JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(February, 2021)

Prepared by :-

ISHA ANUPRIYA
ABHIJEET TUSHAR
JUDICIAL ACADEMY JHARKHAND

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Decided on: 01.02.2021

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(The presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution.)

Facts

The prosecution case in brief is that one Professor TJ Joseph while framing the Malayalam question paper for the second semester B.Com. examination at the Newman College, Thodupuzha, had included a question which was considered objectionable against a particular religion by certain sections of society. The respondent in association with other members of the Popular Front of India (PFI), decided to avenge this purported act of blasphemy. On 04.07.2010 at about 8AM, a group of people with a common object, attacked the victim-professor while he was returning home with his mother and sister after attending Sunday mass at a local Church. Over the course of the attack, members of the PFI forcefully intercepted the victim's car, restrained him and chopped-off his right palm with choppers, knives, and a small axe. Country-made bombs were also hurled at bystanders to create panic and terror in their minds and to prevent them from coming to the aid of the victim. An FIR was consequently lodged against the attackers by the victim-professor's wife under Sections 143, 147, 148, 120-B, 341, 427, 323, 324, 326, 506(H), 307, 149 of IPC; and Section 3 of Explosive Substances Act.

It emerged over the course of investigation that the attack was part of a larger conspiracy involving meticulous pre-planning, numerous failed attempts and use of dangerous weapons. Accordingly, several dozen persons including the present respondent were arraigned by the police. It was alleged that the respondent was one of the main conspirators and the provisions contained in Sections 153A, 201, 202, 212 of IPC, along with Section 16, 18, 18-B, 19 and 20 of the UAPA were also thus invoked against him. However, owing to him being untraceable, the respondent was declared an absconder and his trial was split up from the rest of his co-conspirators. The co-accused of the respondent were tried and most of them were found guilty by the Special Court, NIA vide order dated 30.04.2015 and were awarded cumulative sentence ranging between two and eight-years' rigorous imprisonment.

The respondent could be arrested on 10.04.2015 only and a chargesheet was re-filed by the National Investigation Agency against him, pursuant to which the respondent is now facing trial. The respondent approached the Special Court and the High Court for bail as many as six times between 2015 and 2019, seeking leniency on grounds of his limited role in the

offence and claiming parity with other co-accused who had been enlarged on bail or acquitted. Save for the impugned order, bail was declined to the respondent, observing that prima facie he had prior knowledge of the offence, had assisted and facilitated the attack, arranged vehicle and SIM cards, himself waited near the place of occurrence, transported the perpetrators, sheltered, and medically assisted them afterwards. The Courts were, therefore, of the view that the bar against grant of bail under Section 43-D (5) of the UAPA was attracted.

The respondent again approached the High Court in May, 2019 for the third time, questioning the Special Court's order denying bail. The High Court through the impugned order, released the respondent on bail noting that the trial was yet to begin though the respondent had been in custody for four years. Placing emphasis on the mandate for an expeditious trial under the National Investigation Agency Act, 2008, the High Court held that the undertrial-respondent could not be kept in custody for too long when the trial was not likely to commence in the near future, for not doing so would cause serious prejudice and suffering to him. The operation of the aforementioned bail order was, however, stayed by this Court. Resultantly, the respondent has spent nearly five years and five months in judicial custody.

Decision and Observations

The Apex court stated that the High Court appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D (5) of UAPA.The High Court has relied upon***Shaheen Welfare Association***, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail.

The Apex Court noted that in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, Court in ***Paramjit Singh* v. *State (NCT of Delhi)*,[1] *Babba alias Shankar RaghumanRohida* v. *State of Maharashtra*[2]** and ***Umarmia alias Mamumia* v. *State of Gujarat***[3]enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial.

[1](1999) 9 SCC 252

[2](2005) 11 SCC 569

[3] (2017) 2 SCC 731

Instances of orders enlarging similarly-situated accused under the UAPA passed by the Court in ***Angela Harish Sontakke* v. *State of Maharashtra*,[4]*Sagar TatyaramGorkhe* v. *State of Maharashtra*[5]**was also referred to. The Apex Court said that the facts of the present case were more egregious as the respondent has been in jail for much more than five years, and there are 276 witnesses left to be examined.

> **16.** This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee Representing Undertrial Prisoners* v. *Union of India[* (1994) 6 SCC 731*]*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.
>
> **18.** It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.
>
> **19.** Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.
>
> **20.** Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead, Section 43-D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion etc.

[4]SLP (Crl.) No. 6888 of 2015, Order dated 04.05.2016
[5]SLP (Crl.) No. 7947 of 2015, Order dated 03.01.2017

2. *Phoenix ARC Private Limited v. Spade Financial Services Limited and Others, 2021 SCC OnLine SC 51*

Decided on: 01.02.2021

Bench: 1. Hon'ble Mr. Justice **Dhananjaya Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee,

(Insolvency and Bankruptcy Code: Since the commercial arrangements between Spade and AAA, and the Corporate Debtor were collusive in nature, they would not constitute a 'financial debt'. Hence, Spade and AAA are not financial creditors of the Corporate Debtor.)

Background

By a judgment dated 27 January 2020, NCLAT dismissed the appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") preferred by AAA Landmark Private Limited ("**AAA**") and Spade Financial Services Private Limited ("**Spade**") to assail the order dated 19 July 2019 of the National Company Law Tribunal, New Delhi Bench-III ("**NCLT**" or "**Adjudicating Authority**"). The NCLT had held that AAA and Spade have to be excluded from the Committee of Creditors ("**CoC**") formed in relation to the Corporate Insolvency Resolution Process ("**CIRP**") initiated against AKME Projects Limited ("**Corporate Debtor**"). NCLT passed its order dated 19 July 2019 on applications[1] filed by Phoenix Arc Private Limited ("**Phoenix**") and YES Bank under Section 60(5)(c) of the IBC.

Decision and Observations

Regarding the issue whether Spade and AAA are financial creditors of the Corporate Debtor, the Apex court referred to Section 5(7) of the IBC whichdefines a financial creditor.[6] Section 5(8) of the IBC provides a definition of financial debt.[7] Section 5(8) of the IBC stipulates that

[6](7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to

[7] (8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-—

(a) money borrowed against the payment of interest;
(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

the essential ingredient of a financial debt is disbursal against consideration for the time value of money.

In this context, the Apex court discussed the meaning of the terms "disburse" and "time value of money" used in the principal clause of Section 5(8) of the IBC and referred to ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** wherein the Court has interpreted the term "disbursal".[8]

> 70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:
>
> "1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose."
>
> 71. In the present context, it is clear that the expression "disburse" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. **The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money**...."

The Apex court also referred to the report of the Insolvency Law Committee dated 26 March 2018 which has discussed the interpretation of the term "time value of money" in the following way:

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
(e) receivables sold or discounted other than any receivables sold on non-recourse basis;
(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
Explanation.-- For the purposes of this sub-clause,-—
(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

[8] (2019) 8 SCC 416

"The words "time value" have been interpreted to mean compensation or the price paid for the length of time for which the money has been disbursed. This may be in the form of interest paid on the money, or factoring of a discount in the payment."

In the context of collusive transactions, the Apex Court said in para 50 of the judgment:

51. The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt.

Regarding *"sham transactions"*, the Apex Court referred to ***Snook* v. *London and West Riding Investments Ltd.***[9] and ***Prem Chand Tandon* v. *Krishna Chand Kapoor***[10].

54. The IBC has made provisions for identifying, annulling or disregarding "avoidable transactions" which distressed companies may have undertaken to hamper recovery of creditors in the event of the initiation of CIRP. Such avoidable transactions include: *(i)* preferential transactions under Section 43 of the IBC; (*ii)* undervalued transactions under Section 45(2) of the IBC; (*iii)* transactions defrauding creditors under Section 49 of the IBC; and (*iv)* extortionate transactions under Section 50 of the IBC. The IBC recognizes that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of the rights of legitimate creditors.

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57. NCLT in its order dated 19 July 2019 has noted that AAA and the Corporate Debtor had entered into multiple agreements regarding the same property without giving any explanation or rationale regarding variation in the consideration. This showed that the transactions were collusive in nature entered with the purpose of diverting properties of the Corporate Debtor to AAA.

...

58. It appears that the parties converted the Development Agreement into an Agreement to Sell executed along with a Side Letter to circumvent the legal

[9] [1967] 2 Q.B. 786
[10] (1973) 2 SCC 366

prohibition on splitting a development license in two parts. The transaction between AAA and the Corporate Debtor was collusive in nature.

59. <u>Since the commercial arrangements between Spade and AAA, and the Corporate Debtor were collusive in nature, they would not constitute a 'financial debt'. Hence, Spade and AAA are not financial creditors of the Corporate Debtor</u>.

The Apex Court concluded:

111. In conclusion, we hold that:

(i) The decision of the NCLAT, in as much as it referred to Spade and AAA as financial creditors, is set aside. Due to the collusive nature of their transactions alleged to be a financial debt under Section 5(8), Spade and AAA cannot be labelled as financial creditors under Section 5(7);

(ii) The decision of the NCLAT, in as much as it referred to Spade and AAA as related parties of the Corporate Debtor under Section 5(24), is affirmed; and

(iii) The decision of the NCLAT, in as much as it excluded Spade and AAA from the CoC in accordance with the first proviso of Section 21(2), is affirmed but for the reasons mentioned above.

3. State of Gujarat v. Bhalchandra Laxmishankar Dave, 2021 SCC OnLine SC 52

Decided on: 02.02.2021

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash reddy
3. Hon'ble Mr. Justice**M. R. Shah**

(Being the First Appellate Court the High Court ought to have re-appreciated the entire evidence on record without any limitation, which might be there while dealing with an appeal against the order of acquittal passed by the Trial Court.)

Facts

The respondent herein - original accused (hereinafter referred to as 'the accused') who was working as Assistant Director in ITI, Gandhi Nagar was charged for the offences punishable under Section 7 read with Sections 13(1) and 13(2) of the Prevention of Corruption Act (hereinafter referred to as 'the Act').

The Learned Special Judge, Bharuch after full-fledged trial and appreciation of the entire evidence on record and by detailed judgment and order convicted the accused under Section 7 read with Sections 13(1) and 13(2) of the Act. The Learned Special Judge held the accused guilty and convicted the accused for the aforesaid offences and imposed the sentence of 5 years imprisonment and with fine of Rs. 10,000/-.

Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the Learned Special Judge in Special A.C.B. Case No. 14/2000 - the accused preferred appeal before the High Court being Criminal Appeal No. 92 of 2003. By the impugned judgment and order, the High Court without any detailed re-appreciation of the entire evidence on record, has acquitted the accused for the offences for which he was convicted. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal passed by the High Court, the State of Gujarat has preferred the present appeal.

Decision and Observations

The Apex Court stated, "*On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that, as such, there is no re-appreciation of the entire evidence on record in detail while acquitting the respondent - accused. The High Court has only made general observations on the depositions of the witnesses examined. However, there is no re-appreciation of the entire evidence on record in detail, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the Learned Trial Court.*"

In the subsequent paragraph the Apex court stated, ***"Being the First Appellate Court the High Court ought to have re-appreciated the entire evidence on record without any***

limitation, which might be there while dealing with an appeal against the order of acquittal passed by the Learned Trial Court."

11. An Appellate Court while dealing with an appeal against acquittal passed by the Learned trial Court, is required to bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Therefore, while dealing with the cases of acquittal by the trial Court, the Appellate Court would have certain limitations. Even in the case of acquittal passed by the Learned Trial Court, in the case of *UmedbhaiJadavbhai* v. *The State of Gujarat*, (1978) 1 SCC 228, it is observed and held by this Court that "Once the appeal is entertained against the order of acquittal, the High Court is entitled to re-appreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. The High Court would be justified against an acquittal passed by the Learned Trial Court even on re-appreciation of the entire evidence independently and come to its own conclusion that acquittal is perverse and manifestly erroneous". However, so far as the appeal against the order of conviction is concerned, there are no such restrictions and the Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind that once the Learned Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.

12. On perusal of the impugned judgment and order of acquittal passed by the High Court, we find that High Court decision is based on totally erroneous view of law by ignoring the settled legal position. The approach of the High Court in dealing/non-dealing with the evidence was patently illegal leading to grave miscarriage of justice. Therefore, we are of the firm opinion that the impugned judgment and order passed by the High Court acquitting the respondent - accused without adverting to the reasons given by the Learned trial Court while convicting the accused and without re-appreciating the entire evidence on record in detail cannot be sustained and the same deserves to be quashed and set aside. We are of the opinion that therefore matter deserves to be remanded to the High Court to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove. The High Court ought to have appreciated that it was dealing with the offences under the Prevention of Corruption Act which offences are against the society. And therefore the High Court ought to have been more careful and ought to have gone in detail. We do not approve the manner in which the High Court has dealt with the appeal.

4. *Sk. Sakkar alias Mannan v. State of West Bengal, 2021 SCC OnLine SC 62*

Decided on: 03.02.2021

Bench: 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice**Surya Kant**

3. Hon'ble Mr. Justice Aniruddha Bose

(NDPS Act: The appellant's claim for parity with his acquitted co-accused was rejected by the Apex court as not only was the appellant apprehended at the spot of the incident but also was found in conscious possession of the ganja.)

Facts

The appellant Sk. Sakkar @ Mannan assails the judgement dated 09.12.2009 passed by the High Court at Calcutta whereby his appeal against the judgement and order dated 26.05.2004 and 27.05.2004 passed by Special Judge, Birbhum convicting him for offences under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") and imposing a sentence of five years rigorous imprisonment (RI) and a fine of Rs. 20,000/- (in default, whereof to further undergo RI for one additional year), has been dismissed.

The prosecution case in brief is that upon receiving secret information, D.S.P. Headquarter, Birbhum conducted a raid on 16.11.1997 and intercepted an Ambassador car bearing no. BRW 312. Since the car was detained inside a forest area, 3/4 occupants of the car managed to flee, while only 2 of the occupants, including the appellant, were caught and arrested. 11kgs of ganja was seized following the statutory procedure. The suspects were thereafter interrogated, and a formal FIR was registered at Police Station Sadaipur. Charge sheet was submitted against five persons including the appellant.

The appellant and his co-accused, except one KalachandSaha, were charged under Section 20 of the NDPS Act. Since they pleaded not guilty, trial was conducted, and the charges against them were proved. The Special Judge, Birbhum convicted and sentenced the appellant. The appellant assailed his conviction before the High Court, contending, inter alia, that the prosecution case was suffering from inherent weakness, and that the testimonies of the witnesses were not credible. The plea of absence of independent witnesses, more so when PW-2, PW-3 and PW-8 were declared hostile, was also pressed into service. It was also highlighted that although KalachandSaha was claimed to have been arrested along with the appellant, he was not even charge-sheeted.

The High Court minutely scrutinized the entire evidence and has extensively discussed the depositions made by PW-1, PW-6, PW-7 and PW-9. It then firmly held that about 11 kgs of ganja was recovered from the appellant and KalachandSaha. As regard to other three co-accused, the High Court opined that since they were not arrested at the spot and were roped in only with the aid of confessional statement of the arrested person(s), the case against them was not proved beyond reasonable doubt. The High Court thus acquitted the appellant's co-accused, but dismissed his appeal upholding the conviction and sentence awarded by the Special Judge.

The aggrieved appellant approached the Apex Court through Special Leave to Appeal, in which leave was granted on 27.08.2010. Thereafter, having regards to the fact that the appellant had already undergone actual sentence for a period of 2 years 4 months and 16 days, out of the total sentence of RI for five years, the Apex Court vide order dated 02.11.2012 suspended the sentence and released the appellant on bail.

Decision and Observations

The appellant's claim for parity with his acquitted co-accused was rejected by the Apex court for unlike the appellant, none of them were apprehended at the spot; and as found by the High Court, no evidence was produced to connect them with the alleged offence. Not only was the appellant apprehended at the spot of the incident but also was found in conscious possession of the ganja.

In this case, the Counsel for the appellant relied upon several mitigating circumstances in order to reduce the sentence period such as (i) the appellant has suffered protracted trial for more than 23 years; (ii) he alone has been convicted while his co-accused are acquitted; (iii) the appellant was not involved in any other case under the NDPS Act or other Penal Laws; (iv) the appellant has already undergone actual sentence of 2 years 4 months and 16 days out of the total sentence of five years; (v) and that the appellant has not misused the concession of bail granted by this Court on 02.11.2012.

Having noted the fact that the appellant committed the crime in the year 1997 i.e much before the NDPS (Amendment) Act,2001 came into force, the Apex court found section 20 of the NDPS Act prior to its amendment in 2001 as relevant in this regard.[11] Therefore, the Apex court concluded:

> **11.** It is manifest from Section 20(i) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs. 50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in

[11] "*20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder-*
(a) cultivates any cannabis plant; or
(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable,-
(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;
(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:
Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly.

12. For the reasons(s) stated above, the appeal is allowed in part; the impugned judgments of the Special Judge and the High Court are modified and the sentence of five years RI awarded to the appellant is reduced to the period of sentence already undergone. The bail bond of the appellant is discharged. However, the appellant shall be liable to pay fine of Rs. 20,000/- within two months, if already not deposited and in default thereof he will be liable to undergo RI for six months.

5. *Opto Circuit India Ltd. v. Axis Bank and Others, 2021 SCC OnLine SC 55*

Decided on: 03.02.2021

Bench: 1. Hon'ble Mr. Chief Justice S. A. Bobde

2. Hon'ble Mr. Justice **A. S. Bopanna**

3. Hon'ble Mr. Justice V. Ramasubramanian

(The freezing of the account will also require the same procedure as given in section 17 of the PMLA, since a bank account having alleged 'proceeds of crime' would fall both under the ambit "property" and "records".)

Facts

The instant appeal arises out of the proceedings initiated by respondent No. 4 against the appellant under the PMLA. The analogous matter, which was considered by the High Court along with the writ petition which is the subject matter herein related to the action initiated by the Central Bureau of Investigation ('CBI' for short) for the alleged predicate offence and the instant proceedings is a fall out of the same. It is in that background the Enforcement Directorate in order to track the money trail relating to the predicate offence and prevent layering of the same has initiated the proceedings under the PMLA. In the said process the Deputy Director, Directorate of Enforcement through the communication dated 15.05.2020 addressed to the Anti Money-Laundering Officer ('AML' for short) of Respondents No. 1 to 3 Banks instructed them that the accounts maintained by the appellant company be 'debit freezed/stop operations' until further orders, with immediate effect.

It is in that light the appellant claiming to be aggrieved filed WP No. 8031 of 2020 before the High Court seeking for issue of an appropriate writ to quash the communication dated 15.05.2020 issued for debit freezing the account No. 914020014786978 maintained with the respondent No. 1, account No. 200006044354 maintained with the respondent No. 2 and the account No. 39305709999 maintained with the respondent No. 3. The appellant in that regard also prayed that the respondents be directed to defreeze the accounts to which reference is made.The consideration to be made in this appeal is therefore limited to the aspect of freezing/defreezing the account, more particularly keeping in view the requirement of the appellant to make the statutory payments even if the freezing of the account is found justified.

Decision and ObservationThe Apex court contemplated whether the power available to the competent authority has been exercised in the manner as is contemplated under PMLA and

referred to Section 17 of PMLA[12] whereunder the freezing of such property or record is also provided.

> **9.** A perusal of the above provision would indicate that the pre-requisite is that the Director or such other Authorised Officer in order to exercise the power under Section 17 of PMLA, should on the basis of information in his possession, have reason to believe that such person has committed acts relating to money laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1A) to Section 17 of PMLA provides that the Officer Authorised under sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Subsection (2) provides that after search and seizure or upon issuance of a freezing order the Authorised Officer shall forward a copy of the reasons recorded

[12]17. Search and seizure- (1) Where the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person-
(i) has committed any act which constitutes money-laundering, or
(ii) is in possession of any proceeds of crime involved in money-laundering, or
(iii) is in possession of any records relating to money-laundering, or
(iv) is in possession of any property related to crime
then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to-
(a) Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
(b) Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
(c) seize any record or property found as a result of such search;
(d) place marks of identification on such record of property, if required or make or cause to be made extracts or copies therefrom;
(e) make a note or an inventory of such record or property;
(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:
(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:
Provided that if, at any time before its confiscation under sub-section (5) or subsection (7) of section 8 or section 58B or subsection (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.
(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.
(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:
Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.
(4) the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under subsection (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

along with material in his possession to the Adjudicating Authority in a sealed envelope. Sub-section (4) provides that the Authority seizing or freezing any record or property under sub-section (1) or (1A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the Adjudicating Authority requesting for retention of such record or properties seized.

10. For the purpose of clarity, it is emphasised that the freezing of the account will also require the same procedure since a bank account having alleged 'proceeds of crime' would fall both under the ambit "property" and "records". In that regard it would be appropriate to take note of Section 2(v) and (w) of PMLA which defines "property" and "records".

.....
.....

11. The scheme of the PMLA is well intended. While it seeks to achieve the object of preventing money laundering and bring to book the offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure. Hence a procedure, including timeline is provided so as to ensure that power is exercised for the purpose to which the officer is vested with such power and the Adjudicating Authority is also kept in the loop. In the instant case, the procedure contemplated under Section 17 of PMLA to which reference is made above has not been followed by the Officer Authorised. Except issuing the impugned communication dated 15.05.2020 to AML Officer to seek freezing, no other procedure contemplated in law is followed. In fact, the impugned communication does not even refer to the belief of the Authorised Officer even if the same was recorded separately. It only states that the Officer is investigating the case and seeks for relevant documents, but in the tabular column abruptly states that the accounts have to be 'debit freezed/stop operations'. It certainly is not the requirement that the communication addressed to the Bank itself should contain all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of PMLA before the communication is issued and thereafter the requirement of Section 17(2) of PMLA after the freezing is made is complied. There is no other material placed before the Court to indicate compliance of Section 17 of PMLA, more particularly recording the belief of commission of the act of money laundering and placing it before the Adjudicating Authority or for filing application after securing the freezing of the account to be made. In that view, the freezing or the continuation thereof is without due compliance of the legal requirement and, therefore, not sustainable.

The Additional Solicitor General contended that the power of seizure is available under Section 102 of the Code of Criminal Procedure, which has been exercised and as such the freezing of the account would remain valid. To this the Apex court replied in the following manner:

12. [.....] Firstly, as noted, it has been the contention of Respondent No. 4 that PMLA is a stand-alone enactment. If that be so and when such enactment contains a provision for seizure which includes freezing, the power available therein is to be

exercised and the procedure contemplated therein is to be complied. Secondly, when the power is available under the special enactment, the question of resorting to the power under the general law does not arise. Thirdly, the power under Section 102 CrPC is to the Police Officer during the course of investigation and the scheme of the provision is different from the scheme under PMLA. Further, even sub-section (3) to Section 102 CrPC requires that the Police Officer shall forthwith report the seizure to the Magistrate having jurisdiction, the compliance of which is also not shown if the said provision was in fact invoked. That apart, the impugned communication dated 15.05.2020 does not refer to the power being exercised under the Code of Criminal Procedure.

13. The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been succinctly laid down by this Court in the case of *Mohinder Singh Gill* v. *The Chief Election Commissioner, New Delhi* (1978) 1 SCC 405) as follows;

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *GordhandasBhanji*:

(1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older:"

The Apex court concluded:

17. Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law. We have found fault with the Authorised Officer and declared the action bad only in so far as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party.

6. *N. Vijayakumar v. State of Tamil Nadu, 2021 SCC OnLine SC 53*

Decided on: 03.02.2021

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice **R. Subhash Reddy**
3. Hon'ble Mr. Justice M. R. Shah

(Even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged under the Prevention of Corruption Act. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered.)

Facts

The sole accused in Special Calendar Case No. 49 of 2011 on the file of Special Court for Trial of Prevention of Corruption Act Cases, Madurai, has filed these appeals, aggrieved by the conviction recorded vide judgment dated 28.08.2020 and 22.09.2020 and sentence imposed vide order dated 15.09.2020 and 29.09.2020 by the Madurai Bench of the Madras High Court under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the Act').

The appellant-accused was working as Sanitary Inspector in 8th Ward of Madurai Municipal Corporation. He was chargesheeted for the offence under Sections 7, 13(2) read with 13(1)(d) of the Act alleging that he demanded an amount of Rs. 500/- and a cell phone as illegal gratification from PW-2 (Thiru. D. Gopal), who was working as Supervisor in a Voluntary Service Organisation called Neat And Clean Service Squad (NACSS), which was given sanitation work on contract basis in Ward No. 8 of Madurai Corporation. It was the case of the prosecution that to send his report for extension of work beyond the period of March 2003, when PW-2 has approached him on 09th and 10th of October 2003, such a demand was made, as such appellant being a public servant demanded and accepted illegal gratification on 10th of October 2003 as a motive or reward to do an official act in exercise of his official function and thereby he has committed misconduct which is punishable under Sections 7, 13(2) and 13(1)(d) of the Act. On denial of charge, charges were framed against him for the aforesaid offences and he has pleaded not guilty. Therefore, he was tried before the Special Court for the aforesaid alleged offences. During the trial, on prosecution side, 12 witnesses were examined, i.e. PW-1 to PW-12; and 17 exhibits - Ex.P1 to P.17 and M.O.1 to M.O.4. have been marked. No defence witness was examined and Ex.D1 to D3 were marked during the cross-examination of PW-6.

By considering the oral and documentary evidence on record, trial court, by judgment dated 25.02.2014, acquitted the appellant. Aggrieved by the judgment of the Special Court, State has preferred Criminal Appeal (MD) No. 6 of 2015 before the Madurai Bench of Madras High Court. The Madurai Bench of Madras High Court, by impugned judgment and orders, has reversed the acquittal, and convicted the appellant for the offences under Section 7, 13(2) and 13(1)(d) of the Act and imposed the sentence of rigorous imprisonment for one year and imposed the penalty of Rs. 5000/-.

Decision and Observations

The Apex Court referred to*Chandrappa* **v.** *State of Karnataka*[13] wherein the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal has been laid down in Para 42 of the judgment which reads as:

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

In the case of *Hakeem Khan v. State of Madhya Pradesh*[14] the Court has considered powers of appellate court for interference in cases where acquittal is recorded by trial court. In the

[13](2007) 4 SCC 415
[14](2017) 5 SCC 719

said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. It is further held that so long as the view of trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of trial court cannot be interdicted and the High court cannot supplant over the view of the trial court.

> **13.** By applying the above said principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged.
>
> *****
>
> 15. [...] Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

7. Boloram Bordoloi v. Lakhimi Gaolia Bank and Others, 2021 SCC OnLine SC 65

Decided on: 08.02.2021

Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice **R. Subhash Reddy**

3. Hon'ble Mr. Justice M.R. Shah

(If the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority.)

Facts

The appellant was the Manager of the first respondent-bank. On the basis of certain allegations levelled against him, disciplinary proceedings were initiated and charge memo dated 18.06.2004 was issued. The substance of the charges is extracted in the order passed by the Single Judge. In view of the reply filed by him on 15.07.2004, denying the charges, the respondent-bank having not satisfied with the explanation, has decided to order departmental enquiry against the appellant. The Enquiry Officer, after completing the enquiry by appreciating the oral and documentary evidence on record, has held that all the charges, i.e. charge nos. 1 to 5, framed against the appellant were proved. In view of the findings recorded by the Enquiry Officer, the respondent-bank has proposed to inflict the punishment of compulsory retirement on the appellant. Based on the findings recorded in the departmental enquiry, has passed order imposing the punishment of "compulsory retirement" from service.

The appellant was unsuccessful before the departmental appellate authority, i.e., Board of Directors of the Bank and the appellate authority has dismissed his appeal confirming the order of the disciplinary authority. Challenging the order of the disciplinary authority imposing the punishment of compulsory retirement, as confirmed by the appellate authority, the appellant approached the High Court by filing Writ Petition (C) No. 219 of 2006 before the Gauhati High Court. The Single Judge vide detailed judgment and order dated 08.06.2007 has not interfered with the order of compulsory retirement but at the same time has found that withholding of the service benefits including pensionary dues was illegal and issued directions for payment of such benefits to the appellant. As against the order of the Single Judge, the appellant has preferred Writ Appeal No. 361 of 2008. The Division Bench of the High Court, by the impugned order, has dismissed the same by confirming the order of the Single Judge.

This civil appeal is filed by the appellant in Writ Appeal No. 361 of 2008 on the file of Gauhati High Court, aggrieved by the order dated 03.04.2009.

Observations and Decisions

> **7.** The appellant was working as a Manager of the respondent-bank. A perusal of the charges, which are held to be proved by the Enquiry Officer, reveal that he has sanctioned and disbursed loans without following the due procedure contemplated

under law and also there are allegations of misappropriation, disbursing loans irregularly in some instances to (a) units without any shop/business; (b) more than one loan to members of same family etc. The Enquiry Officer, after considering oral and documentary evidence on record, has held that all the charges are proved. Based on the findings recorded by Enquiry Officer, the disciplinary authority has tentatively decided to impose punishment of compulsory retirement. Disciplinary authority has issued show cause notice dated 30.07.2005 by enclosing a copy of the enquiry report. In response to the show cause notice, the appellant has submitted his comments vide letter dated 16.08.2005 indicating that due to work pressure some operational lapses have occurred. Further he has also pleaded that if the bank has sustained any loss due to his fault, he is ready to bear such loss from his own source. After filing the response to the show cause notice, order is passed by disciplinary authority imposing punishment of compulsory retirement. After Enquiry Officer records his findings, it is always open for the disciplinary authority to arrive at tentative conclusion of proposed punishment and it can indicate to the delinquent employee by enclosing a copy of the enquiry report. Though the learned counsel for the appellant has argued that even before tentative conclusion is arrived at by the disciplinary authority, the enquiry report has to be served upon him, but there is no such proposition laid down in the judgment of this Court in the case of *Managing Director, ECIL, Hyderabad* (supra). In the aforesaid judgment of this Court it is held that delinquent employee is entitled to a copy of the enquiry report of the enquiry officer before the disciplinary authority takes a decision on the question of guilt of the delinquent. Merely because a show cause notice is issued by indicating the proposed punishment it cannot be said that disciplinary authority has taken a decision. A perusal of the show cause notice dated 30.07.2005 itself makes it clear that along with the show cause notice itself enquiry report was also enclosed. As such, it cannot be said that the procedure prescribed under the rules was not followed by respondent-bank. We are of the view that the judgment of this Court in the case of *Managing Director, ECIL, Hyderabad* (supra) is not helpful to the case of the appellant. Further, it is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10.12.2005, the Board's decision is communicated vide order dated 21.12.2005 in Ref. No. LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that orders impugned are devoid of reasons.

8. Even, the last submission of the learned counsel for the appellant that the punishment imposed is disproportionate to the gravity of charges, also cannot be accepted. The charges framed against the appellant in the departmental enquiry are serious and grave. If we look at the response, in his letter dated 16.08.2005, to the show cause notice issued by the disciplinary authority, it is clear that he has virtually admitted the charges, however, tried to explain that such lapses occurred due to work pressure. Further he went to the extent of saying - he is ready to bear the loss suffered by the bank on account of his lapses. The manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the

public money. The nature of his work demands vigilance with the in-built requirement to act carefully. If an officer/employee of the bank is allowed to act beyond his authority, the discipline of the bank will disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks. If the manager of a bank indulges in such misconduct, which is evident from the charge memo dated 18.06.2004 and the findings of the enquiry officer, it indicates that such charges are grave and serious. Inspite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary proceedings on the appellant, is disproportionate to the gravity of charges. As such, this submission of the learned counsel for the appellant also cannot be accepted.

8. *A. Subramanian and Another v. R. Pannerselvam, 2021 SCC OnLine SC 66*

Decided on: 08.02.2021

Bench: 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(It is a common principle of law that even trespasser, who is in established possession of the property could obtain injunction. However, the matter would be different, if the plaintiff himself elaborates in the plaint about title dispute and fails to make a prayer for declaration of title along with injunction relief.)

Facts

The plaintiff, R. Pannerselvam, who is the respondent in this appeal, filed O.S. No. 188 of 2002 in the Court of District Munsif, Namakkal praying for permanent injunction interdicting the defendants from disturbing the peaceful possession and enjoyment of the plaintiff over the suit property. The suit property was measuring 1777-1/2 sq.ft. comprising in Survey No. 172/1 situated at Kalappanaickenpatti Village. Plaintiff's case in the suit was that suit property originally belonged to one Dhasi Naidu son of Thalama Naidu who went to Sri Lanka as a Farm Labour and died at Sri Lanka. The son of Dhasi Naidu, Krishnasamy Naidu came to India in 1981 and entrusted the suit property and other properties to one Ghani Sahib, who had been managing and enjoying the properties.

The plaintiff claimed to have purchased the suit property by registered deed on 16.07.2001 for a valid consideration from the descendants of Dhasi Naidu. The plaintiff's further case was that the first defendant was formerly military serviceman, and the second defendant who was son-in-law of the first defendant, working as constable in police department, attempted to disturb the plaintiff's peaceful possession and enjoyment over the suit property. Hence, the suit was filed.

Defendant No. 1 filed written statement refuting the claim of the plaintiff; defendant admitted that suit property belonged to Dhasi Naidu. The defendant pleaded that registered sale deed dated 16.07.2001 itself is a fabricated and forged one. So called legal heirs-descendants of Dhasi Naidu as alleged in sale deed are fictious and are not true legal heirs of the said Dhasi Naidu. The title of the suit property is itself questionable, the plaintiff along with Ghani Sahib has fabricated two special powers and plaintiff under Order VII Rule 14 of C.P.C. with the said documents had filed suit. The defendants in the written statement had set up the claim that Dhasi Naidu's son Sanjeevi Naidu had entrusted the suit property and other properties to one P. Rangaraju Naidu by a registered power of attorney, who later died, leaving behind his only legal heir Mrs. Arjuna Devi, who died leaving behind her

daughters, Nalanda, Indira and Gunabarathi. Defendant No. 1 on behalf of her three daughters filed a suit against the Ghani Sahib questioning his tenancy which suit was dismissed and had been taken in appeal being A.S. No. 297 of 1994.

The trial court held that power of attorney dated 22.05.2001 was prepared at Sri Lanka and registered at Namakkal Sub-Registrar's office. The documents filed on behalf of the plaintiff are Exhibits PW1 and PW2. The trial court held that the plaintiff has right over the property, the possession of plaintiff was also found proved. The trial court decreed the suit.

The defendants filed an appeal before the Sub Court, Namakkal being A.S. No. 172 of 2005. The First Appellate Court entered into the validity of power of attorney Exhibits PW1 and PW2 and observed that Exhibit PW1 is in circumstances by suspicious surrounding. The First Appellate Court, however, came to a conclusion that power deed written abroad need not be registered. The First Appellate Court, further, came to the conclusion that execution and authentication of power of attorney, Exhibit PW1 having not been proved, the sale deed Exhibit PW2 is also adversely affected. Hence, plaintiff has failed to establish his title over the suit property.

The First Appellate Court has, further, found that defendant No. 1 had instituted O.S. No. 524 of 1987 which was for the same property in which defendant No. 1 had claimed declaration and possession of the property for himself and her three daughters which suit having been dismissed, the defendant has also not been able to prove that suit property belonged to the three daughters of defendant No. 1 and possession lies with them. The First Appellate Court allowed the appeal and set aside the decree on the ground that plaintiff had failed to prove his title. Aggrieved by the judgment of the First Appellate Court the plaintiff has filed the second appeal.

The High Court vide its judgment dated 28.04.2009 allowed the second appeal by deciding three substantial questions of law affirming the decree of trial court granting injunction in favour of the plaintiff. The High Court found that defendant having filed Original Suit No. 524 of 1987 for declaration and recovery of possession of the suit property which was dismissed by the trial court against which A.S. No. 297 of 1994 having also been dismissed, the finality was achieved to the previous proceedings that defendant has neither title nor in possession of the suit property and the possession of the plaintiff having been admitted by the defendant, the suit of the plaintiff deserved to be decreed. The High Court was further of the view that the First Appellate Court ought not to have entered into the validity of the Exhibits A-1 and A-2. The High Court allowed the appeal. Aggrieved against the judgment of the High Court, the defendants have come up in this appeal.

Observations and Decisions

The relevant extract of the judgment are as follows:

20. In the present case the possession of the plaintiff was upheld by the High Court on two main reasons. Firstly, the defendant of the suit, Subramanian had earlier filed a suit for recovery of possession and declaration for the same property against Ghani Sahib who was manager of the property which suit was dismissed and recovery of possession having been rejected, defendant cannot even make a plea to be in possession and secondly defendant in his cross-examination himself admitted that the plaintiff after purchase had demolished the construction. The High Court in paragraph 13 of its judgment has extracted the relevant excerpts from the statement of DW1's deposition during cross-examination.....

21. The High Court was also right in its view that it is a common principle of law that even trespasser, who is in established possession of the property could obtain injunction. However, the matter would be different, if the plaintiff himself elaborates in the plaint about title dispute and fails to make a prayer for declaration of title along with injunction relief. The High Court has rightly observed that a bare perusal of the plaint would demonstrate that the plaintiff has not narrated anything about the title dispute obviously because of the fact that in the previous litigation, DW1 failed to obtain any relief. The High court has rightly observed that the principle that plaintiff cannot seek for a bare permanent injunction without seeking a prayer for declaration is not applicable to the facts of the present case.

25. [....] But coming to the facts in the present case the present suit giving rise to this appeal, was not a suit for declaration of title and possession rather the suit was filed for injunction. As noted above, the High Court has given cogent reasons for holding that the suit filed by the plaintiff for injunction was maintainable without entering into the title of the plaintiff in facts of the present case specially in view of the previous litigation which was initiated at the instance of defendant No. 1 where he lost the suit for declaration and recovery of possession of the same property. The submission of learned counsel for the appellants that evidence filed by the defendant were not looked into is not correct. The trial court as well as the High Court has looked into not only the oral evidence but the exhibits which were filed on behalf of the defendant which is clear from the discussion made by the High Court in paragraphs 13 and 16.

26. We do not find any error in the view of the High Court that it was not necessary to enter into the validity of Exhibits A-1 and A-2 and the suit for injunction filed by the plaintiff deserved to be decreed on the basis of admitted and established possession of the plaintiff. We, thus, do not find any error in the judgment of the High Court allowing the second appeal filed by the plaintiff by setting aside the judgment of the First Appellate Court and restoring that of trial court.

9. *Kalamani Tex and Another v. P. Balasubramanian, 2021 SCC OnLine SC 75*

Decided on: 10.02.2021

Bench: 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice **Surya Kant**
3. Hon'ble Mr. Justice Aniruddha Bose

(The NI Act, Section 118 and 139, regarding blank cheque- The statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him.)

Facts

M/s. KalamaniTex (Appellant No. 1) and its managing partner-B. Subramanian (Appellant No. 2) are in appeal challenging the judgment dated 09.11.2017 passed by the High Court of Judicature at Madras, whereby the order of acquittal of the Judicial Magistrate, Tiruppur was reversed and the appellants have been convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NIA'). Consequently, Appellant No. 2 has been sentenced to undergo three months Simple Imprisonment and a fine of Rs. 5,000/-.

The instant proceedings have originated out of a complaint preferred by P. Balasubramanian (Complainant-Respondent) against the appellants. The respondent is the proprietor of a garment company named and styled as 'Growell International', which along with Appellant No. 1 was engaged in a business arrangement, whereby they agreed to jointly export garments to France. Certain issues arose regarding delays in shipment and payment from the buyer, due to which, the appellants had to pay the respondent a sum of Rs. 11.20 lakhs. To that end, Appellant No. 2 issued a cheque on behalf of Appellant No. 1 bearing no. 897993 dated 07.11.2000 in favour of the respondent and also executed a Deed of Undertaking on the same day wherein Appellant No. 2 personally undertook to pay the respondent in lieu of the initial expenditure incurred by the latter. The respondent presented the said cheque to the bank on 29.12.2000 for collection but it was returned with an endorsement that there were insufficient funds in the account of appellants. In wake of the cheque being dishonoured, the respondent issued a notice dated 08.01.2001 asking the appellants to pay the amount within 15 days. The appellants in their reply dated 27.01.2001 denied their liability and claimed that blank cheques and signed blank stamp papers were issued to help the respondent in some debt recovery proceedings, and not because of any legally enforceable debt.

The respondent then lodged a private complaint under section 138 and 142 of the NIA read with Section 200 of the Code of Criminal Procedure, 1973 (in short 'CrPC') before the Judicial Magistrate.

Decision and Observations

The Apex court had to examine whether the High Court erred in reversing the findings of the trial Court in exercise of its powers under Section 378 of CrPC and stated the principles regarding that. On a similar analogy, the Apex Court while referring to ***Ram Jag* v. *State of UP***[15], ***Rohtas* v. *State of Haryana***[16] and ***Raveen Kumar* v. *State of Himachal Pradesh***[17]stated that the Court hasevolved its own limitations on the exercise of powers under Article 136 of the Constitution and has reiterated that while entertaining an appeal by way of special leave, there shall not ordinarily be an attempt to re-appreciate the evidence on record unless the decision(s) under challenge are shown to have committed a manifest error of law or procedure or the conclusion reached is ex-facie perverse.

Coming to the facts of this case, the Apex Court said:

> **14.** Adverting to the case in hand, we find on a plain reading of its judgment that the trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. This point of law has been crystalized by this Court in *RohitbhaiJivanlal Patel* v. *State of Gujarat*[(2019) 18 SCC 106] in the following words:
>
> *"In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the appellant-accused....."*
>
> **15.** Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the Complainant-Respondent to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.

In the context of blank cheque, the Apex Court said the following:

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[15] (1974) 4 SCC 201

[16] (2019) 10 SCC 554

[17] 2020 SCC OnLine SC 869

18. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite *Bir Singh* v. *Mukesh Kumar, [*(2019) 4 SCC 197,*]* where this court held that:

"Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

19. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NIA.

10. Pravat Chandra Mohanty v. State of Odisha and Another, 2021 SCC OnLine SC 81

Decided on: 11.02.2021

Bench: 1. Hon'ble Mr. Justice **Ashok Bhushan**

2. Hon'ble Mr. Justice Ajay Rastogi

(The nature of offence, and its effect on society are relevant considerations while granting leave by the Court of compounding the offence. The offences which affect the public in general and create fear in the public in general are serious offences, nature of which offence may be relevant consideration for Court to grant or refuse the leave.)

Facts

The two appeals by the accused have been filed against the common judgment of the Orissa High Court dated 09.11.2020 dismissing the Criminal Appeal Nos. 207 and 210 of 1988 filed by the appellants. Both the appellants being the accused in Lal Bagh P.S. Case No. 273 of 1985 were tried in Sessions Trial No. 246 of 1985 for the offences punishable under Sections 304, 342, 323, 294, 201 167, 477-A, 471 read with Section 34 of the IPC. Learned Sessions Judge convicted the accused Pratap Kumar Choudhury under Section 304 (Part II) IPC to undergo R.I. for eight years and accused Pravat Chandra Mohanty under Section 304 (Part II) to undergo R.I. for five years. Both the accused were further sentenced under Section 471 IPC read with Section 466 IPC to undergo R.I. for three years and R.I. for three months under Section 342 IPC and R.I. for one month under Section 323 IPC by judgment dated 29.08.1988.

Aggrieved by the judgment of the trial court the appellants, Pravat Chandra Mohanty (hereinafter referred to as "Mohanty") filed Criminal Appeal No. 207 of 1988 and Pratap Kumar Choudhury (hereinafter referred to as "Choudhury") filed Criminal Appeal No. 210 of 1988 before the Orissa High Court. The High Court decided both the appeals by its judgment and order dated 09.11.2020 partly allowing the appeals. The conviction of both the appellants under Section 304 (Part II) IPC read with Section 34 IPC and Section 342/34 IPC was set aside and their conviction under Sections 323/34 IPC and 471/34 IPC was upheld. The High Court convicted both the appellants under Section 324/34 IPC. Simple imprisonment for one month was imposed under Section 323/34 IPC. Simple imprisonment for three months for the offence under Section 471/34 IPC and simple imprisonment for one year for the offence under Section 324/34 IPC were imposed by the High Court. All the sentences were to run concurrently. Aggrieved by the above judgment these appeals have been filed.

Observations and Decision

In thepresent case, the Apex Court noted, "where accused has already been convicted for offence under Section 324 IPC. By Cr.P.C. (Amendment) Act, 2005, offence under Section 324 IPC has been made non-compoundable offence. Prior to the aforesaid amendment, offence under Section 324 was compoundable. Learned counsel for the appellants is right in his

submissions that on the date when offence was committed, i.e., 04/05.05.1985, the offence under Section 324 IPC was compoundable."

The Apex Court then proceeded to examine whether in the present case the Court may permit compounding of offence under Section 324 IPC.

> **32.** The question arises as to while granting leave of the Court for composition of offence, what is the guiding factor for the Court to grant or refuse the leave for composition of offence. The nature of offence, and its affect on society are relevant considerations while granting leave by the Court of compounding the offence. The offences which affect the public in general and create fear in the public in general are serious offences, nature of which offence may be relevant consideration for Court to grant or refuse the leave. When we look into the conclusion recorded by the trial court and the High Court after marshalling the evidence on record, it is established that both the accused have mercilessly beaten the deceased in the premises of the Police Station. Eleven injuries were caused on the body of the deceased by the accused. .....

The Apex Court referred to a Division Bench Judgment of Nagpur High Court reported in ***Provincial Government, Central Provinces and Berar* v. *Bipin Singh Choudhary,***[18] and said in para 35 of the judgment, *"The ratio of the judgment is that in event people holding public office abuse their position, it becomes a matter of great public concern. We fully endorse the above view of the Nagpur High Court."* Also, in***Yashwant* v. *State of Maharashtra***,[19] it was laid down that when the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society.

> **38.** [...] We, thus, are of the considered opinion that present is a case where this Court is not to grant leave for compounding the offences under Section 324 IPC as prayed by the counsel for the appellants. The present is a case where the accused who were police officers, one of them being in-charge of Station and other Senior Inspector have themselves brutally beaten the deceased, who died the same night. Their offences cannot be compounded by the Court in exercise of Section 320(2) read with subsection (5). We, thus, reject the prayer of the appellants to compound the offence.

Further, the Apex Court proceeded to consider the question of sentence in the backdrop of refusal of the prayer for the compounding of the offence. Relevant cases on this point are ***Gulab Das* v. *State of Madhya Pradesh,***[20] ***Ishwar Singh* v. *State of Madhya Pradesh.***[21]

The Apex Court concluded:

> **43.** Looking to the facts that both the appellants are more than 75 years of age now, we are of the considered opinion that the ends of justice be served in reducing the

[18]AIR 1945 Nag, Oudh, Pesh& Sind 104
[19](2019) 18 SCC 571
[20](2011) 10 SCC 765
[21](2008) 15 SCC 667

sentence awarded for conviction under Section 324 IPC to six months instead of one year. Additionally the legal heirs of the deceased can be compensated by the compensation which has been offered and deposited by the appellant in this Court. Thus, sentence of one year is reduced to six months by awarding compensation of Rs. 3.5 Lakhs each to the legal heir of the deceased in addition to the compensation awarded by the High Court. The compensation deposited in this Court shall be remitted to the trial court who may pay the same to the legal heirs of the deceased. The affidavit has been filed before us that the deceased had four sons, his wife is dead, the entire amount be disbursed equally to two sons who are alive and heirs of two deceased sons.

44. In result, the appeals are partly allowed. The sentence awarded to the appellants under Section 324 IPC of one year is reduced to six months with enhancement of compensation to Rs. 3.5 lacs each in addition to compensation awarded by the High Court to be paid to the legal heirs of the deceased. The compensation to the legal heirs be paid as directed above.

11. *Daddy's Builders Pvt. Ltd. and Another v. Manisha Bhargava and Another, 2021 SCC OnLine SC 82*

Decided on: 11.02.2021

Bench: 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice M.R. Shah

(Consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days)

Facts

Feeling aggrieved and dissatisfied with the impugned order dated 04.09.2020 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'National Commission') in First Appeal No. 1999/2018, by which the National Commission has dismissed the said appeal confirming the order passed by the Karnataka State Consumer Disputes Redressal Commission (hereinafter referred to as the 'State Commission') dated 26.09.2018 rejecting the application filed by the petitioners herein seeking condonation of delay in filing the written version/written statement to the consumer complaint, original respondent nos. 1 & 2-petitioners herein have preferred the present special leave petition.

By order dated 26.09.2018, the State Commission rejected the application filed by the petitioners herein seeking condonation of delay in filing the written statement/written version to the consumer complaint. It is not in dispute that the written version/written statement was filed beyond the prescribed period of limitation provided under the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act'), i.e., beyond the period of 45 days. It is not in dispute that as per the provisions of the Act, the written version/written statement is required to be filed within 30 days and the same can be extended by a further period of 15 days. The order passed by the State Commission came to be confirmed by the National Commission. Hence, the present special leave petition.

Observations and Decisions

The relevant extract of the judgment are as follows:

> **5.** However, the aforesaid cannot be accepted. It is required to be noted that as per the decision of this Court in the case of *J.J. Merchant* v. *Shrinath Chaturvedi*, reported in (2002) 6 SCC 635, which was a three Judge Bench decision, consumer fora has no power to extend the time for filing a reply/written statement beyond the period prescribed under the Act. However, thereafter, despite the above three Judge

Bench decision, a contrary view was taken by a two Judge Bench and therefore the matter was referred to the five Judge Bench and the Constitution Bench has reiterated the view taken in the case of *J.J. Merchant* (supra) and has again reiterated that the consumer fora has no power and/or jurisdiction to accept the written statement beyond the statutory period prescribed under the Act, i.e., 45 days in all. However, it was found that in view of the order passed by this Court in *Reliance General Insurance Co. Ltd.* (supra) dated 10.02.2017, pending the decision of the larger Bench, in some of the cases, the State Commission might have condoned the delay in filing the written statement filed beyond the stipulated time of 45 days and all those orders condoning the delay and accepting the written statements shall not be affected, this Court observed in paragraph 63 that the decision of the Constitution Bench shall be applicable prospectively. We say so because one of us was a party to the said decision of the Constitution Bench.

6. Now so far as the reliance placed upon the order passed by this Court dated 10.02.2017 in the case of *Reliance General Insurance Co. Ltd.* (supra) is concerned, the same has been dealt with in detail by the National Commission by the impugned order while deciding the first appeal. As rightly observed by the National Commission, there was no mandate that in all the cases where the written statement was submitted beyond the stipulated period of 45 days, the delay must be condoned and the written statement must be taken on record. In order dated 10.02.2017, it is specifically mentioned that it will be open to the concerned fora to accept the written statement filed beyond the stipulated period of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter. Therefore, ultimately, it was left to the concerned fora to accept the written statement beyond the stipulated period of 45 days in an appropriate case. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in the case of *J.J. Merchant* (supra) and the subsequent authoritative decision of the Constitution Bench of this Court in the case of *New India Assurance Company Limited* v. *Hilli Multipurpose Cold Storage Pvt. Ltd.* (2020) 5 SCC 757,consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order passed by the learned National Commission.

12. State of Odisha v. Banabihari Mohapatra and Anr. , 2021 SCC OnLine 121

Decided on : 12.02.2021
Bench : 1. Hon'ble Ms. Justice **Indira Banerjee**
2. Hon'ble Mr. Justice Hemant Gupta

(Suspicion, however strong cannot take the place of proof. Before a case against an accused can be said to be fully established on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must fully be established and the facts so established should be consistent only with the hypothesis of guilt of the accused.

An appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

If two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought is to be established by circumstantial evidence.)

Facts

The first accused came to the residence of the deceased at around 7.30 a.m. on 23rd June, 2014 and told the Complainant that the deceased had been lying motionless and still, not responding to calls. Later his younger son Luja alias Smruti Ranjan Mohapatra being the second Respondent also came and informed the complainant that the deceased was lying motionless. On hearing this, the Complainant along with her family members went to the Ferry Ghat near the Chandabali Bus Stand and found her husband lying dead inside a room which was locked, with a swollen belly and a deep burn injury on his right foot which was apparently caused by electric shock. The body of the deceased appeared black and blood was oozing out from the mouth and nostril of the deceased.

In the FIR, the complainant has alleged that on 22nd June, 2016, the deceased had left the house to go to the house of a relative. He had been wearing a gold chain on his neck and two gold rings on his fingers, and had been carrying Rs. 800 for purchase of a new pair of pants and shirt and Rs. 5,000/- for purchase of articles for a marriage.

On making enquiries the complainant learnt that the deceased had not visited the house of the relative on that day. The complainant has alleged that the Accused No. 1 Banabihari Mohapatra, his son Luja alias Smruti Ranjan Mohapatra, being the Accused No. 2, and other accomplices committed murder of her husband by applying electric shock to him after administering some poisonous substances to him.

The Sessions Judge Bhadrak framed charges against the Accused Respondents Banabihari Mohapatra and Luja @ Smruti Ranjan Mohapatra alleging that, together they had intentionally caused the death of the deceased, thereby committing murder and had caused disappearance of evidence and thus been guilty of offences under Sections 302/201 read with Section 34 of the IPC. This Special Leave Petition filed by the State of Odisha is against a final judgment and order dated 2nd November, 2020 passed by the High Court of Orissa at Cuttack dismissing an application for leave to appeal being CRLLP No. 14 of 2020 filed by the Petitioner State, against a judgment dated 14th January, 2020 passed by the Sessions Judge, Bhadrak in ST. Case No. 182/392 of 2014, acquitting the Respondents from charges under Sections 302/201 read with Section 34 of the Penal Code, 1860 (IPC).

Observations and Decision

The Hon'ble Court after referring to the evidences produced in the case, held that the Prosecution miserably failed to establish the guilt of the Accused Respondents and the Trial Court rightly acquitted the Accused Respondents. While holding so, the Hon'ble Court also made the following observations :-

> **34.** As held by this Court in *Sadhu Saran Singh* v. *State of U.P.* reported in (2016) 4 SCC 357, an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.
>
> **35.** Before a case against an accused can be said to be fully established on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must fully be established and the facts so established should be consistent only with the hypothesis of guilt of the accused. There has to be a chain of evidence so complete, as not to leave any reasonable doubt for any conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the Accused.
>
> **36.** In *Shanti Devi* v. *State of Rajasthan* reported in (2012) 12 SCC 158, this Court held that the principles for conviction of the accused based on circumstantial evidence are:
>
> > "10.1. The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.
> >
> > 10.2. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.
> >
> > 10.3. The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.
> >
> > 10.4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

37. Keeping the above test in mind, we have no iota of doubt that the Trial Court rightly acquitted the Accused Respondents. There is a strong possibility that the accused, who was as per the opinion of the doctor who performed the autopsy, intoxicated with alcohol, might have accidentally touched a live electrical wire, may be while he was asleep. The impugned judgment of the High Court dismissing the appeal on the ground of delay does not call for interference under Article 136 of the Constitution of India.

38. It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take the place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt. This proposition has been reiterated in *Sujit Biswas* v. *State of Assam* reported in (2013) 12 SCC 406 : AIR 2013 SC 3817.

39. In *Kali Ram* v. *State of Himachal Pradesh* reported in (1973) 2 SCC 808 : AIR 1973 SC 2773, this Court observed:—

> "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought is to be established by circumstantial evidence."

13. H.S. Goutham v. Rama Murthy and Anr. , 2021 SCC OnLine 87

Decided on : 12.02.2021
Bench : 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice **M.R. Shah**

(As per Order XXI Rule 92, where an application is made under Order XXI Rule 89, Order XXI Rule 90 and Order XXI Rule 91 and the same is disallowed, the Court shall make an order confirming the sale and thereafter the sale shall become absolute. As per Order XXI Rule 94, where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date on which the sale became absolute.

Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. Therefore, as per Order XXI Rule 90, an application to set aside the sale on the ground of irregularity or fraud may be made by the decree holder on the ground of material irregularity or fraud in publishing or conducting it.

An appeal against the decree passed in a suit for recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should or should not have been recorded.

As per the provisions of Order XLI, the appellate court may permit additional evidence to be produced whether oral or documentary, if the conditions mentioned in Order XLI Rule 27 are satisfied after the additional evidence is permitted to be produced in exercise of powers under Order XLI Rule 27.)

Issue

Whether in the facts and circumstances of the case, more particularly, when the mortgaged property was sold in the court auction in the execution proceedings and the sale was confirmed in favour of the auction purchaser and the sale certificate was issued and sale was confirmed after overruling the objections raised by the judgment debtors, more particularly, the objection that the consent decree was obtained by fraud and that initially the consent decree was not challenged at all and not only that, even order dated 03.03.1998 overruling the objections raised by the judgment debtors was also not challenged at the earliest, the High Court is justified in quashing and setting aside the consent decree on the ground that the same was obtained by fraud, relying upon the report submitted by the Principal City Civil Judge which was called for in the appeal.

Observations and Decision

The Hon'ble Court allowed the appeals and held as follows :-

25. At this stage, it is required to be noted that as per the relevant provisions of the Code of Civil Procedure, more particularly, Order XXI Rule 92 read with Order XXI Rule 94, once the sale is confirmed and the sale certificate has been issued in favour of the purchaser, the same shall become final.

26. Now, so far as the procedure adopted by the High Court calling for the report from the learned Principal City Civil Judge on whether the decree was obtained by fraud or not is concerned, at the outset, it is required to be noted that at the time when the High Court passed such an order, there was already an order passed by the learned Executing Court dated 03.03.1998 overruling the objections raised by the judgment debtors that the decree was obtained by fraud and mis-representation. As observed by the learned Executing Court in the order dated 03.03.1998, the judgment debtors except the averments that the decree was obtained by fraud, mis-representation, neither any further submissions were made on that nor even the judgment debtors led any evidence in support of the same. Therefore, as such, learned Executing Court was justified in overruling the objection that the decree was obtained by fraud, mis-representation etc. As per the settled principle of law, when the fraud is alleged the same is required to be pleaded and established by leading evidence. Mere allegation that there was a fraud is not sufficient. Therefore, subsequent order passed by the High Court calling for the report from the learned Principal City Civil Judge on the question whether the decree was obtained by fraud or not, can be said to be giving an opportunity to the judgment debtors to fill in the lacuna. Therefore, the course adopted by the High Court calling for the report from the learned Principal City Civil Judge cannot be approved.

27. Even otherwise, it is required to be noted that as per the provisions of Order XLI, the appellate court may permit additional evidence to be produced whether oral or documentary, if the conditions mentioned in Order XLI Rule 27 are satisfied after the additional evidence is permitted to be produced in exercise of powers under Order XLI Rule 27. Thereafter, the procedure under Order XLI Rules 28 and 29 is required to be followed. Therefore, unless and until the procedure under Order XLI Rules 27, 28 and 29 are followed, the parties to the appeal cannot be permitted to lead additional evidence and/or the appellate court is not justified to direct the court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court. From the material produced on record, it appears that the said procedure has not been followed by the High Court while calling for the report from the learned Principal City Civil Judge.

28. Even otherwise, it is required to be noted that at the time when the learned Principal City Civil Judge permitted the parties to lead the evidence and submitted the report/finding that the decree was obtained by fraud, there was already an order passed by the Executing Court-Co-ordinate Court overruling the objections made by the judgment debtors that the decree was obtained by fraud. Therefore, unless and until the order dated 03.03.1998 was set aside, neither the High Court was justified in calling for the report from the learned Principal City Civil Judge nor even the learned Principal City Civil Judge was justified in permitting the judgment debtors to lead the evidence on the allegation that the decree was obtained by fraud, mis-representation, when the judgment debtors failed to lead any evidence earlier before the Executing Court when such objections were raised.

29. From the impugned judgment and order passed by the High Court, it appears that the High Court has heavily relied upon the report submitted by the learned Principal City Civil Judge and thereafter has come to the conclusion that the decree was obtained by fraud, mis-representation. Therefore, in the facts and circumstances of the case and for the reasons stated above, the High Court has committed an error in relying upon the report submitted by the learned Principal City Civil Judge holding that the decree was obtained by fraud.

30. Even otherwise, on perusal of the evidence led before the learned Principal City Civil Judge and even the findings recorded by the learned Principal City Civil Judge and the reasoning given by the High Court while holding that the decree was obtained by fraud, we are of the opinion that, in the facts and circumstances of the case, and even on the evidence led, the High Court has erred in holding that the decree was obtained by fraud. The judgment debtors-original defendants have put their signatures on the written statement or on the consent terms. The mortgaged property and the promissory note are not in dispute. Therefore, when the suit was filed and the judgment debtors wanted to get more time to repay the amount and when it was agreed to pay Rs. 4,50,000/- (suit claim) in a monthly installment of Rs. 5,000/- within three years, nothing was unnatural.

31. Now, so far as the objection raised on behalf of the appellant herein that the appeal before the High Court against a consent decree was not maintainable is concerned, the same has no substance. The High Court has elaborately dealt with the same in detail and has considered the relevant provisions of the Code of Civil Procedure, namely, Section 96, Order XXIII Rule 3, Order XLIII Rule 1(m) and order XLIII Rule 1A(2). It is true that, as per Section 96(3), the appeal against the decree passed with the consent of the parties shall be barred. However, it is also true that as per Order XXIII Rule 3A no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. However, it is required to be noted that when Order XLIII Rule 1(m) came to be omitted by Act 104 of 1976, simultaneously, Rule XLIII Rule 1A came to be inserted by the very Act 104 of 1976, which provides that in an appeal against the decree passed in a suit for recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should or should not have been recorded. Therefore, the High Court has rightly relied upon the decision of this Court in *Banwari Lal* v. *Chando Devi*, (1993) 1 SCC 581 : AIR 1993 SC 1139 (para 9) and has rightly come to the conclusion that the appeal before the High Court against the judgment and decree passed in O.S. No. 3376 of 1995 was maintainable. No error has been committed by the High Court in holding so.

32. Now, so far as the dismissal of I.A. No. 4 of 1999 by the learned Executing Court in the Execution Petition No. 232 of 1996 which was filed by the judgment debtors to set aside the court auction/sale dated 11.02.1999 and 18.02.1999 with respect to the subject mortgaged property is concerned, it is not in dispute that the judgment debtors as such did not deposit the amount of Rs. 4,50,000/- i.e. sale consideration together with interest in terms of Order XXI Rule 90 CPC. Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. Therefore, as per Order XXI Rule 90, an application to set aside the sale on the ground of irregularity or fraud may be made by the decree holder on the ground of material irregularity or fraud in publishing or conducting it. It is required to be noted that in the present case, as such, it is not the case of the judgment debtors that there was any material irregularity or fraud in publishing or conducting the sale. No such submissions have been made before this Court. Their objection is

that the decree was obtained by fraud. Therefore also, the application submitted by the original judgment debtors under Order XXI Rule 90 i.e. I.A. No. 4 of 1999 was required to be dismissed and was rightly dismissed by the learned Executing Court.

33. Now, so far as the impugned judgment and order passed by the High Court in CRP No. 3297 of 2000 quashing and setting aside the order passed by the Executing Court dated 03.03.1998 is concerned, from the impugned judgment and order passed by the High Court, it appears that the sale has been set aside by the High Court in view of the finding on Point No. 1 i.e. the decree was obtained by fraud and mis-representation and considering the report filed by the learned Principal City Civil Judge. However, it is required to be noted that at the time when learned Executing Court passed the order dated 03.03.1998 no evidence was led by the judgment debtors. The allegation that the decree was obtained by fraud and mis-representation was not substantiated. The High Court ought to have appreciated that even the order dated 03.03.1998 was not challenged by the judgment debtors till the year 2000 and, in the meantime, two applications being I.A. 3 of 1999 and I.A. No. 4 of 1999 were submitted by the judgment debtors under Order XXI Rule 90, which came to be dismissed and the mortgaged property was sold in the court auction and even the sale was confirmed and the sale certificate was issued and the same was registered with the Sub-Registrar. As observed hereinabove, as per Order XXI Rule 92, where an application is made under Order XXI Rule 89, Order XXI Rule 90 and Order XXI Rule 91 and the same is disallowed, the Court shall make an order confirming the sale and thereafter the sale shall become absolute. As per Order XXI Rule 94, where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date on which the sale became absolute. Therefore, when after the order dated 03.03.1998 overruling the objections raised by the judgment debtors and thereafter the order was passed in I.A. No. 4 of 1999 and thereafter when the sale was confirmed and the sale certificate was issued, the High Court ought not to have thereafter set aside the order dated 03.03.1998 overruling the objections raised by the judgment debtors, which order was not challenged by the judgment debtors before the High Court till the year 2000. Under the circumstances, the impugned judgment and order passed by the High Court in CRP No. 3297 of 2000 quashing and setting aside the order dated 03.03.1998 cannot be sustained and the same deserves to be quashed and set aside.

34. Now, so far as the impugned judgment and order passed by the High Court in MFA No. 3934 of 2000 quashing and setting aside the order dated 30.10.1999 dismissing I.A. No. 4 of 1999 which was filed by the judgment debtors under Order XXI Rule 90 is concerned, the High Court has set aside the same observing that the auction purchaser cannot be said to be the bona fide purchaser as he was related to the judgment creditor and that he was a partner of the firm in whose favour the mortgage was executed. However, it is required to be noted that I.A. No. 4 of 1999 was not filed to set aside the sale on the aforesaid grounds. The said application was submitted on the ground that no proper publication was made to get the adequate market value. Therefore, the High Court has gone beyond the case of the judgment debtors in I.A. No. 4 of 1999. Even on merits also and factually, the High Court is not correct in observing that the auction purchaser was not a bona fide purchaser. According to the judgment creditor, the partnership firm was already dissolved much before and thereafter the plaintiff inherited the assets, claims and liabilities of the firm. Even as observed by the learned Executing Court while passing the order in I.A. No. 4 of 1999 the judgment debtors even did not deposit the entire amount. Under the circumstances, the High Court therefore committed an error in quashing and setting aside order dated 30.10.1999 passed in I.A. No. 4 of 1999.

14. Sudipta Chakrobarty and Anr. v. Ranaghat S.D. Hospital, 2021 SCC OnLine 107

Decided on : 15.02.2021
Bench : 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Ajay Rastogi

(The delay in delivery of judgments has been observed to be in violation of Article 21 of the Constitution of India and the problems gets aggravated when the operative portion is made available early, and the reasons follow much later, or are not made available for an indefinite period. Undisputedly, the rights of the aggrieved parties are being prejudiced if the reasons are not available to them to avail of the legal remedy of approaching the Court where the reasons can be scrutinized. It indeed amounts to defeating the rights of the party aggrieved to challenge the impugned judgment on merits and even the succeeding party is unable to obtain the fruits of success of the litigation.)

Facts

In this case, the Hon'ble Court had directed the Registrar of the National Commission to submit a Report stating the number of cases in which reasoned judgments had not been passed, even though the operative order had been pronounced in Court. By the report dated 27.7.2020, it was informed that as on 20.12.2019, there were 85 such cases in which the operative order had been pronounced, but reasoned judgments were not delivered so far.

Observations and Decision

The Hon'ble Court referred to the cases of *State of Punjab* v. *Jagdev Singh Talwandi* (1984) 1 SCC 596, *Anil Rai* v. *State of Bihar* (2001) 7 SCC 318, *Zahira Habibulla M. Sheikh* v. *State of Gujarat,* (2004) 5 SCC 353, *Mangat Ram* v. *State of Haryana,* (2008) 7 SCC 96, *Ajay Singh* v. *State of Chhattisgarh,* (2017) 3 SCC 330, *Balaji Baliram Mupade* v. *The State of Maharashtra* (Civil Appeal No. 3564 of 2020) *Oriental Insurance Co. Ltd.* v. *Zaixhu Xie* (Civil Appeal No. 4022 of 2020) and *SJVNL* v. *CCC HIM JV* (Civil Appeal No. 494 of 2021) and held as follows :-

> **3.** The fact which has been brought to our notice by the Registrar of the Commission can, in no manner, be countenanced that between the date of operative portion of the order and the reasons are yet to be provided, or the hiatus period is much more than what has been observed to be the maximum time period for even pronouncement of reserved judgments. In *State of Punjab* v. *Jagdev Singh Talwandi* (1984) 1 SCC 596 in para 30, the Constitution Bench of this Court, as far back in 1983, drew the attention of the Courts/Tribunal of the serious difficulties which were caused on account of a practice which was being adopted by the adjudicating authorities including High Courts/Commissions, that of pronouncing the final operative part of the orders without supporting reasons. This was later again discussed by this Court in *Anil Rai* v. *State of Bihar* (2001) 7 SCC 318.
>
> **4.** Undisputedly, the rights of the aggrieved parties are being prejudiced if the reasons are not available to them to avail of the legal remedy of approaching the Court where the

reasons can be scrutinized. It indeed amounts to defeating the rights of the party aggrieved to challenge the impugned judgment on merits and even the succeeding party is unable to obtain the fruits of success of the litigation.

5. The afore-mentioned principle has been emphatically restated by this Court on several occasions including in *Zahira Habibulla M. Sheikh* v. *State of Gujarat* [(2004) 5 SCC 353 : AIR 2004 SC 3467 paras 80-82]; *Mangat Ram* v. *State of Haryana* [(2008) 7 SCC 96 paras 5-10]; *Ajay Singh* v. *State of Chhattisgarh* [(2017) 3 SCC 330 : AIR 2017 SC 310] and more recently in *Balaji Baliram Mupade* v. *The State of Maharashtra* (Civil Appeal No. 3564 of 2020 pronounced on 29.10.2020) *Oriental Insurance Co. Ltd.* v. *Zaixhu Xie* (Civil Appeal No. 4022 of 2020 pronounced on 11.12.2020) and *SJVNL* v. *CCC HIM JV* **(Civil Appeal No. 494 of 2021 pronounced on 12.02.2021)** wherein the delay in delivery of judgments has been observed to be in violation of Article 21 of the Constitution of India and the problems gets aggravated when the operative portion is made available early, and the reasons follow much later, or are not made available for an indefinite period.

6. In the instant case, the operative order was pronounced on 26.04.2019, and in the reasons disclosed, there is a hiatus period of eight months.

7. Let this Order be placed before the President of the National Consumer Disputes Redressal Commission to look into the matter, and take necessary steps so that this practice is discontinued, and the reasoned Judgment is passed alongwith the operative order. We would like to observe that in all matters where reasons are yet to be delivered, it must be ensured that the same are made available to the litigating parties positively within a period of two months.

15. Kotak Mahindra Bank Pvt. Ltd. v. Ambuj A. Kasliwal and Ors., 2021 SCC OnLine 95

Decided on : 16.02.2021
Bench : 1. Hon'ble Mr. Justice S.A. Bobde (C.J.)
2. Hon'ble Mr. Justice **A.S. Bopanna**
3. Hon'ble Mr. Justice V. Ramasubramanian

(When further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the appellant/Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law.)

Facts

The appellant was before the Supreme Court assailing the order dated 16.07.2019 passed in W.P.(C) No. 7530 of 2019 whereby the High Court of Delhi has permitted the respondents No. 1 and 2 herein to prosecute the appeal before the Debts Recovery Appellate Tribunal ('DRAT' for short) without pre-deposit of a portion of the debt determined to be due, as provided under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDBA Act' for short). The appellant/Bank claiming to be aggrieved by the said order was before the Supreme Court in the instant appeal.

Observations and Decision

The Hon'ble Court referred to the provisions of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, analogous provision contained in Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the judgment rendered in *Narayan Chandra Ghosh* **v.** *UCO Bank* (2011) 4 SCC 548 and held as follows:-

> **10.** A perusal of the provision which employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said Section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five per cent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver. It is in that background, keeping in perspective the said provision, the DRAT has in the instant case ordered deposit of

fifty per cent of the amount. The respondents No. 1 and 2 while seeking waiver of the deposit have essentially projected the case to indicate that the recovery certificate ordered by the DRT is for the sum of Rs. 145 Crores with interest at 9% per annum and the amount realised by the Bank from the compensation amount payable to respondent No. 3 is itself a sum of Rs. 152,81,07,159/- (Rupees One Hundred Fifty Two Crores Eighty One Lakhs Seven Thousand and One Hundred Fifty Nine) and as such there is no debt due.

12. The extracted portion indicates that the High Court has proceeded at a tangent while adverting to the aspect of recovery made towards the loan amount from the land acquisition compensation payable to respondent No. 3. The conclusion appears to be that the receipt of the compensation amount even though was before passing of the decree, would wipe out the decretal amount of Rs. 145 Crores with interest at 9% per annum, though it has not been expressly stated so. Per contra, the DRAT by its order dated 27.02.2019 while directing the pre-deposit of fifty per cent of the amount had taken note of the fact that if the decretal amount as ordered by the DRT is taken into consideration and the amount received by the Bank towards the compensation amount is credited, the balance of the decretal amount payable by respondents No. 1 to 3 would work out to Rs. 68,18,92,841/- (Rupees Sixty Eight Crores Eighteen Lakhs Ninety Two Thousand and Eight Hundred Forty One). It is in that view, the DRAT has ordered pre-deposit of fifty per cent of the said amount which still remains to be a debt due. On that aspect, though the ultimate correctness of the actual amount due is a matter for calculation to be made in the execution proceedings, for the present, for the purpose of pre-deposit if the decree/recovery certificate issued by the DRT is taken into consideration the position is clear that even if the amount of compensation is appropriated, either before or after the decree, there would still be outstanding amount payable which would be the subject matter of the appeal in DRAT, apart from the fact that the appellant Bank in their appeal are claiming the entire amount which has fallen due since the terms of settlement was not adhered to.

13. Thus, when *prima facie* it was taken note by the DRAT that further amount was due and the pre-deposit was ordered, without finding fault with such conclusion the High Court was not justified in setting aside the orders passed by the DRAT. As noted from the extracted portion of the order passed by the High Court, all that the High Court has concluded is that the benefit of the receipt of Rs. 152,81,07,159/- (Rupees One Hundred Fifty Two Crores Eighty One Lakhs Seven Thousand and One Hundred Fifty Nine) as against the decretal amount cannot be denied though it was received before passing of the final judgment. Such conclusion in any event could not have tilted the balance in favour of the respondents No. 1 and 2 to waive the entire pre deposit, unless the High Court had rendered a categorical finding that the entire decretal amount stands satisfied from such receipt and there was no debt due which in any event was beyond the scope of consideration in a petition of the present nature. On the other hand, as stated, the DRAT having taken note of the decretal amount, the receipt of the amount credited as compensation and, having further noted the debt is still due, has directed the pre-deposit limited to that extent.

14. Therefore, in the facts and circumstances arising herein, when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the appellant/Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, which is extracted above. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at

least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law. The order of the High Court is, therefore, liable to be set aside.

15. It is noticed that this Court while considering an analogous provision contained in Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI' for short) relating to pre-deposit in order to avail the remedy of appeal has expressed a similar opinion in the case of *Narayan Chandra Ghosh* v. *UCO Bank* (2011) 4 SCC 548, which reads as hereunder:—

.....

16. Having arrived at the above conclusion the issue is also with regard to the extent to which pre-deposit is to be ordered in the instant case. Though the learned Senior Advocates on either side have indicated different figures as the actual debt due as on today, we do not propose to enter into that aspect of the matter since the actual amount due is a matter which would be taken note by the DRAT while considering the appeal on merits and at the point of recovery if any, in the execution proceedings. However, for the present we would take note of the amount as indicated in the order dated 27.02.2019 passed by the DRAT. Hence, for the purpose of determining the pre-deposit, the decretal amount due is taken at Rs. 68,18,92,841/- (Rupees Sixty-Eight Crores Eighteen Lakhs Ninety-Two Thousand and Eight Hundred Forty-One). Mr. Mukul Rohtagi, learned Senior Advocate would contend that a portion of property belonging to respondent No. 3 has been acquired and the remaining property is still under mortgage and as such pre-deposit would be burdensome to the respondents No. 1 and 2, more particularly when the entire compensation amount is deposited and major portion of the debt due is discharged.

17. As already noted, a total waiver would be against the statutory provisions. However, in the instant case, taking note that though the issue relating to the actual amount due is to be considered by the DRAT, keeping in view the fact that the DRT has taken into consideration the earlier settlement and has accordingly decreed the claim to that extent and towards such decree since payment of a major portion is made, though by appropriation of the compensation amount and admittedly since the remaining properties belonging to respondent No. 3 is available by way of mortgage and the respondents No. 1 and 2 are the personal guarantors, we deem it appropriate that in the peculiar facts and circumstances of this case to permit the pre-deposit of twenty-five per cent of the amount as taken note by the DRAT i.e. twenty-five per cent of Rs. 68,18,92,841/- (Rupees Sixty Eight Crores Eighteen Lakhs Ninety Two Thousands and Eight Hundred Forty One). To the said extent, the order dated 27.02.2019 passed by the DRAT on IA No. 511 of 2018 is liable to be modified.

18. It is clarified that the consideration made herein and debt due quantified is limited to the aspect relating to pre-deposit. All other contentions including as to the actual amount of debt due is left open to be urged in the pending appeals.

16. Kaloji Narayana Rao University of Health Sciences v. Srikeerti Reddi Pingle and Ors., 2021 SCC OnLine 94

Decided on : 16.02.2021
Bench : 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice **S. Ravindra Bhat**

(Each candidate for the MBBS course should have undergone study in Physics, Chemistry and Biology, in each of the levels (i.e. the two years of 10+2 board examination, or the concerned intermediate examination) with practical exams, in each of those years; that he or she should also have had English as a subject, and that the score in Mathematics would be ignored and not taken into consideration. The stipulation of equivalence in Regulation 4(2)(f) of the Medical Council of India Regulations on Graduate Medical Education, 1997 is not merely a formal one. The provision must be read in the context of the consistent conditions of eligibility prescribed in Regulations 4(2)(a) to (e), as noted above.)

Facts

The Kaloji Narayana Rao University of Health Sciences (hereafter variously referred to as "the University" or "the appellant") appeals a decision of the Telangana High Court[1] in W.P. No. 23953/2020 which had allowed a writ petition preferred by the respondent (hereafter referred to as "the student"). The respondent student had sought a direction declaring the action of the University in treating her as ineligible for admission to the MBBS Course for the academic year 2020-21, as illegal. The facts necessary for decision are few; the student had applied, pursuant to a notification issued by the University on 30.11.2020 for admission into the management quota for NRI candidates for the MBBS/BDS course during the academic year (AY) 2020-21. The student had applied for admission to the MBBS course. The University published a list on 12.12.2020 containing the respondent student's name, clarifying that she had not furnished proof of study of Biological Science subject in the qualifying examination (10+2 or equivalent). The respondent student then secured a letter from the Consulate General of India in New York, stating that she had successfully completed the 12th grade from one Conrad High School, West Hartford, Connecticut and that it was equivalent to the Pre-University (Two Year Course) New Intermediate University and the 12-year Senior Secondary Board Examination Certificate of India. On 23.12.2020, the University issued a notification seeking web option for the second round of online counselling for admission to the MBBS/BDS seats in the management quota for AY 2020-21.

The student approached the High Court on 24.12.2020 and besides relying upon the certificate/letter issued by Conrad High School, she also relied upon a certificate issued by the Telangana State Board of Intermediate Education dated 23.12.2020, which declared the equivalence and informed that the 12th class/senior secondary examination of the West Hartford Board of Education, Connecticut USA was equivalent to the Intermediate Examination conducted by the Telangana State Board of Intermediate Education. The

student applied for an interim order and was permitted to participate in the counselling process conducted for the remaining seats without prejudice to the parties' rights. Thereafter, the University filed an application for vacation of the interim order, made its position clear and spelt out why according to it, the respondent student was ineligible.

The High Court, by its impugned order, relied upon the certificate of the Telangana State Board of Intermediate Education, as well as the letter dated 11.12.2020 of Conrad High School, and the certificate of 14.12.2020 issued by the West Hartford Science Department Supervisor. The High Court declared that she had completed her 12th grade with Biological Sciences as required by the concerned regulations framed by the erstwhile MCI - which continued to govern and regulate admissions to various classes of medical courses. The High Court also held erroneous, the University's position that there was no proof of her studying Biological Sciences in the qualifying examination. The Court took note of the equivalence certificate issued by the Telangana State Board of Intermediate Education, and was of the opinion that the University could not, therefore, approve and add new grounds in respect of the student's application for admission. It concluded that the University acted arbitrarily in treating the student ineligible.

Observations and Decision

The Hon'ble Court referred to Regulation 4 of the Medical Council of India Regulations on Graduate Medical Education, 1997 and the judgments rendered in ***Sharanya Balaji Nadar* v. *The Dental Council of India*** and ***Kashvi Udhaya-kumar* v. *Union of India*** and, allowing the appeal, held as follows :-

> **11.** A plain reading of Regulation 4(2) shows that the MCI visualized five different situations, having regard to the nature and structure of high school education in India, and provided for equivalence in respect of other variants of similar examinations, possibly even overseas qualifications. In all, the MCI regulations contemplate six qualifications for eligibility - (i) higher secondary examinations conducted by one of the several boards (of secondary and senior secondary school examinations) or the Indian School Certificate Examination [Reg. 4(2)(a)]; (ii) the intermediate examination in science of an Indian University/Board or other recognised examining body [Reg. 4(2)(b)]; (iii) "*Pre-professional/pre-medical examination"* with Physics, Chemistry and Biology/Bio-technology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination, with further stipulation that the pre-professional examination should have a practical test in Physics, Chemistry and Biology/Bio-technology [Reg. 4(2)(c)]; (iv) the first year examination of the three years degree course of a recognized university, with Physics, Chemistry and Biology/Bio-technology, with a further stipulation that the candidate should have passed the 10+2 examination with English at a level not less than the "core course" [Reg. 4(2)(d)]; (v) the B.Sc. examination of an Indian University, only if the candidate *"has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology)/Bio-technology and further that he/she has passed the earlier qualifying examination with the following subjects - Physics, Chemistry, Biology and English"* [Reg. 4(2)(e)]; and lastly, (vi) any examination found to be equivalent to the intermediate science

examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English[Reg. 4(2)(f)].

12. It is noticeable that each variant of what is acceptable, lays stress on certain common features : (a) that the candidate should have passed the examination with Physics, Chemistry and Biology/Bio-technology; (b) the candidate should have undergone practical tests in those science subjects (c) the candidate should have studied English and, lastly, (d) that marks obtained in Mathematics would not be taken into consideration for deciding admission to the MBBS course.

14. A careful reading of the said provision discloses that the MCI emphasized that the candidate should have undergone study at the 10+2 stage, (or in the intermediate course) in the specified subjects of Physics, Chemistry and Biology/Bio-technology. In this case, the certificate relied upon by the student[7] merely clarifies that she undertook a course whilst in the 10th grade. That, by no means, is sufficient to fall within the description of "equivalent" qualification under Regulation 4(2)(f). Nor, in the opinion of this court, can it be deemed adequate having regard to the letter of the Assistant Principal of Conrad High School[8] that the AP course in Biological Sciences is of college standard.

15. In the opinion of this court, there is a rationale and compelling logic on the part of the University to say that the candidate should have studied biology or biological sciences (apart from the other two science subjects, along with the further requirement of having studied English) in all the relevant years during the intermediate or at 10+2 level. Further, the reference to having studied in the first year in a degree course, at the college level with the said subject, carries with it, the implication that the student would have necessarily undergone academic study and training in the said three subjects at the 10+2 or intermediate level (without which, admission in a degree course is inconceivable in India). The further emphasis on having attended or undertaken practical lessons, (again at that level, in each of the concerned years) clearly signifies that a candidate should have undergone study in those subjects for the last two years at school or intermediate college level. The regulation is further clear that the examination score (marks) in Mathematics *shall not be taken into consideration* for the purpose of admission to a medical course, in reckoning merit or performance in the qualifying examination.

19. It is apparent that the High Court followed its previous judgment, and did not closely scrutinize the equivalence certificate or the subject stipulations. It also appears to have been largely influenced by the fact that the candidate was in fact admitted by the University. In the opinion of this court, the construction placed on Regulation 4(2), i.e., that each of the sub clauses (a) to (f) prescribes independent qualifications which should be deemed essential, is rather simplistic. That interpretation ignores the fact that each of the sub-clauses insists that certain subjects should have been studied, and practical examinations attempted at the 10+2 or equivalent level. Secondly, the college or intermediate examination [or equivalent qualifications under Regulation 4(2)(f)] cannot be read in isolation, having regard to the circumstances. The provision must be read in the context of the requirements for eligibility under Regulations 4(2)(a) to (e). The equivalence in qualification is not merely at the level of a 10+2 requirement, i.e., that the candidate should have passed an examination equivalent to the intermediate science examination at an Indian University/Board. Additional to this requirement, Regulation 4(2)(f) requires equivalence in 'standard and scope' in an examination where the candidate is tested in Physics, Chemistry and Biology including practical testing in these subjects, along with English. These subject matter requirements are consistent across Regulations 4(2)(a) to (e) and (f).

20. The approach and construction placed by the High Court, in this court's opinion, undermines the intent behind the MCI's insistence that a certain kind of education should be undergone, which is that each candidate for the MBBS course should have undergone study in Physics, Chemistry and Biology, in each of the levels (i.e. the two years of 10+2 board examination, or the concerned intermediate examination) with practical exams, in each of those years; that he or she should also have had English as a subject, and that the score in Mathematics would be ignored and not taken into consideration[9]. It would be, in this context, necessary to clarify that the equivalence relied on by the Telangana Intermediate Board in this case, merely alluded to the general equivalence in terms of education at the intermediate level, without stipulating whether the qualifications were equivalent in terms of the subjects in which she undertook courses for the relevant years.

21. The stipulation of equivalence in Regulation 4(2)(f) is not merely a formal one. The provision must be read in the context of the consistent conditions of eligibility prescribed in Regulations 4(2)(a) to (e), as noted above. This court, in *State of Bombay* v. *R.M.D. Chamarbaugwala*[10] interpreted the definition of a 'prize competition'[11]. A prize competition was defined as including crossword prize competitions, picture prize competitions, etc., and finally, any other prize competition, *for which solution is or is not prepared beforehand by the promotors, or for which the solution is determined by lot or chance.* This last qualification was appended only to the last sub-clause on 'any other competition'. The court held that the qualification should be equally applicable to the other sub-clauses too, and that there was no difficulty in reading the qualifying clause as lending colour to each of those items. In the present case, Regulation 4(2)(f) explicitly refers to the subject matter requirement reiterated in all the eligibility conditions from (a) to (e); the substance of the eligibility requirement indeed, is that the candidate should have qualified an intermediate level examination or first year of a graduate course, and studied the subjects of Physics, Chemistry and Biology at this level, along with practical testing in these subject areas, and the English language. This subject matter requirement is at the heart of eligibility to be admitted into the medical course.

22. For these reasons, this court is of the opinion that the interpretation placed upon the regulations in both the cited cases, by the Madras High Court, do not reflect the correct position. To be eligible, the candidate should produce clear and categorical material to show that she underwent the necessary years of study in all the stipulated subjects. This court is of the opinion that such stipulations are to be regarded as essential, given that the course in question, i.e., MBBS primarily if not predominantly, involves prior knowledge - both theoretical and practical, of senior secondary level in biology or biological sciences.

17. Gauri Shankar v. State of Punjab, 2021 SCC OnLine 96

Decided on : 16.02.2021
Bench : 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice **Ajay Rastogi**

(In a conviction under Section 302 of the IPC, punishment of remainder of natural life cannot be imposed by the trial Judge. The power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.)

Facts

The sole accused appellant faced trial for committing the murder of two minor children aged 4 years and 2 years in brutal manner by administering celphos to them. After being convicted by learned trial Judge for offence under Section 302 IPC by judgment dated 1st July, 2013 and confirmed by the High Court on appeal preferred at his instance being dismissed by judgment impugned dated 13th December, 2018, the appellant preferred this appeal. Learned trial Judge had held the appellant guilty of an offence under Section 302 IPC and punished him with imprisonment for life which would mean remainder of natural life and fine of Rs. 5000/- by judgment dated 1st July, 2013.It was the contention of the appellant before the Supreme Court that while convicting the accused appellant for offence under Section 302 IPC, he has been sentenced with imprisonment for life which would mean a remainder of natural life which was not in the domain of the trial Court, and this could have been exercised only by the High Court or by this Court.

Observations and Decision

Referring to the judgment rendered in ***Union of India* v. *V. Sriharan @ Murugan*** (2016) 7 SCC 1, the Hon'ble Court, though upheld the sentence, held that :-

> **15.** On the legal principles, the learned counsel for the appellant appears to be correct, but we have taken note of the prosecution case in totality with motive of the crime that he was living in a relationship with the complainant Anju who had two children from the previous marriage, and had taken away the life of two minor innocent children at the very threshold of their life and murdered in a brutal manner by administering celphos to them has been established. It is true that the punishment of remainder of natural life could not have been imposed by the learned trial Judge but after looking into the entire case, we consider it appropriate to confirm the sentence of imprisonment for life to mean the remainder of natural life while upholding the conviction under Section 302 IPC.

18. Unitech Ltd. and Ors. v. Telangana State Industrial Infrastructure Corporation (TSIIC) and Ors, 2021 SCC OnLine 99

Decided on : 17.02.2021
Bench : 1. Hon'ble Mr. Justice **D.Y.Chandrachud**
2. Hon'ble Mr. Justice M.R. Shah

(The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena.
Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked.)

Issue

This case *inter alia* raised the issue of writ jurisdiction of the High Court under Article 226 in matters related to contractual matter between a state instrumentality and a private party.

Observations and Decision

38. Much of the ground which was sought to be canvassed in the course of the pleadings is now subsumed in the submissions which have been urged before this Court on behalf of the State of Telangana and TSIIC. As we have noted earlier, during the course of the hearing, learned Senior Counsel appearing on behalf of the State of Telangana and TSIIC informed the Court that the entitlement of Unitech to seek a refund is not questioned nor is the availability of the land for carrying out the project being placed in issue. Learned Senior Counsel also did not agitate the ground that a remedy for the recovery of moneys arising out a contractual matter cannot be availed of under Article 226 of the Constitution. However, to clear the ground, it is necessary to postulate that recourse to the jurisdiction under Article 226 of the Constitution is not excluded altogether in a contractual matter. A public law remedy is available for enforcing legal rights subject to well-settled parameters.

39. A two judge Bench of this Court in *ABL International Ltd.* v. *Export Credit Guarantee Corporation of India*[7] [*ABL International*] analyzed a long line of precedent of this Court[8] to conclude that writs under Article 226 are maintainable for asserting contractual rights against the state, or its instrumentalities, as defined under Article 12 of the Indian Constitution. Speaking through Justice N Santosh Hegde, the Court held:

> "27. ...the following legal principles emerge as to the maintainability of a writ petition:
>
> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable."

40. This exposition has been followed by this Court, and has been adopted by three-judge Bench decisions of this Court in *State of UP* v. *Sudhir Kumar*[9] and *Popatrao Vynkatrao Patil* v. *State of Maharashtra*[10]. The decision in *ABL International*, cautions that the plenary power under Article 226 must be used with circumspection when other remedies have been provided by the contract. But as a statement of principle, the jurisdiction under Article 226 is not excluded in contractual matters. Article 23.1 of the Development Agreement in the present case mandates the parties to resolve their disputes through an arbitration. However, the presence of an arbitration clause within a contract between a state instrumentality and a private party has not acted as an absolute bar to availing remedies under Article 226.[11] If the state instrumentality violates its constitutional mandate under Article 14 to act fairly and reasonably, relief under the plenary powers of the Article 226 of the Constitution would lie. This principle was recognized in *ABL International*:

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corpn.* v. *Registrar of Trade Marks* [(1998) 8 SCC 1].) **And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction**."

(emphasis supplied by court)

41. Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract. Similarly, the presence of an arbitration clause does oust the jurisdiction under Article 226 in all cases though, it still needs to be decided from case to case as to whether recourse to a public law remedy can justifiably be invoked. The jurisdiction under Article 226 was rightly invoked by the Single Judge and the Division Bench of the Andhra Pradesh in this case, when the foundational representation of the contract has failed. TSIIC, a state instrumentality, has not just reneged on its contractual obligation, but hoarded the refund of the principal and interest on the consideration that was paid by Unitech over a decade ago. It does not dispute the entitlement of Unitech to the refund of its principal.

19. Compack Enterprises India (P) Ltd. v.Beant Singh, 2021 SCC OnLine SC 97

Decided on : 17.02.2021
Bench : 1. Hon'ble Mr. Justice **Mohan M. Shantanagoudar**
2. Hon'ble Mr. Justice Vineet Sharan

(It is well-settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. The Courts must be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto. This formulation, however, is far from absolute and does not apply as a blanket rule in all cases. A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake.)

Issue

The legal point involved in the present case was related to consent decrees and whether they create estoppels by judgment against parties.

Observations and Decision

The Hon'ble Court, with respect to consent decrees creating estoppels on parties, held as follows :-

> **20.** Before adverting to the specific contentions raised by the learned senior counsel for the Petitioner, it may be useful to briefly summarise the law governing consent decrees that shall inform our conclusions on the present matter. It is well-settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, this Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto. (*Gupta Steel Industries* v. *Jolly Steel Industries Pvt. Ltd.*, (1996) 11 SCC 678; *Suvaran Rajaram Bandekar* v. *Narayan R. Bandekar*, (1996) 10 SCC 255).
>
> **21.** However, this formulation is far from absolute and does not apply as a blanket rule in all cases. This Court, in *Byram Pestonji Gariwala* v. *Union Bank of India*, (1992) 1 SCC 31, has held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. Further, this Court in the exercise of its inherent powers may also unilaterally rectify a consent decree suffering from clerical or arithmetical errors, so as to make it conform with the terms of the compromise.
>
> **22.** The present Petitions thus must be answered in light of the above-stated position of law. It is relevant at this juncture to note that the first impugned judgment of the High Court dated 14.2.2019 recorded the terms of the compromise that the Petitioner had agreed to; and that the same Court has subsequently upheld the validity of that consent decree in the second impugned judgment dated 25.07.2019. Thus, keeping in line with this Court's jurisprudence, we would be cautious in exercising our inherent power to interfere in this consent decree, except where there is any exceptional or glaring error apparent on the face of the record. We now refer to and answer the specific contentions raised by the parties.

20. Tata Motors Ltd. v. Antonio Paolo Vaz and Anr., 2021 SCC OnLine SC 125

Decided on : 18.02.2021
Bench : 1. Hon'ble Mr. Justice U.U.Lalit
2. Hon'ble Mr. Justice Hemant Gupta
3. Hon'ble Mr. Justice **S. Ravindra Bhat**

(In a case involving deficiency of service between the dealer of a car and its purchaser, Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with the dealer, in the facts of this case, were on principal-to-principal basis.)

Facts

The first respondent, Antonio Paulo Vaz (hereafter "Vaz") bought a car after paying the agreed total consideration price in 2011 to the second respondent, Vistar Goa (P) Ltd, a dealer in cars (hereafter "the dealer"). At the time of purchase, Vaz availed bank credit. A 2009 model car which had run 622 kilometres was sold to him in place of a new car of 2011 make. Vaz, therefore, requested for refund of the price paid or replacement of the car with one of 2011. The price was however not refunded; neither was the car replaced. Vaz refused to take delivery of the 2009 model car. He attempted a resolution of his concern and thereafter, caused a legal notice to be issued to the dealer, as well as the appellant. Upon his grievance remaining unaddressed, he preferred a complaint before the Goa District Consumer Redressal Forum (hereafter "the district forum").

The district forum heard the appellant, which was represented, and Vaz. Despite service of notice (of the complaint) the dealer was absent and was unrepresented; it was therefore proceeded against *ex parte*. The district forum determined 'deficiency in service' and held the dealer and the appellant (i.e. manufacturer of the car) to be jointly and severally liable. The district forum's order, (made on 27.09.2013) noted that the car had some defects; the undercarriage of the car was *"fully corrugated and had scratch marks on the body. The alloy wheels were also corrugated inside and the car also travelled almost 622 km. Also some parts such as music system was not provided although agreed."* The appellant denied the facts and alleged that Vaz, the customer had been informed that the car purchased by him was a 2009 model. The district forum observed that this averment (by the appellant) was apparently incorrect because if Vaz had agreed to such an offer, he would not have refused to take the delivery of the car which was even then with the dealer; he also urged that the music system was not provided.

In the light of these facts and observations, the district forum held that there was deficiency in the service committed by the dealer and the appellant, and allowed Vaz's complaint, holding the dealer and the appellant jointly and severally liable to replace the car with a new

one of the same model or to refund the entire amount of the car with interest @10% from the date given of delivery. Both were also jointly and severally directed to pay Rs. 20,000/- to Vaz towards mental stress and agony in addition to costs of Rs. 5,000/-.

Aggrieved, the manufacturer preferred an appeal to the State Commission under Section 15 of the Consumer Protection Act (hereafter "the Act"). The state commission dismissed the appeal with costs of Rs. 5,000/-. It held that Vaz was a consumer as defined under Section 2 (d) (i) of the Act; and that he was awaiting delivery of the car. It also ruled that an expert report was not necessary for cases where the facts speak for themselves, and the present case was one such. The appellant's plea that its relation with the dealer was on a principal-to-principal basis was unsubstantiated according to the state commission, by any material or evidence. The appellant had not produced any documentary evidence in support of its allegation; nor did it produce the invoice No. 9010016851 dated 28.02.2009. The state commission also rejected the plea that no direct sale was undertaken by the appellant; it concluded that the appellant sold to Vaz, the defective car manufactured by it, and the dealer and the appellant were liable for sale of the defective car.

Before the National Commission, the appellant urged two contentions : one that Vaz was not a "consumer" since he did not accept delivery of the car from the dealer, and two that its relationship with the dealer was on principal-to-principal basis and that therefore, no liability could be fastened upon it. The impugned order negatived both arguments. For rejecting the second submission, the impugned order noticed that the manufacturer (i.e. appellant) appointed dealers after its due diligence, and that *"the sale of its goods is undertaken by the Manufacturer through its dealers, the Manufacturer exercises superintendence over its dealers including the right to terminate their dealerships."* Against this order, the present appeal was preferred.

Observations and Decision

The Hon'ble referred to the Clauses of the agreement and the judgments rendered in ***Indian Oil Corporation* v. *Consumer Protection Council, Kerala,*** (1994) 1 SCC 397, ***General Motors (I) (P) Ltd.* v. *Ashok Ramnik Lal Tolat,*** (2015) 1 SCC 429, ***Jos Philip Mampillil* v. *Premier Automobiles Limited,*** (2004) 2 SCC 278 and held :-

> **28.** The record establishes the absolute dearth of pleadings by the complainant with regard to the appellant's role, or special knowledge about the two disputed issues, i.e. that the dealer had represented that the car was new, and in fact sold an old, used one, or that the undercarriage appeared to be worn out. This, in the opinion of this court, was fatal to the complaint. No doubt, the absence of the dealer or any explanation on its part, resulted in a finding of deficiency on its part, because the car was in its possession, was a 2009 model and sold in 2011. The findings against the dealer were, in that sense, justified on demurrer. However, the findings against the appellant, the manufacturer, which had not sold the car to Vaz, and *was not shown to have made the representations in question,* were not justified. The failure of the complainant to plead or prove the manufacturer's liability could not have

been improved upon, through inferential findings, as it were, which the district, state and National Commission rendered. The circumstance that a certain kind of argument was put forward or a defence taken by a party in a given case (like the appellant, in the case) cannot result in the inference that it was involved or culpable, in some manner. Special knowledge of the allegations made by the dealer, and involvement, in an overt or tacit manner, by the appellant, had to be proved to lay the charge of deficiency of service at its door. In these circumstances, having regard to the nature of the dealer's relationship with the appellant, the latter's omissions and acts could not have resulted in the appellant's liability.

30. Clearly, the dealer, in the facts of that case, acknowledged the defects in the car. *In the present case, the dealer did not acknowledge any such deficiency*; furthermore, the car had been made over to the dealer on 28.02.2009 (as is evident from an invoice issued to the dealer, a copy of which is on the record). Therefore, it is difficult to expect the appellant, a manufacturer, to be aware of the physical condition of the car, two years after its delivery to the dealer. During that period, a number of eventualities could have occurred; the dealer may have allowed people to use the car for the distance it is alleged to have covered. Also, the use of the car and prolonged idleness without proper upkeep could have resulted in the undercarriage being corrugated. All these are real possibilities. Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with the dealer, in the facts of this case, were on principal-to-principal basis.

31. For all the above reasons, the findings of the National Commission and the lower forums against the appellant are set aside. This court is conscious that the car, by now would have deteriorated; in these circumstances, it is open to the respondent, Vaz to execute the order for alternative relief (of refund, with interest granted to him, by the district forum, as affirmed by the State and National Commissions) through the district forum concerned. During pendency of this appeal, the court had directed the appellant to deposit certain amounts. It is hereby directed that the amounts so deposited, with interest accrued should be refunded to the appellant. Subject to these observations and directions, the appeal is allowed; but in the circumstances, without order on costs.

21. Anmol Kumar Tiwari v. State of Jharkhand, 2021 SCC OnLine SC 123

Decided on : 18.02.2021
Bench : 1. Hon'ble Mr. Justice **L. Nageswara Rao**
2. Hon'ble Ms. Justice Indira Banerjee

(Selections to public employment should be on the basis of merit. Appointment of persons with lesser merit ignoring those who have secured more marks would be in violation of the Articles 14 and 16 of the Constitution of India. If candidates are selected due to error or irregularities on the part of the recruiting authority or the examination body, without any fraud or misrepresentation on the part of the candidates, it would be improper to terminate their services after their appointment, as held in *Vikas Pratap Singh v. State of Chhattisgarh.*)

Facts

An advertisement was issued calling for applications for appointment to 384 posts of Police Sub-Inspectors, Attendants (Sergeant) and Company Commanders by the Home Department of the Government of Jharkhand on 01.03.2008. 1217 candidates were declared successful in the written examination and were called for interview. The final result was published and 382 candidates were selected against 384 vacancies as candidates belonging to SC Quota for the two posts of Sergeant were not available. A High-Level Committee was constituted by the State Government to examine the irregularities in the selection process. A report was submitted by the Deputy Inspector General of Police (Personnel), State of Jharkhand in which it was found that the select list was prepared wrongly by ignoring merit of candidates and by giving undue importance to the preferences given by them. Unsuccessful candidates filed Writ Petitions in the High Court of Jharkhand at Ranchi. During the pendency of the Writ Petitions, the appointments of 42 candidates made on the basis of the original select list were cancelled. 43 persons were appointed on the basis of the revised select list that was prepared in accordance with the recommendations of the Committee headed by the Director General of Police, Jharkhand. In view of the developments during the pendency of the Writ Petitions, the High Court of Jharkhand disposed of the Writ Petitions giving liberty to aggrieved persons to challenge the revised select list.

42 persons filed Writ Petitions being aggrieved by the termination of their services. The Appellants in the Civil Appeals arising out of SLP (Civil) Nos. 24404-24405 of 2019 and Civil Appeals arising out of SLP (Civil) Nos. 26302-26305 of 2019 filed applications for intervention in the Writ Petitions before the High Court. The Writ Petitions filed by the 42 persons whose services were terminated were allowed by a judgment dated 12.08.2016. A learned Single Judge of the High Court held that the appointment of the Writ Petitioners was irregular. The authorities prepared a revised select list after correcting the irregularities and appointed 43 persons on the basis of their merit in accordance with the Rules. As the Writ Petitioners were appointed after completion of their training and have served the State for a

considerable period, the High Court was of the opinion that they should be appointed against existing/anticipated or future vacancies. Their appointments were directed to be treated as fresh appointments and they were to be placed at the bottom of the seniority list in the revised merit list. The High Court observed that the Writ Petitioners cannot be held responsible for the irregularities committed by the authorities in the matter of their selection and there is no allegation of fraud or misrepresentation on their part.

Insofar as the intervenors are concerned, the High Court was aware that they secured more marks than the Writ Petitioners. However, the High Court observed that they cannot be said to be similarly situated to the Writ Petitioners. Accepting the statement made on behalf of the Government that there were no vacancies in which the intervenors could be considered for appointment, the High Court refused to grant any relief to the intervenors.

The State of Jharkhand and the intervenors in the Writ Petitions filed Letters Patent Appeal (LPAs) against the judgment of the learned Single Judge dated 12.08.2016. While placing reliance on a judgment of this Court in *Vikas Pratap Singh* v. *State of Chhattisgarh*, a Division Bench of the High Court of Jharkhand dismissed the LPAs. The contention on behalf of the intervenors in the Writ Petitions that they should also be appointed in view of their being more meritorious than the Writ Petitioners, was not accepted by the Division Bench. The reason given by the High Court for not granting relief to the intervenors in the Writ Petitions is that there were no vacancies for their appointments and that they are not similarly situated to the Writ Petitioners. Dissatisfied with dismissal of LPAs, the intervenors in the Writ Petitions and the State Government filed these Appeals.

Observations and Decision

Referring to the judgment rendered in ***Vikas Pratap Singh* v. *State of Chhattisgarh,*** (2013) 14 SCC 494, the Hon'ble Court dismissed the appeal and upholding the judgment of the Jharkhand High Court, held :-

> **9.** Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in *Vikas Pratap Singh's case* (supra), where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants-therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the

Writ Petitioners are similarly situated to the Appellants in *Vikas Pratap Singh's case* (supra), we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted. Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present.

10. The second issue relates to the claim of the intervenors in the Writ Petitions for appointment. There is no doubt that selections to public employment should be on the basis of merit. Appointment of persons with lesser merit ignoring those who have secured more marks would be in violation of the Articles 14 and 16 of the Constitution of India. The intervenors in the Writ Petitions admittedly have secured more marks than the Writ Petitioners. After cancellation of the appointments of the Writ Petitioners, 43 persons have been appointed from the revised select list. Those 43 persons have secured more marks than the intervenors. By the appointment of 43 persons, the number of posts that were advertised i.e. 384 have been filled up. The intervenors have no right for appointment to posts beyond those advertised. The contention on behalf of the intervenors in the Writ Petitions is that they cannot be ignored when relief is granted to the Writ Petitioners who were less meritorious than them. We are unable to agree. Relief granted to Writ Petitioners is mainly on the ground that they have already been appointed and have served the State for some time and they cannot be punished for no fault of theirs. The intervenors are not similarly situated to them and they cannot seek the same relief. The other ground taken by the intervenors in the Writ Petitions before us is that relief was denied to them only on the basis of a wrong statement made on behalf of the State Government that there were no vacancies. No doubt, the intervenors have placed on record material to show that there was no shortage of vacancies for their appointment. One of the reasons given by the High Court for not granting relief to the intervenors is lack of vacancies. However, we are not inclined to direct appointment of the intervenors as selections in issue pertain to an advertisement issued in 2008. Subsequently, selections to posts of Sub-Inspectors have been held and a large number of persons were appointed. The number of posts advertised in 2008 is 384 and the intervenors have no right for appointment for posts beyond those advertised. They cannot claim any parity with the Writ Petitioners.

22. *Amitabha Dasgupta v. United Bank of India, 2021 SCC OnLine SC 124*

Decided on : 19.02.2021
Bench : 1. Hon'ble Mr. Justice **Mohan M. Shantanagoudar**
2. Hon'ble Mr. Justice Vineet Saran

(Obligations of Banks with respect to locker or safe deposit facilities – discussed. Principles enumerated in the judgment to be binding on the Banks till the RBI issues suitable rules or regulations.)

Issues

1. Whether the Bank owes a duty of care to the locker holder under the laws of bailment or any other law with respect to the contents of the locker? Whether the same can be effectively adjudicated in the course of consumer dispute proceedings?
2. Irrespective of the answer to the previous issue, whether the Bank owes an independent duty of care to its customers with respect to diligent management and operation of the locker, *separate from its contents*? Whether compensation can be awarded for non-compliance with such duty?

Observations and Decision

The Hon'ble Court referred to the provisions of the Indian Contract Act, the Consumer Protection Act, the circulars of the RBI and the judgments renderedby different forums and the Supreme Court and held :-

Regarding the first issue :-

> **37.** Having perused the aforementioned precedents, we find that what was commonly contested in all these cases is whether delivery of possession or entrustment of valuables from the locker holder to the bank had taken place, for the purpose of Section 148 of the Contract Act. Even in the relevant foreign precedents which we have noted, the application of the principles of bailment was contingent on determining whether possession was transferred in the facts of the case. This in turn requires factual findings on whether the bank had knowledge of the contents of the locker; or whether the locker holder had prepared any receipt or inventory of the articles placed inside the locker or was otherwise able to prove the particulars of the items deposited in the locker. We are of the considered opinion that these questions cannot be adjudicated upon in the course of proceedings before the consumer fora. This aspect must be evaluated by the civil court, upon appreciation of evidence led by the parties, as was done in all the aforementioned decisions of *Jagdish Chandra Trikha* (supra), *Sohan Lal Saigal* (supra), *Mohinder Singh Nanda* (supra) and *Atul Mehra* (supra).
>
> **38.** It is true that the National Commission has, in previous decisions such as *Punjab National Bank, Bombay* v. *K.B. Shetty*,[17] and *Mahender Singh Siwach* v. *Punjab and Sind Bank*,[18] awarded the value of articles which have been stolen or gone missing from bank lockers. Moreover, in *Pune Zilla Madyawarti Sahakari Bank Limited* v. *Ashok Bayaji*

Ghogare,[19] the National Commission has gone to the extent of holding that the affidavit of the locker holder should ordinarily be accepted for proving the contents of the bank locker, unless the same stands impeached by way of cross examination. However, it is relevant to note that in the facts of the aforementioned cases, the complainants had produced detailed and precise documentary proof for corroborating the extent of jewellery placed inside the locker, which has not been done in the present case.

39. In *UCO Bank* (supra), similar situation arose as in the present case, wherein the respondent locker holder claimed that his locker was tampered with and broken open, and valuables were subsequently lost, due to the negligence of the bank. The bank not only disputed the value of jewellery kept inside the locker, but also denied any negligence in the breaking open of the locker. The locker holder had only produced an affidavit in respect of the value of the jewellery claimed by him. Hence the National Commission held that it is appropriate that both these issues should be remitted for determination in a civil suit in a competent civil court, after adducing of elaborate evidence on both sides.

40. In the recent case of *Mamta Chaudaha* v. *Branch Manager/Head Manager, State Bank of India*,[20] the National Commission again observed that the appellant locker holders had not produced any evidence apart from a standard affidavit to prove that they had kept a specified quantity of gold ornaments inside the bank locker. Further, there was no evidence of forcible entry to the locker. Hence the complaint for recovery of value of the ornaments was dismissed.

41. In light of the aforementioned conflicting decisions of the National Commission, we find that the approach adopted by the National Commission in the impugned judgment is the correct approach. In the present case, the Respondent bank has not disputed their negligence in breaking open the locker in spite of clearance of rental dues by the Appellant. However, the number of items originally deposited by the Appellant inside the locker is a contested fact. Hence, we do not propose to record any conclusions on whether the Appellant locker holder in the present case is entitled to claim return or recovery of the value of the ornaments alleged to have been deposited by him. We are in agreement with the findings in the impugned judgment to the extent that the Appellant must file a separate suit before the competent civil court for seeking this relief and for proving that the aforesaid items were actually in the custody of the bank. This is especially inasmuch as the contents of the locker are disputed by the Respondent bank. Hence it is clarified that all questions of fact and law are left open before the civil court to decide on the merits of the case, including as to whether the law of bailment is applicable, or any other law as the case may be.

Regarding the second issue :-

42. As discussed supra, imposition of liability upon the bank with respect to the contents of the locker is dependent upon provision and appreciation of evidence in a civil suit for such purpose. However, this does not mean that the Appellant in the present case is left without any remedy. Banks as service providers under the earlier Consumer Protection Act, 1986, as well as the newly enacted Consumer Protection Act, 2019, owe a separate duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems. This includes ensuring the proper functioning of the locker system, guarding against unauthorized access to the lockers and providing appropriate safeguards against theft and robbery. This duty of care is to be exercised irrespective of the application of the laws of bailment or any other legal liability regime to the contents of the locker. The banks as

custodians of public property cannot leave the customers in the lurch merely by claiming ignorance of the contents of the lockers.

51. It appears to us that the present state of regulations on the subject of locker management is inadequate and muddled. Each bank is following its own set of procedures and there is no uniformity in the rules. Further, going by their stand before the consumer fora, it seems that the banks are under the mistaken impression that not having knowledge of the contents of the locker exempts them from liability for failing to secure *the lockers in themselves* as well. In as much as we are the highest Court of the country, we cannot allow the litigation between the bank and locker holders to continue in this vein. This will lead to a state of anarchy wherein the banks will routinely commit lapses in proper management of the lockers, leaving it to the hapless customers to bear the costs. Hence, we find it imperative that this Court lays down certain principles which will ensure that the banks follow due diligence in operating their locker facilities, until the issuance of comprehensive guidelines in this regard.

52. Thus, we emphasize that irrespective of the value of the articles placed inside the locker, the bank is under a separate obligation to ensure that proper procedures are followed while allotting and operating the lockers:

(a) This includes maintenance of a locker register and locker key register.

(b) The locker register shall be consistently updated in case of any change in allotment.

(c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish.

(d) Banks may consider utilizing appropriate technologies, such as blockchain technology which is meant for creating digital ledger for this purpose.

(e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed.

(f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker.

(g) The concerned staff shall also check that the keys to the locker are in proper condition.

(h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security.

(i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard.

(j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner

other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider.

(k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder. The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future.

(l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard.

(m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

(n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities.

(o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra.

53. In the present case, it is undisputed that the Respondent Bank inadvertently broke the Appellant's locker, without any just or reasonable cause, even though he had already cleared his pending dues. Moreover, the Appellant was not given any notice prior to such tampering with the locker. He remained in the dark for almost a year before he visited the bank for withdrawing his valuables and enquired about the status of the locker. Irrespective of the valuation of the ornaments deposited by the Appellant, he had not committed any fault so far as operation of the locker was concerned. Thus, the breaking open of the locker was in blatant disregard to the responsibilities that the bank owed to the customer as a service provider. The alleged loss of goods did not result from any force majeure conditions, or acts of third parties, but from the gross negligence of the bank itself. It is case of gross deficiency in service on the part of the bank.

54. Thus, looking to the facts and circumstances of the case, we deem it appropriate to impose costs of Rs. 5,00,000/- on the Bank which should be paid to the Appellant as compensation. The amount of Rs. 5,00,000/- shall be deducted from the salary of the erring officers, if they are still in service. If the erring officers have already retired, the amount of costs should be paid by the Bank. Additionally, the Appellant shall be paid Rs. 1,00,000/- as litigation expense.

55. Before concluding, we would like to make a few observations on the importance of the subject matter of the present appeal. With the advent of globalization, banking institutions have acquired a very significant role in the life of the common man. Both domestic and international economic transactions within the country have increased multiple folds. Given that we are steadily moving towards a cashless economy, people are hesitant to keep

their liquid assets at home as was the case earlier. Thus, as is evident from the rising demand for such services, lockers have become an essential service provided by every banking institution. Such services may be availed of by citizens as well as by foreign nationals. Moreover, due to rapid gains in technology, we are now transitioning from dual key-operated lockers to electronically operated lockers. In the latter system, though the customer may have partial access to the locker through passwords or ATM pin, etc., they are unlikely to possess the technological know-how to control the operation of such lockers. On the other hand, there is the possibility that miscreants may manipulate the technologies used in these systems to gain access to the lockers without the customers' knowledge or consent. Thus the customer is completely at the mercy of the bank, which is the more resourceful party, for the protection of their assets.

56. In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker. The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage investor confidence and harm our reputation as an emerging economy.

57. Thus it is necessary that the RBI lays down comprehensive directions mandating the steps to be taken by banks with respect to locker facility/safe deposit facility management. The banks should not have the liberty to impose unilateral and unfair terms on the consumers. In view of the same, we direct the RBI to issue suitable rules or regulations as aforesaid within six months from the date of this judgment. Until such Rules are issued, the principles stated in this judgment, in general and at para 13 in particular, shall remain binding upon the banks which are providing locker or safe deposit facilities. It is also left open to the RBI to issue suitable rules with respect to the responsibility owed by banks for any loss or damage to the contents of the lockers, so that the controversy on this issue is clarified as well.

23. Khushi Ram v. Nawal Singh and Ors., 2021 SCC OnLine SC 128

Decided on : 22.02.2021
Bench : 1. Hon'ble Mr. Justice **Ashok Bhushan**
2. Hon'ble Mr. Justice R.Subhash Reddy

(A consent decree based on admission of the fact that there was family settlement between the parties does not require registration under Section 17 of the Indian Registration Act, 1908.

A very liberal and broad view of the validity of the family settlement has to be taken and there must be an attempt to uphold it and maintain it. The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same. Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.)

Issue

1. Whether a consent decree based on admission of the fact that there was family settlement between the parties requires registration under Section 17 of the Indian Registration Act, 1908?
2. Whether a member outside a family can be a party to a family settlement and will it be binding on him?

Observations and Decision

The Hon'ble Court referred to the provisions of the Indian Registration Act and the judgments rendered in *Bhoop Singh* **v.** *Ram Singh Major,* (1995) 5 SCC 709, *Mata Deen* **v.** *Madan Lal,* (Civil Appeal No. 890/2008), *Som Dev* **v.** *Rati Ram,* (2006) 10 SCC 788, *K. Raghunandan* **v.** *Ali Hussain Sabir,* (2008) 13 SCC 102, *Mohammade Yusuf* v. *Rajkumar*, (2020) 10 SCC 264, and held :-

> **20.** This Court held that since the decree which was sought to be exhibited was with regard to the property which was subject matter of suit, hence, was not covered by exclusionary clause of Section 17(2) (vi) and decree did not require registration. The issue in the present case is squarely covered by the above judgment. We, thus, conclude that in view of the fact that the consent decree dated 19.08.1991 relate to the subject matter of the suit, hence it was not required to be registered under Section 17(2) (vi) and was covered by exclusionary clause. Thus, we, answer question No. 1 that the consent decree dated 19.08.1991 was not registrable and Courts below have rightly held that the decree did not require registration.

Regarding the second issue, the Hon'ble Court referred to ***Kale* v. *Deputy Director of Consolidation,*** (1976) 3 SCC 119, ***Ram Charan Das* v. *Girjanandini Devi,*** (1965) 3 SCR 841 and held :-

> **21.** The submission of the learned counsel for the appellant is that the consent decree was passed in favour of nephews of Smt. Jagno, who do not belong to the family of the plaintiffs-appellants. It is submitted that plaintiffs-appellants belonged to the family of Badlu, who was the tenure-holder of the property. It is submitted that the defendants-respondents belong to family of Smt. Jagno being brother's son of Smt. Jagno, i.e., nephews, hence, they belong to different family and no family arrangement could have been entered with them.
>
> **22.** Before we answer the above issue, it is necessary to find out what is the concept of family with regard to which a family settlement could be entered. A Three-Judge bench of this Court in *Ram Charan Das* v. *Girjanandini Devi*, (1965) 3 SCR 841 had occasion to consider a family settlement regarding the immovable property, this Court laid down that every party taking benefit under a family settlement must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim. .....
>
> **23.** A Three Judge Bench in the celebrated judgment of this Court in *Kale* v. *Deputy Director of Consolidation*, (1976) 3 SCC 119 had elaborately considered all contours of the family settlement. This Court laid down that term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis.....
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> **24.** After reviewing the earlier decision, this Court laid down following in paragraph 19:—
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> > "19. Thus it would appear from a review of the decisions analysed above that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds."
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> **26.** Reverting to the facts of the present case, admittedly, the defendants-respondents were nephews, i.e., brother's sons of Smt. Jagno. We need to look into the Hindu Succession Act, 1956, Section 15, which deals with the general rules of succession in the case of female Hindus for properties inherited by female Hindus, which are devolved in according to Sections 15 and 16. .....
>
> **27.** A perusal of Section 15(1)(d) indicates that heirs of the father are covered in the heirs, who could succeed. When heirs of father of a female are included as person who can possibly succeed, it cannot be held that they are strangers and not the members of the family qua the female.
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> **28.** In the present case, Smt. Jagno, who as a widow of Sher Singh, who had died in 1953, had succeeded to half share in the agricultural land and she was the absolute owner when she entered into settlement. We, thus, do not find any merit in the submission of learned counsel for the appellants that the defendants-respondents were strangers to the family.

24. Ram Vijay Singh v. State of Uttar Pradesh, 2021 SCC OnLine SC 142

Decided on : 25.02.2021
Bench : 1. Hon'ble Mr. Justice R.F. Nariman
2. Hon'ble Mr. Justice **Hemant Gupta**
3. Hon'ble Mr. Justice B.R. Gavai

(As per the Latin maxim, *lex non cogit ad impossibilia*, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.

The first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age.)

Facts

The present appeal had been preferred against the order dated 22.4.2020 passed by the High Court of Judicature at Allahabad. Vide the said order, the appeal filed by the appellant against his conviction for an offence under Section 302 read with Section 34 of the Penal Code, 1860 was dismissed. Before the Supreme Court, the appellant filed an application for bail, *inter alia*, on the ground that he was juvenile on the date of incident i.e. 20.7.1982. In support of plea of juvenility, the appellant relied upon family register maintained by the Panchayat, Aadhaar Card and an order passed by the High Court in the year 1982. In the said order, the High Court had granted bail on the basis of the report of the Radiologist that the age of the appellant at that time was between 15½ - 17½ years. The appellant further stated that he had moved criminal miscellaneous application raising a claim of him being a juvenile at the time of commission of offence before the High Court but the said application was not decided and the appeal was dismissed on merits.

Keeping in view the said assertion raised by the appellant, the Supreme Court ordered the claim of juvenility to be decided within a period of four weeks by the High Court and if possible, judgment on the same be delivered within two weeks thereafter. It was thereafter, the High Court had sought the report of the Medical Board. The Medical Board, in its report submitted on 8.9.2020 to the High Court opined that the age of the appellant is between 40-55

years. The State and the informant objected to the report. Further, there was also a mention of a single barrel gun granted to the appellant on 24.7.1982, a couple of days after the occurrence of the incident. However, the High Court on the basis of the medical report submitted its order to this Court stating that the appellant was juvenile on the date of commission of the offence.

The Supreme Court on 13.1.2021 directed the learned Advocate appearing for the State to produce all original documents with regard to the Gun Licence in question. In pursuance of the said direction, the State filed an application submitted on behalf of the appellant to seek the Arms Licence. In Column 2 of the application, the appellant has provided his date of birth as 30.12.1961. Such application was filed on or around 21.12.1981 wherein a police report was submitted on 28.3.1982 stating that no criminal case was registered against the appellant. It is on that basis, the application for Arms Licence was processed and the Area Magistrate approved the grant of Licence. The Arms Licence was hence granted on 24.7.1982, that is after the date of incident. With this factual background, the question of juvenility of the appellant as on the date of incident, i.e., 20.7.1982 was examined by the Hon'ble Court.

Observations and Decision

The Hon'ble Court referred to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Juvenile Justice (Care and Protection of Children) Rules, 2007, and the judgments rendered in ***Abuzar Hossain alias Gulam Hossain* v. *State of West Bengal,*** (2012) 10 SCC 489, ***Mukarrab* v. *State of Uttar Pradesh,*** (2017) 2 SCC 210, ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal,*** (2020) 7 SCC 1, and dismissing the appeal, held :-

> **10.** The judgment in *Abuzar Hossain* considered Section 7-A of the Act and Rule 12 of the Rules. A perusal of Rule 12(3)(b) of the Rules shows that in the absence of documents as mentioned in clause (i), (ii) or (iii), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. It was further provided that in case wherein the exact assessment of the age cannot be done, the Court or the Juvenile Justice Board, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. However, it is to be noted that Section 94 of the Act does not have any corresponding provision of giving benefit of margin of age.
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> **11.** Admittedly, in the present case, there is no Date of Birth Certificate from the school or matriculation or equivalent certificate or a Birth Certificate given by a Corporation or Municipal Authority or Panchayat. Therefore, clause (iii) of Section 94(2) of the Act to determine the age by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board comes into play.
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> **14.** We do not find any merit in the arguments advanced by the appellant. The medical report in support of the bail order is not available. Such order granting bail cannot be conclusive determination of age of the appellant. It was an interim order of bail pending trial but in the absence of a medical report, it cannot be conclusively held that the appellant was juvenile on the date of the incident.

15. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of Section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules.

16. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. This Court in *Arjun Panditrao Khotkar* v. *Kailash Kushanrao Gorantyal*[7] held, in the context of certificate required under Section 65B of the Evidence Act, 1872, that as per the Latin maxim, *lex non cogit ad impossibilia*, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident.

17. Apart from the said fact, there is an application submitted by the appellant himself for obtaining an Arms Licence prior to the date of the incident. In such application, he has given his date of birth as 30.12.1961 which would make him of 21 years of age on the date of the incident i.e. 20.7.1982. The Court is not precluded from taking into consideration any other relevant and trustworthy material to determine the age as all the three eventualities mentioned in sub-section (2) of Section 94 of the Act are either not available or are not found to be reliable and trustworthy. Since there is a document signed by the appellant much before the date of occurrence, therefore, we are of the opinion that the appellant cannot be treated to be juvenile on the date of incident as he was more than 21 years of age as per his application submitted to obtain the Arms Licence.