution of a National Commission for Protection of Child Rights (hereinafter referred to as 'NCPCR/National Commission') under Section 3 and the State Commissions for Protection of Child Rights (hereinafter referred to as 'State Commissions') under Section 17. We shall deal with their respective functions and powers at a later stage but there can be no manner of doubt that these two Commissions - one at the National level and the other at the State level - are expected to function in a spirit of cooperation. We expect such Commissions to consult, discuss and cooperate with each other while exercising their powers and fulfilling the duties enjoined upon them by the CPCR Act. These two institutions are in the nature of siblings. The goal which they both set out to achieve is the same, viz., protecting children from all sorts of abuse, exploitation etc. We see no reason why there should be any disharmony and lack of coordination between these two institutions. This non-cooperation and lack of coordination can only occur when the persons manning the institutions put their own interests over the interest of the children. It is only when those in-charge of such commissions give themselves so much importance that they forget that they are the creation of statute, the only purpose of which is to protect children.

Role of the Commissions and of Courts vis-à-vis inquiry:

16. Any Commission, while conducting an inquiry under Section 13(1)(j) has been given wide powers akin to that of a civil court and has a right to forward any case to a magistrate and the magistrate is required to deal with such case forwarded to him as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973. The follow up action which a Commission can take is also clearly set out in Section 15 of the CPCR Act which empowers the Commission to make recommendations to the concerned Government or authority for initiation of proceedings including prosecution or such other action as the Commission may deem fit. This is a recommendatory power but normally we would expect that the Government would accept the recommendation of the Commission in this regard. The second power given to the Commission is to approach the Supreme Court or the High Court for an appropriate writ, order or direction. The Commission can also recommend the grant of interim relief to a victim under Section 15(iii) of the CPCR Act. The aforesaid provisions which set out the powers relating to inquiries and steps to be taken thereafter clearly indicate that the inquiry contemplated is more than only gathering of information, and is more in the nature of an investigation or inquisition.

Role of Police

35. Police officials should realise that when the Commissions constituted under the CPCR Act ask for some relevant information, they must respectfully reply to the same and not rake up the dispute of so-called 'jurisdiction'. Even the police officials must realise that these Commissions have been constituted for the welfare of the children. Even assuming that the WBCPCR had started an inquiry, we see no reason why Dr. Rajesh Kumar could not have provided the information to the NCPCR. It was not for him to question the jurisdiction of the NCPCR. If any official is asked for information by any of the Commissions, he is duty bound to reply to the letters of the Commission. One Commission may raise the issue that since it is seized of the matter and is inquiring into it, the National Commission should not start another inquiry, but it is not for the officials to raise such an issue. Whether an inquiry has actually been initiated or not cannot be decided by an official. This has to be decided either by the Commission or by a Court of law. Therefore, in our view, Dr. Rajesh Kumar would have been better advised to furnish information to the NCPCR rather than challenging the jurisdiction of the NCPCR.

The Hon'ble Court elaborately discussed about the powers and functions of the National and the State Commissions on the Protection of Child Rights and also the role of the Courts and the Police. Finally regarding the three issues formulated by the Hon'ble Court, it was held as follows :-

12. We may clarify that we have used the term 'jurisdiction' because it has been used by the parties. However, the proper word should not be 'jurisdiction' but the 'functions and powers' to be exercised by the respective Commissions. In our view if we do not refer to the 'jurisdictions' and deal with the 'functions and powers' of the Commissions then matters become much simpler. There is no ouster of jurisdiction like in the case of courts. The purpose of Section 13(2) is to ensure that one Commission carries out the inquiry. The language of the CPCR Act is clear that if the State Commission or any other Commission constituted under law has started an inquiry under Section 14 then the National Commission should stay its hands in the matter. Both the Commissions have similar powers and functions. The jurisdiction of the State Commissions is limited to the State for which such Commission is constituted whereas the National Commission has jurisdiction all over the country and can inquire into any matter in any State. We have no doubt in our mind that both the Commissions are expected to function in a spirit of comity and in concert with each other and not as adversaries.

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38. As far as the questions framed by us in Para 12 of this judgment are concerned, we answer Question No. 1 by holding that in the facts of the present case, the WBCPCR had not started an inquiry till 07.03.2017. As far as Question No. 2 is concerned, we are of the view that there is no question of ouster of jurisdiction of any Commission. The only constraint placed by Section 13(2) is that if the State Commission has already started an inquiry, the National Commission should naturally refrain from inquiring into the matter.

This, however, does not mean that the National Commission cannot go into the other larger questions which may have led to the specific incidents of violation of child rights which need to be inquired into. With regard to Question No. 3 we hold that even a State Commission has the power to inquire into those matters which fall within its purview and even if the illegality is such that it has inter-State or international ramifications, e.g. a child is being illegally sent for adoption abroad. Here again, we are of the view that if the State Commission in such a case asks for assistance from the National Commission or some other State Commission where the child may have been illegally trafficked, the National Commission or the other State Commission(s) should cooperate with the Commission inquiring into the matter.

39. As clearly held by us above, both the Commissions have to work for the best interest of the children in a spirit of cooperation. Unfortunately, in this case, there has been no cooperation rather mudslinging at each other. We would like to reiterate and re-emphasise that there are no jurisdictional issues involved.

16. K. Lubna and Others v. Beevi and Others, (2020 SCC OnLine SC 26)

Decided on : -13.01.2020

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

- Subletting even a portion of the leased property entitles the landlord to claim eviction from the whole property if the lease does not give such a right of sub-letting

- Question of law can be raised at any stage of a case

Facts

One Pathummakutty, the owner, let out three shop room premises, to one Beerankoya. The ownership rights in the property were transferred in favour of the appellants in 1986 by a registered document. This transfer/assignment was intimated to original respondent No. 1 (now represented through his legal heirs) as per a registered letter in May, 1986. The allegation is that the original respondent sent rent through money orders only up to November, 1987, and stopped payment of rent thereafter. It is also alleged that the appellants required the premises *bona fide*; two of the shops had been sublet by the original respondent without the consent of the appellants and the value of the suit shops had been reduced materially and permanently by the respondents. The appellants, thus, sent a legal notice dated 15.12.1987 demanding surrender of possession of suit shop rooms and arrears of rent, and ultimately filed an eviction petition before the Rent Control Court, Kozhikode for eviction under Sections 11(2), 11(3) and 11(4) (i) & 11(4) (ii) of the Kerala Buildings (Lease and Rent Control), Act, 1965 (hereinafter referred to as the 'said Act').

The trial court *vide* judgment dated 31.10.1994 found against the appellants on all grounds except non-payment of rent while granting a decree of eviction for all the three shops. The appellants preferred an appeal before the appellate authority. The three rooms were 3/471, 3/472 and 3/476. In respect of Room No. 3/471 though *bona fide* need of the appellants was not found, in Room No. 3/472 the *bona fide* need of the appellant was stated to be proved but no sub-letting was stated to have been proved, and in respect of Room No. 3/476 the sub-letting was proved. Thus, eviction was granted in respect of rooms 3/472 and 3/476 *vide* order dated 9.7.1998.

The aforesaid order resulted in cross-revision petitions by both sides before the High Court of Kerala. In terms of the impugned order dated 30.10.2007 *qua* Room No. 3/471, no *bona fide* need has been found and the position is the same in respect of Room No. 3/472. Further, while sub-letting was not proved *qua* Room No. 3/472, was stated to have been proved *qua* Room No. 3/476. The result of the aforesaid is that the endeavour of eviction from Room Nos. 3/471 and 3/472 failed, while eviction order *qua* Room No. 3/476 on the ground of sub-letting was sustained.

The appellants, aggrieved by this order, preferred a Special Leave Petition, in which leave was granted on 4.3.2011. The respondents did not prefer any appeal, and even after leave was granted, did not file any cross-appeal/cross-objections. In the proceedings of 29.8.2019, the Supreme Court recorded the real contention of the appellants as advanced by the counsel, that there was one tenancy though there were different violations in different portions of the tenancy. The notice dated 15.12.1987 was stated to be a composite notice and one eviction petition was filed *qua* the whole premises. That being the position, it was sought to be contended before the Supreme Court, by inviting the Court's attention to Section 11(4)(i) of the said Act, that even if the sub-tenancy is created in part of the premises, the entitlement of eviction is in respect of the whole of the premises.

Observations and Decision

It was contended that the ground that sub-letting one room would entail eviction from the entire tenancy premises, apparently was never urged before the trial court, the appellate court or the High Court. It formed a part of the pleadings before the Supreme Court, to the extent of being included in the rejoinder to the SLP. Thereafter by way of an interlocutory application, additional grounds were urged where this question was sought to be raised, and leave was granted by the Court post that stage.

The Hon'ble Court regarding this contention, referred to the case of ***Yeswant Deorao Deshmukh* v. *Walchand Ramchand Kothari* 1950 SCR 852** and ***Chittoori Subbanna* v. *Kudappa Subbanna***[34] held as follows :-

> **9. On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law**.
>
> **10.** No doubt the legal foundation to raise a case by including it in the grounds of appeal is mandated. Such mandate was fulfilled by moving a separate application for permission to urge additional grounds, a course of action, which has already been examined by, and received the imprimatur of, this Court in *Chittoori Subbanna* v. *Kudappa Subbanna*.
>
> **11.** We may also usefully refer to what has been observed by Lord Watson in *Connecticut Fire Insurance Co.* v. *Kavanagh*[3] in the following words:
>
> > "....When a question of law is raised for the first time in a court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the court of ultimate review is placed in a much less advantageous position than the courts below."

[34] AIR 1965 SC 1325.

> **12.** In our view, the aforesaid succinctly sets forth the parameters of scrutiny, where the question of law is sought to be raised at the final court stage. There are no "nice questions of fact" required to be decided in the present case which would dissuade us from examining this plea at this stage. We have set forth the undisputed facts aforesaid. Thus, the only question is whether this is a question of law which deserves to be examined, and has ramifications in the present case.
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> (emphasis supplied)

On the issue of eviction, the Hon'ble Court referred to the decision in ***M. Meeramytheen* v. *K. Parameswaran Pillai***[35] and, allowing the appeal, held as follows :-

> **14.** The aforesaid judgment, in our view, covers the legal principle on all fours. A bare reading of sub-para (i) of sub-section (4) of Section 11[36] of the said Act leaves no manner of doubt that the cause arises upon the tenant transferring his rights under a lease and sub-lets the entire building "or any portion thereof", if the lease does not confer on him any right to do so. The proviso requires that the landlord should have sent a registered notice to the tenant intimating the contravention of the said condition of the lease and upon the tenant failing to terminate the transfer or the sub-lease, as the case may be, within thirty (30) days of the receipt of the notice, an application for eviction could be made by the landlord. Thus, sub-letting of any part of the tenanted premises gives right to eviction from the whole premises. That is how the statute reads and that is also, in our opinion, a reasonable interpretation of the same, as, if one tenancy is created it would not be appropriate to pass eviction order only in respect of a part thereof, and not the whole. The provision reading clearly, and in view of the aforesaid judicial pronouncements, there is no doubt about this proposition. This is not a case of *bona fide* requirement. The findings of fact in this case are not required to be closely scrutinised as the essential facts, which have

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[35] (2010) 15 SCC 359.

36 11. Eviction of tenants.—

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(4) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building,—

(i) if the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so:

Provided that an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sublease as the case may be, within thirty days of the receipt of the notice or the refusal thereof."

Section 19 (1) (a) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 is in *pari materia* with Section 11(4) (i) of the Kerala Act.

Section 19 - Eviction of tenant

(1) Notwithstanding anything contained in any contract or law to the contrary, but subject to the provisions of the Industrial Disputes Act, 194 7 (Act XIV of 1947), and to those of section 18 , where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of an order passed by the Controller on one or more of the following grounds:

(a) for breach of the conditions of the tenancy, or for sub letting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment;

……

been analysed by the courts below, clearly show the existence of a single tenancy. Issuance of a single notice and the filing of a single eviction petition, albeit raising different grounds for different portions of the premises, is an undisputed fact. Thus, the appellant is not expected to allege sub-letting of the whole premises if the sub-letting is only in part of the premises. No doubt the appellants have not specifically claimed that by sub-letting a portion, the whole premises is liable to be vacated, but then that is the legal consequence as is emerging from the legal position.

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16. We are, thus, of the view that the appellants are entitled to a decree of eviction for the entire premises, mentioned as tenanted premises, on the ground of the respondents having sub-let a part of the premises, and a decree is accordingly passed.

17. Padum Kumar v. State of Uttar Pradesh, (2020 SCC OnLine SC 32)

Decided on : -14.01.2020

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

(Expert opinion must always be received with great caution. It is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. Therefore, it is not safe to base the conviction solely on the evidence of the hand-writing expert.)

Facts

The appellant-Padum Kumar was then working as Postman in Indira Nagar Post Office, Lucknow. On 09.04.1992, PW-3-Dr. M.L. Varshney, Professor, Agriculture Institute, Naini, Allahabad had sent a registered envelope No. 0095 to the Complainant-Dr. K.B. Varshney (PW-1) from the Sub-Post Office of the said Institute. The said envelope contained four Indira Vikas Patra of value of each Rs. 5,000/- totalling Rs. 20,000/-. The envelope did not reach PW-1-Dr. K.B. Varshney; therefore, on 27.04.1992, PW-3-Dr. M.L. Varshney made a complaint before the Post Master, Post Office, Agriculture Institute, Naini, Allahabad. PW-1-Complainant-Dr. K.B. Varshney also enquired from Indira Nagar Post Office. On 29.04.1992, PW-1 had also filed a complaint to the Senior Superintendent, Department of Posts that the envelope Registry No. 0095 has not been received. On 14.05.1992, information was received from Senior Superintendent, Post and Telegraph, Lucknow that a person named "Mohan" has received the aforesaid registry on 13.04.1992. Then, PW-1 and his son Devesh Mohan-PW-2 went to Indira Nagar Post Office and saw the signature where it has been written as "D. Mohan". Complainant's son is also named Devesh Mohan (PW-2). On being shown the signature, PW-2 denied that the signature in question belongs to him. A case was registered in Crime No. 394/1992 under Sections 420, 467 and 468 IPC at P.S. Ghazipur, Lucknow. The case was investigated. Later on, the investigation of the case was entrusted to C.B. C.I.D.

The Investigating Officer has recorded the statement of various witnesses. The Investigating Officer had sent the disputed signature along with the specimen signatures of PW-2-Devesh Mohan to the Forensic Science Laboratory, Lucknow. As per the report given by the Forensic Science Laboratory, Lucknow, the person who has made specimen signatures has also made the disputed signature in the delivery slip-Ex.-P4. The disputed signature "Q-1" along with the specimen signatures of PW-2 "S-1 to S-6" were sent to private hand-writing expert M.Y. Khan-PW-5. In his evidence, PW-5 has stated that on comparison of the disputed signature "Q-1" in Ex.-P4-delivery slip with the specimen signatures of PW-2 "S-1 to S-6", he came to the conclusion that the disputed signature is different from the specimen signatures and PW-5 had issued his report-Ex.-P9. Yet another hand-writing expert Siya Ram Gupta had also examined the disputed signature with reference to the specimen signatures. Siya Ram Gupta had opined that the disputed signature in the delivery slip has not been made by PW-2-Devesh Mohan. By the time of trial, hand-writing expert Siya Ram Gupta passed away and

his son Ranjeet Kumar was examined as PW-8. As PW-8-Ranjeet Kumar was acquainted with the hand-writing of his father-Siya Ram Gupta, the report of handwriting expert Siya Ram Gupta has been marked through his son-PW-8. The investigation revealed that the appellant had forged the signature on the delivery slip-Ex.-P4. On completion of investigation, charge sheet has been filed against the appellant-accused under Sections 420, 467 and 468 IPC.

To prove the charges against the appellant, the prosecution examined PW-1-Dr. K.B. Varshney, PW-2-Devesh Mohan, PW-3- Dr. M.L. Varshney, hand-writing expert-PW-5-M.Y. Khan, PW-8-Ranjeet Kumar, son of another hand-writing expert-Siya Ram Gupta and other witnesses. Upon consideration of the oral and documentary evidence, the trial court noted that three hand-writing experts are on record. According to one expert, the disputed signature has been made by Devesh Mohan-PW-2. The trial court also noted that the other two experts have mentioned in their reports that the disputed signature "Q-1" in delivery slip do not match with the specimen signatures "S-1 to S-6". The trial court held that the appellant being the Postman did the work of delivery of registry and the delivery slip was kept with him therefore, the conclusion is that the appellant made the signature of "D. Mohan" in the delivery slip. The trial court held that the appellant frequently used to visit the house of the complainant-PW-1 by taking registries and letters and thus, he was well-acquainted with the signature of PW-2-Devesh Mohan. Based upon the evidence of PWs 1 to 3 and the reports of hand-writing experts, the trial court held that the appellant had committed the offence of forgery and convicted him under Sections 467 and 468 IPC and sentenced him to undergo rigorous imprisonment of four years and three years respectively. Both the sentences were directed to run concurrently.

Challenging the conviction, the appellant has filed an appeal before the appellate court - Additional Chief Judicial Magistrate, Lucknow. The appellate court dismissed the appeal by holding that upon proper analysis of evidence adduced by the prosecution, the trial court had rightly convicted the appellant under Sections 467 and 468 IPC.

Being aggrieved, the appellant filed Criminal Revision No. 511 of 2006 before the High Court of Allahabad which came to be dismissed by the impugned judgment. The High Court held that the prosecution has adduced evidence proving that the signature of "D. Mohan" in the delivery slip and the specimen signatures of PW-2-Devesh Mohan differs. The High Court further held that the appellant was the person who delivered the envelope and in such circumstances, it is for the appellant to explain as to who signed the disputed signature and in the absence of any such explanation from the appellant, the presumption is to be raised against the appellant that he is the only person having knowledge of the same. The revision was accordingly dismissed and the conviction of the appellant was affirmed.

This appeal was preferred challenging the impugned judgment dated 19.02.2018 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 511 of 2006 whereby the High Court dismissed the revision petition filed by the appellant confirming his conviction under Sections 467 and 468 IPC and the sentence of imprisonment imposed upon him.

Observations and Decision

It was contended before the Hon'ble Court that without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction.

The Hon'ble Court relied on the decision of the Apex Court in ***S. Gopal Reddy* v. *State of A.P.* (1996) 4 SCC 596** and in ***Magan Bihari Lal* v. *State of Punjab* (1977) 2 SCC 210** and held as follows :-

> **16.** Of course, it is not safe to base the conviction solely on the evidence of the hand-writing expert. As held by the Supreme Court in *Magan Bihari Lal* v. *State of Punjab* **(1977) 2 SCC 210** that *"expert opinion must always be received with great caution.....it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law."*
>
> **17.** It is fairly well settled that before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence.....
>
> (emphasis by Court)

Relying on the principles discussed in the aforementioned cases, the Hon'ble Court held:

> **18. .....** As pointed out by the courts below, the evidence of hand-writing expert is the evidence relied upon by the prosecution to corroborate the evidence of PW-2-Devesh Mohan who has denied his signature in Ex.-P4. Learned counsel for the appellant is not right in contending that the courts below have based the conviction solely upon the opinion of the hand-writing experts. The evidence of hand-writing experts is only a corroborative piece of evidence to corroborate the evidence of PW-2-Devesh Mohan.
>
> **19.** In the light of the evidence of PWs 1 to 3 and other evidence, the High Court rightly found that the appellant who delivered the registered envelope at the place of the complainant-PW-1 is bound to explain as to who made the alleged signature in Ex.-P4-delivery slip. In the absence of any explanation by the appellant-accused, as held by the High Court, a presumption is to be raised against the appellant who delivered the envelope as he is the only person having knowledge of the same. From the evidence of PW-3-Dr. M.L. Varshney, the prosecution has proved that the envelope contained valuable security-four Indira Vikas Patra of value of each Rs. 5,000/- totalling Rs. 20,000/-. Upon appreciation of evidence adduced by the prosecution, the courts below rightly recorded the concurrent findings that the appellant has forged the signature of PW-2-Devesh Mohan and the conviction of the appellant under Sections 467 and 468 IPC is based upon the evidence and the conviction does not suffer from any infirmity warranting interference.

18. Uttam Chand (D) through LRs v. Nathu Ram (D) through LRs and Others (2020 SCC OnLine SC 37)

Decided on : -15.01.2020

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

(The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Mere long continuous possession is not sufficient. There must also be hostile possession by assertion of a hostile title in denial of the title of the true owner.)

Facts

The plaintiff filed a suit for possession on the basis of purchase of suit property from the Managing Officer, Department of Rehabilitation, Government of India in a public auction held on 21st March, 1964. The certificate of sale was issued thereafter on 4th January, 1965. The plaintiff filed a suit for possession on 17th February, 1979 alleging the defendants to be in an unauthorised possession of the suit property and who have refused to vacate the same.

The defendants in the written statement denied that the plaintiff is the owner of the property. The defendants asserted that their house existed on the property in question for more than the last two centuries. The grandfather of the defendants was said to be in possession of the property as owner, thereafter their father one Tara Chand and now all the defendants are in possession of the property as owners. It was denied that the property was ever vested with the Managing Officer and, therefore, it was claimed that the Managing Officer has no authority or jurisdiction to auction the property in question. Therefore, the plaintiff has no interest, right or title in the property.

Decision of the Trial Court

Parties went to trial on the following issues:

1. Whether the suit is properly valued for the purpose of Court fee & Jurisdiction?
2. Whether the suit is time barred?
3. Whether the plaintiff is the owner of the property in suit?
4. Whether the defendants become owner by adverse possession of the property in suit?
5. Whether the defendants are in unauthorized occupation of the property in dispute?
6. Relief.

Before the learned trial court, the plaintiff examined PW-4 Chander Bhan, Lower Division Clerk from the Land and Building Department who proved that the sale certificate was issued in favour of plaintiff on 15th January, 1965. Thus, Issue No. 3 was held in favour of the plaintiff and the plaintiff was found to be owner of the property. But Issue Nos. 2, 4 and 5

were decided in favour of the defendants and against the plaintiff and consequently the suit was dismissed.

Decision in the First Appeal

In the first appeal by the plaintiff, the learned First Appellate Court affirmed the findings recorded by the trial court on Issue Nos. 1 and 3 that the plaintiff is the owner of the property in question. However, in respect of Issue No. 2 as to whether the suit is time barred, the learned First Appellate Court returned a finding that the suit is within time as the same was filed on February 17, 1979 i.e. before the completion of 12 years. Issue No. 2 was decided against the defendants holding that the findings recorded by the trial court that the limitation starts from the date of purchase of the suit property is not sustainable. The right of the respondents over the property was challenged before the completion of 12 years, therefore, the suit filed in February, 1979 is within period of limitation. Under issue No. 4, the findings recorded were that the mere possession of land, however long it may be, would not ripe into possessory title unless the possessor has *animus possidendi* to hold the land adverse to the title of the true owner. The assertion of title must be clear and unequivocal. Consequently, Issue No. 5 was also decided against the defendants and the suit stood decreed.

Decision in the Second Appeal

In the second appeal, the High Court affirmed the finding of ownership in favour of the plaintiff and relied upon electricity and house tax bills showing the possession of the defendants over the suit property from November, 1963. It was, thus, held that the adverse possession of the defendants over the same matured within 12 years, by November, 1995, therefore, the suit filed on 17th February, 1979 was barred by limitation.

The High Court referred to the statement of PW-1 Uttam Chand that the suit property was assessed to house tax but no one had paid such tax. He stated that there was only one kachha room of mud at the site but he did not know when the unauthorised construction was made in the suit property. The High Court considered the statement of witness of the plaintiff to return a finding that Tara Chand, deceased father of the defendants was found in possession of the suit property in March, 1964. The High Court returned a finding that Tara Chand was in occupation of the suit property even prior to the purchase of the same by the plaintiff in the year 1964. The Court referred to the judgment of this Court reported as *T. Anjanappa* v. *Somalingappa*[1] to hold that the defendants were in open, uninterrupted, peaceful and hostile possession since March, 1964 and the period of 12 years was completed in March, 1976. Therefore, the suit filed by the plaintiff on 17th February, 1979 was barred by limitation.

The Plaintiff was in appeal before the Supreme Court aggrieved against judgment and decree passed by the High Court of Delhi whereby, the defendants second appeal was allowed and the suit of the plaintiff for possession on the basis of title was dismissed.

Observations and Decision of the Hon'ble Supreme Court

On the ground of adverse possession, the Hon'ble Court referred to the decision rendered in ***T. Anjanappa* v. *Somalingappa***[37] and observed that in this case the Court had set aside the finding of the High Court that the defendants claiming adverse possession do not have to prove who is the true owner. If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. In ***T.Anjanapa*** (supra), it was held as follows :-

> **12.** The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.
>
> **13.** Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:
>
> > "24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners." (See *Vidya Devi* v. *Prem Prakash* [(1995) 4 SCC 496], SCC p. 504, para 24.)
>
> **14.** Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:.....

The Hon'ble Court also referred to the following cases wherein the principle related to adverse possession" had been discussed:-

- ***Kurella Naga Druva Vudaya Bhaskara Rao* v. *Galla Jani Kamma alias Nacharamma***[38]
  The payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. If according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner.
- ***Brijesh Kumar v. Shardabai (Dead) by Legal Representatives***[39]
  "Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in M. Venkatesh v. BDA, (2015) 17 SCC 1. The respondent had failed to establish peaceful, open and continuous possession demonstrating a

[37] (2006) 7 SCC 570.
[38] (2008) 15 SCC 150.
[39] (2019) 9 SCC 369.

wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus. Reference may also be made to Chatti Konati Rao v. Palle Venkata Subba Rao, (2010) 14 SCC 316, on adverse possession……."

- ***Ravinder Kaur Grewal v. Manjit Kaur***[40]

"The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

- ***M Siddiq (D) through LRs v. Mahant Suresh Das***[41]

"A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognisant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr. Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being '*nec vi nec claim and nec precario*'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession

[40] (2019) 8 SCC 729.
[41] 2019 SCC OnLine SC 1440.

has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading paragraph 11(a), it becomes evident that beyond stating that the Muslims have been in long exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence."

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

16. In the present case, the defendants have not admitted the vesting of the suit property with the Managing Officer and the factum of its transfer in favour of the plaintiff. The defendants have denied the title not only of the Managing Officer but also of the plaintiff. The plea of the defendants is one of continuous possession but there is no plea that such possession was hostile to the true owner of the suit property. The evidence of the defendants is that of continuous possession. Some of the receipts pertain to 1963 but possession since November, 1963 till the filing of the suit will not ripe into title as the defendants never admitted the plaintiff-appellant to be owner or that the land ever vested with the Managing Officer. In view of the judgments referred to above, we find that the findings recorded by the High Court that the defendants have perfected their title by adverse possession are not legally sustainable. Consequently, the judgment and decree passed by the High Court is set aside and the suit is decreed. The appeal is allowed.

19. State Rep. by the inspector of Police v. M. Murugesan and Another, (2020 SCC OnLine SC 34)

Decided on : -15.01.2020

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

(Jurisdiction of the Court under Section 439, CrPC is limited only to the grant or refusal of bail pending trial and any directions or orders beyond this jurisdiction is illegal, even if the object of such direction/order is laudable.)

Facts

In this case, the State was aggrieved against an order passed by the High Court of Judicature at Madras on 24th April, 2019 constituting a Heterogeneous Committee of named persons to give its recommendations on the reforms that can be brought into practice for reformation, rehabilitation and re-integration of the convict/accused person to society and best practices for improving the quality of investigation. The Committee was mandated to submit report within eight weeks and that the State was directed to furnish data for each District. The Committee was to scrutinize the same and submit the final data separately along with the report. The State was directed to provide office room for the Committee to conduct its meetings and to keep the documents and other materials in safe custody.

Such directions came to be passed in a matter pertaining to grant of bail under Section 439 of the Code of Criminal Procedure, 1973. The High Court had admitted the accused to bail on 18th February, 2019 subject to certain conditions but passed an order to call for the details of the cases registered by the Police, final report filed, trial conducted and the result of such cases. The details were to bring to light the manner in which the entire criminal justice system is operating in the State. In pursuance of the directions so issued and the data provided, the impugned order was passed by the learned Single Bench.

Observations and Decision

The Hon'ble Court was of the opinion that the jurisdiction of the High Court came to an end when an application for grant of bail under Section 439 of the Code was finally decided and, therefore, the Hon'ble Single Bench committed grave illegality in retaining the file after grant of bail to the accused on 18th February, 2019. The Hon'ble Court referred to the judgment of *State of Punjab* v. *Davinder Pal Singh Bhullar* [42] and observed as follows :-

> **6.** In *State of Punjab* v. *Davinder Pal Singh Bhullar*, the High Court of Punjab & Haryana after deciding a criminal appeal continued to pass order in respect of offenders in other cases not connected with the matter which was dealt with by the High Court. This Court deprecated the invocation of jurisdiction in a matter not connected with the appeal and that too after passing of the final order.....

[42] (2011) 14 SCC 770. *See* also, *Santosh Singh* v. *Union of India*, (2016) 8 SCC 253.

7. This Court in *Davinder Pal Singh Bhullar* referred to a case reported as *Simrikhia* v. *Dolley Mukherjee and Chhabi Mukherjee* wherein the Court observed that inherent powers under Section 482 of the Code cannot be exercised to do something which is expressly barred under the Code. It was held that inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High Court act at its whim or caprice. The Code does not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law and not otherwise. The High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to bypass the procedure prescribed. It was also held that the High Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution of India at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an investigating officer mala fide or the matter is not investigated at all, but even in such a case, the High Court cannot direct the police as to how the investigation is to be conducted but can insist only for the observance of due process as provided in the Code. .....

8. This Court in a judgment reported as *Sangitaben Shaileshbhai Datanta* v. *State of Gujarat* was examining a question where a court after grant of bail to an accused ordered the accused and their relatives to undergo scientific test viz. lie detector, brain mapping and Narco-Analysis. This Court held that direction of the court to carry out such tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements.....

9. In another judgment reported as *Reserve Bank of India* v. *General Manager, Cooperative Bank Deposit A/C HR. Sha*, Reserve Bank of India challenged an order passed on an application under Section 439 of the Code, wherein an argument was raised that the poor depositors are not paid by the Bank out of the amount which has been received by the Bank. The Court issued directions that the Bank should start distributing the amount which is so far recovered by them from the accused. The Bank was directed to furnish details of the money paid to the poor depositors. The accused as well as the Investigating Officer and the Administrator of the Bank were directed to remain present in the Court. This Court found that such directions are beyond the scope of an application for bail filed by the accused under Section 439 of the Code. .....

Applying the aforesaid principles to the present case, the Hon'ble Court allowed the appeal and held as follows :-

11. We find that learned Single Judge has collated data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the Court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court.

20. *Rajasthan State Road Transport Corp. Managing Director and Another v. Ramesh Kumar Sharma, (2020 SCC OnLine SC 139)*

Decided on : -16.01.2020

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

(Where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947. It is only when the dispute involves recognition, observance or enforcement of or obligations created by the Industrial Disputes Act, the only remedy would be exclusively under the provisions of the Industrial Disputes Act.)

Facts

The civil suit was filed by the workmen for declaration and permanent injunction assailing a fine imposed on them by the appellant management. It is, *inter alia*, the plea of the respondents that what has been done is in violation of Regulation 35 of the standing order (which is non-statutory) in effect thus, the contractual obligation *inter se* the parties is alleged to have been breached.

The appellant endeavoured to stall the suit by raising a plea under order VII Rule 11 of Code of Civil Procedure, 1908 claiming that the plaint is liable to be rejected and the respondents to be relegated to the remedy under the Industrial Disputes Act, 1947. The plea did not find favour with the learned Civil Judge, Jaipur City who dismissed that application by order dated 16.5.2006. The revision petition preferred against the same was dismissed by the High Court on 27.02.2008. Before the Apex Court the issue was whether this exercise of the two forums below was valid or not.

Observations and Decision

The Hon'ble Court referred to the following cases:-

- *The Premier Automobiles Ltd.* **v.** *Kamlekar Shantaram Wadke of Bombay* **(1976) 1 SCC 496**

> "9. It would thus be seen that through the intervention of the appropriate government, of course not directly, a very extensive machinery has been provided for settlement and adjudication of industrial disputes. But since an individual aggrieved cannot approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the government, it is legitimate to take the view that the remedy provided under the Act is not such as to completely oust the jurisdiction of the civil court for trial of industrial disputes. If the dispute is not an industrial dispute within the meaning of Section 2(k) or within the meaning of Section 2A of the Act, it is obvious that there is no provision for adjudication of such disputes under the Act. Civil courts will be the proper forum. But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation

or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of either moving the machinery under the Act or to approach the civil court. It is plain that he can't have both. He has to choose the one or the other. But we shall presently show that the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act. In that event civil court will have no jurisdiction even to grant a decree of injunction to prevent the threatened injury on account of the alleged breach of contract if the contract is one which is recognized by and enforceable under the Act alone."

- ***Rajasthan State Road Transport Corporation* v. *Krishna Kant* (1995) 5 SCC 75**

"35. We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act-and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial employment (Standing Order) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to

"statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

The Hon'ble Court, thus, observed as follows :-

8. We must keep in mind that the Industrial Dispute Act is an alternative dispute resolution mechanism for the benefit of the workmen to provide "speedy, inexpensive, informal and unencumbered by the plethora of procedural laws. The object is thus, to protect the workmen.

9. It has also been observed that dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947. It is only when the dispute involves recognition, observance or enforcement of or obligations created by the Industrial Disputes Act, the only remedy would be exclusively under the provisions of the Industrial Disputes Act. The facts of this case involved the termination of service of workmen and thus the remedy was *inter alia* under the Industrial Disputes Act.

(emphasis supplied**)**

Applying the aforesaid principle in the present case, the Hon'ble Court dismissed the appeal and held as follows :-

10. The present case involves recovery of certain fine amount which cannot be said to be covered by Section 2-A of the Industrial Disputes Act. The workmen in their wisdom (or possibly, lack of it) approached the civil Court and have been left high and dry for the last fifteen years without any adjudication on merits of their claims. We may also note that the impugned orders are also, in a sense interlocutory in character.

21. State of Madhya Pradesh v. Babbu Rathore and Another (2020 SCC OnLine SC 42)

Decided on : -17.01.2020

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Ajay Rastogi

(An offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.)

Facts

The background facts in nutshell are that deceased Baisakhu, in a drunken state met Kamla Prajapati on road to ward no. 10, Pasia, Thana Anuppur, Anuppur, Madhya Pradesh. Kamla Prajapati took him to his house, but the deceased Baisakhu stated that he had to return two hundred fifty rupees to Nasru and requested him to take to his place. Upon insistence of deceased Baisakhu, Kamla Prajapati took him to the house of Nasru where accused Babbu Rathore was drinking liquor. Baisakhu stated that he wanted to have liquor so leaving him there, Kamla Prajapati returned back. When Ujaria Bai, the wife of deceased, went to house of Nasru to inquire about her husband, then Nasru told her that deceased Baisakhu had left with Babbu Rathore. The dead body of Baisakhu was recovered on 14th July, 2011. Information of unnatural death was recorded by police and post-mortem on the body of the deceased was conducted which proved death was unnatural and caused by asphyxia due to strangulation.

The preliminary investigation confirmed that the deceased was last seen with the present respondents. After registration of FIR, investigation was conducted by the Sub-Inspector and charge-sheet came to be filed against the present respondents for offences punishable under Section 302/34, 404/34 of the IPC and Section 3(2)(v) of the Act, 1989. The trial Court took cognizance of the matter and Special Case No. 37/11 was registered.

During proceedings in Special Case No. 37/11, statement of the material witnesses PW 2 Narsu, PW 4 Kamla Prajapati and PW 5 Uparia Bai, wife of deceased Baisakhu were recorded. It appears from the record that at the advanced stage of the trial, a grievance was raised by the respondents that they had been charged under Section 3(2)(v) of the Act, 1989 and since the investigation has been conducted by an Officer below the rank of Deputy Superintendent of Police which is the mandate of law as provided under Section 9 of the Act, 1989 read with Rule 7 of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities)

Rules, 1995 (hereinafter being referred to as the "Rules, 1995"), the very investigation is faulty and illegal and that deserves to be quashed and set aside and in consequence thereof, further proceedings in trial does not hold good and respondents deserve to be discharged.

Learned trial Court, while taking note of Section 9 of the Act, 1989 and Rule 7 of the Rules, 1995 held that the investigation has been conducted by an Officer below the rank of Deputy Superintendent of Police and is without authority and illegal and in consequence thereof, discharged the respondents not from the charges levelled against them under the provisions of the Act, 1989 but also from the provisions of the IPC for which there was no requirement of the investigation to be conducted by an Officer not below the rank of Deputy Superintendent of Police under judgment dated 24th July, 2015 which came to be challenged before the High Court of Madhya Pradesh.

This appeal was directed against the judgment of the High Court of Madhya Pradesh dated 9th May, 2019 confirming Order of the trial Judge dated 24th July, 2015 whereby the respondents have been discharged from the offences under Sections 302/34, 404/34 of the IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 (hereinafter being referred to as "Act, 1989") at the advanced stage of the trial when almost all the material witnesses have been examined by the prosecution which has given rise to this appeal.

Observations and Decision

The Hon'ble Court referred the provision of Section 9 of the SC/ST Act, Rule 7 of the corresponding Rules and to the decision of the Supreme Court in ***State of M.P. v. Chunnilal @ Chunni Singh*, (2009) 12 SCC 649**, wherein it had been held as follows :-

> The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence."

(emphasis supplied by the Court)

Relying on the aforesaid principle, the Hon'ble, regarding the present case, held:-

> **11.** Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(v) of the Act, 1989 and the charges under IPC have been framed after investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC where the investigation has been made by a competent police officer

under the provisions of the Code. In such a situation, the charge-sheet deserves to proceed in an appropriate competent Court of jurisdiction for the offence punishable under the IPC, notwithstanding the fact that the charge-sheet could not have proceeded confined to the offence under Section 3 of the Act, 1989.

12. The order impugned is accordingly restricted to the offence under Section 3 of the Act, 1989 and not in respect of offences punishable under the IPC. The Special Case No. 37/11 is restored on the file of the Special Court, District Anuppur(MP) and the trial Court may proceed further and conclude the trial expeditiously in respect of offences punishable under the IPC in accordance with law.