JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(October, 2020)

Part II

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1. ***Raveen Kumar v. State of Himachal Pradesh, 2020 SCC OnLine SC 869***

Decided on: 26.10.2020

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3. Hon'ble Mr. Justice Hrishikesh Roy

(Lack of independent witnesses are not fatal to the prosecution case. However, such omissions cast an added duty on Courts to adopt a greater-degree of care while scrutinising the testimonies of the police officers)

Facts

The prosecution case is that on 01.11.1994 at around 3 : 30 P.M., a police party while conducting traffic checks for suspected ammunition near the HP-J&K border at Surangani, stopped a Maruti van which was being driven by the appellant. The police in the course of rummaging found that the van was loaded with tins of ghee, a bag of maize, 20 bottles of honey, *rajmah*, *angithi*, thermos, stepney and some other miscellaneous articles. A polythene bag underneath the driver's seat was also discovered. Suspecting it to contain narcotics, the police summoned two local shopkeepers (including Nam Singh, PW1) as independent witnesses. The appellant was informed of his statutory right to be searched in the presence of a magistrate or gazetted officer but he consented to being searched by the police party itself. The contents of the bag were then examined and *charas*, in the form of *dhoopbati* and balls was found. It was weighed using scales obtained from a nearby shop and was found to be 1 kg and 230 gms. After a 10 gm sample of the contraband was extracted, the *charas* was sealed and seized, and other procedural formalities were completed. The appellant was arrested and statement of one of the two independent witnesses - Nam Singh (PW1) was recorded. The sample was sent for chemical analysis where it was confirmed to be *charas* with a resin content of 34.5%. The prosecution, accordingly, charged the appellant for offence under Section 20 of the NDPS Act.

The appellant, Raveen Kumar, challenges the judgment dated 23.04.2010 and the order dated 18.05.2010 passed by a Division Bench of the High Court of Himachal Pradesh, whereby his acquittal under Section 20 of the Narcotics, Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") was reversed and a sentence of two-years rigorous imprisonment with a fine of Rs. 50,000 was instead imposed.

Decision and Observations

Regarding the ***scope of appeal in cases of acquittal*** , the Apex court stated the following:

11. The appellant's contention that the High Court could not have set aside a finding of acquittal, is legally unfounded. It has been settled through a catena of decisions that there is no difference of power, scope, jurisdiction or limitation under the CrPC between appeals against judgments of conviction or of acquittal. An appellate Court is free to re-consider questions of both law and fact, and re-appreciate the entirety of evidence on record. There is, nonetheless, a self-restraint on the exercise of such power, considering the interests of justice and the fundamental principle of presumption of innocence. Thus, in practice, appellate Courts are reluctant to interfere with orders of acquittal, especially when two reasonable conclusions are possible on the same material.

12. This Court has very illustratively, in *State of UP* v. *Banne*[(2009) 4 SCC 271], listed circumstances were interference of an appellate Court against acquittal would be justified. These would include patent errors of law, grave miscarriage of justice, or perverse findings of fact. In turn, *Babu* v. *State of Kerala*[(2010) 9 SCC 189], clarified that "*findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material*" or if they are '*against the weight of evidence*' or if they suffer from the '*vice of irrationality*'.

Regarding the ***need for independent witnesses,*** the Apex court opined:

19. It would be gainsaid that lack of independent witnesses are not fatal to the prosecution case. However, such omissions cast an added duty on Courts to adopt a greater-degree of care while scrutinising the testimonies of the police officers, which if found reliable can form the basis of a successful conviction.

20. The trial Court held that no independent witness supported the prosecution case and that the testimonies of the star police-witnesses, namely, PW2 and PW5, were contradictory. Both these observations are unreasoned and unsubstantiated by the evidence on record. The High Court, on the contrary, has given cogent and lucid reasons as to how the testimony of PW1 (alleged hostile independent witness) also substantially supports the prosecution case.

Regarding ***the leniency in sentence***, the Apex Court was of the following opinion:

23. After having given a very generous consideration to the appellant's age and circumstances, as well as the delay in trial and appeal, we feel that it would serve the interests of justice to simply not disturb the sentence of two years' rigorous imprisonment and a fine of Rs. 50,000 which has been awarded by the High Court.

24. We say so for the reason that the law on minimum mandatory sentence, both at the time of commission of the offence and at the stage of appeal, prohibits any imprisonment lower than a term of ten years. Section 20(ii) of the NDPS Act, as it stood before the amendment of 2001, specified that where contravention relates to cannabis in a form other than *ganja*, then the same shall be punishable with "*rigorous imprisonment 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".

25. Similarly, Section 20(ii)(C) of the NDPS Act, as it stands post the amendment of 2001, specifies the same minimum mandatory punishment of ten years for possession of 'commercial quantity' of cannabis. The High Court, as the law was being misconstrued at that time, relied upon the quantity of pure resin content of 424 gms. Instead, as now stands clarified by a co-ordinate Bench of this Court in *Hira Singh* v. *Union of India*[2020 SCC OnLine SC 382], the total quantity of the mixture, which includes the neutral substance, ought to be relevant for purposes of sentencing. This total quantity in the instant case is 1 kg 230 gms, which exceeds the definition of 'commercial quantity' as specified at Sl. No. 23 in Notification S.O. 1055 (E), dated 19.10.2001. Thus, the sentence accorded by the High Court is clearly already far too charitable.

The Appeal was dismissed.

2. ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence, 2020 SCC OnLine SC 867***

Decided on: 26.10.2020

Bench: 1. Hon'ble Mr. Justice U.U. Lalit
2. Hon'ble Mr. Justice **M.M. Shantanagoudar**
3. Hon'ble Mr. Justice Vineet Saran

(Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation.)

Facts

The Appellant was arrested and remanded to judicial custody on 04.08.2018 for the alleged offence punishable under Section 8(c) read with Sections 22(c), 23(c), 25A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). After completion of 180 days from the remand date, that is, 31.01.2019, the Appellant (Accused No. 11) filed application for bail under Section 167(2) of the Code of Criminal Procedure, 1973 ('CrPC') on 01.02.2019 before the Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai ('Trial Court') on the ground that the investigation was not complete and chargesheet had not yet been filed. Accordingly, on 05.02.2019, the Trial Court granted the order of bail in Crl. M.P. No. 131 of 2019 in R.R. No. 09/2017 pending before the said court. The Respondent/complainant, i.e. the Intelligence Officer, Directorate of Revenue Intelligence filed Crl. O.P. No. 9750 of 2019 before the High Court of Judicature at Madras praying to cancel the bail of the Appellant. The High Court, by the impugned judgment, allowed the said appeal and consequently cancelled the order of bail granted by the Trial Court. Being aggrieved, the Appellant has approached the Apex Court questioning the judgment of the High Court.

Issues

(a) Whether the indefeasible right accruing to the appellant under Section 167(2), CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency;

(b) Whether the Court should take into consideration the time of filing of the application for bail, based on default of the investigating agency or the time of disposal of the application for bail while answering (a).

Decision and observations

The Apex court found that both the above mentioned questions have been answered by the majority opinion of a three judge Bench of the Apex Court in ***Uday Mohanlal Acharya v. State of Maharashtra,*** (2001) 5 SCC 453. It is pertinent to note that in *Uday Mohanlal Acharya case,* the application for default bail filed by the accused was rejected by the Magistrate based on the wrongful assumption that Section 167(2), CrPC is not applicable to cases pertaining to the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. The chargesheet was filed while the application challenging rejection of bail was pending before the High Court. Hence the High Court held that the right to default bail was no longer enforceable. The Apex court held that the accused is deemed to have exercised his right to default bail under Section 167(2), CrPC the moment he files the application for bail and offers to abide by the terms and conditions of bail. The prosecution cannot frustrate the object of Section 167(2), CrPC by subsequently filing a chargesheet or additional complaint while the bail application is pending consideration or final disposal before a Magistrate or a higher forum. The Apex court observed the following in *Uday Mohanlal Acharya case:*

> "13...It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in *Sanjay Dutt's case* (supra). The crucial question that arises for consideration, therefore, is what is the true meaning of the expression 'if already not availed of'? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. .....
>
> If the expression "availed of" is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an order notwithstanding the maximum period stipulated in Section 167 had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge-sheet then also the so-called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. .....
>
> It is in this sense it can be stated that if after expiry of the period, an application for being released on bail is filed, and the accused offers to furnish the bail and thereby avail of his indefeasible right and then an order of bail is passed on certain terms and conditions but the accused fails to furnish the bail, and at that point of time a challan is filed, then possibly it can be said that the right of the accused stood

> extinguished. But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the Magistrate not being available and the matter not being moved, or that the Magistrate erroneously refuses to pass an order and the matter is moved to the higher forum and a challan is filed in interregnum.
>
> (emphasis supplied)

Regarding the meaning of "***if not already availed of***" in ***Sanjay Dutt v. State through C.B.I.,*** [1], the Apex court clarified in the following words:

> **43.** [...] we have arrived at the conclusion that the majority opinion in *Uday Mohanlal Acharya* (supra) is the correct interpretation of the decision rendered by the Constitution Bench in *Sanjay Dutt* (supra). The decision in *Sanjay Dutt* merely casts a positive corresponding obligation upon the accused to promptly apply for default bail as soon as the prescribed period of investigation expires. As the decision in *Hitendra Vishnu Thakur* (supra) expressly cautions, the Court cannot *suo motu* grant bail without considering whether the accused is ready to furnish bail or not. This is an in-built safeguard within Section 167(2) to ensure that the accused is not automatically released from custody without obtaining the satisfaction of the Court that he is able to guarantee his presence for further investigation, or for trial, as the case may be. Further, as the majority opinion in *Rakesh Kumar Paul* (supra) pointed out, there could be rare occasions where the accused voluntarily forfeits his right to bail on account of threat to his personal security outside of remand or for some other reasons. The decision in *Sanjay Dutt* clarifies that once a chargesheet is filed, such waiver of the right by the accused becomes final and Section 167(2) ceases to apply.
>
> **44.** However, the Constitution Bench decision in *Sanjay Dutt* cannot be interpreted so as to mean that even where the accused has promptly exercised his right under Section 167(2) and indicated his willingness to furnish bail, he can be denied bail on account of delay in deciding his application or erroneous rejection of the same. Nor can he be kept detained in custody on account of subterfuge of the prosecution in filing a police report or additional complaint on the same day that the bail application is filed.

Regarding the ***import of Explanation I to Section 167(2), CrPC***, the Apex court was of the following opinion:

> **49.** It is true that Explanation I to Section 167(2), CrPC provides that the accused shall be detained in custody so long as he does not furnish bail. However, as mentioned supra, the majority opinion in *Uday Mohanlal Acharya* expressly clarified that Explanation I to Section 167(2) applies only to those situations where the accused has availed of his right to default bail and undertaken to furnish bail as

[1](1994) 5 SCC 410
"48…The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of."

directed by the Court, but has subsequently failed to comply with the terms and conditions of the bail order within the time prescribed by the Court. We find ourselves in agreement with the view of the majority. In such a scenario, if the prosecution subsequently files a chargesheet, it can be said that the accused has forfeited his right to bail under Section 167(2), CrPC. Explanation I is only a safeguard to ensure that the accused is not immediately released from custody without complying with the bail order.

50. However, the expression 'the accused does furnish bail' in Section 167(2) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to Section 167(2) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court.

The Apex court concluded in the following terms:

78. Therefore, in conclusion:

78.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

78.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

78.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail

would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

78.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.

(emphasis supplied)

3. *Rajesh Dhiman v. State of Himachal Pradesh, 2020 SCC OnLine SC 868*

Decided on: 26.10.2020
Bench: 1. Hon'ble Mr. Justice N. V. Ramana
2. Hon'ble Mr. Justice **Surya Kant**
3. Hon'ble Mr. Justice Hrishikesh Roy

(Merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal, the Apex court reiterated)

Facts

On 09.01.2002, at about 1.00 P.M., a police team led by ASI Purushottam Dutt (PW8) and also comprising Constable Sunder Singh (PW1), Constable Bhup Singh (PW2) and Constable Bhopal Singh (PW7) were checking traffic at Shamshar when a motorcycle without a number plate was spotted. Gulshan Rana (appellant in Criminal Appeal No. 1126 of 2019) was driving the vehicle and Rajesh Dhiman (appellant in Criminal Appeal No. 1032 of 2013) was seated on the pillion with a backpack slung over his shoulders. They were signalled to stop and documents of the motorcycle were demanded. Meanwhile, another vehicle was halted and its occupants Karam Chand (PW3) and Shiv Ram were included in the search. An attempt was made to associate local residents to witness the subsequent proceedings, but none agreed. Subsequently, the appellants were given option to be searched in the presence of a Magistrate or Gazetted Officer but they consented to be searched by the police on the spot itself. The police then discovered polythene bags containing *charas* from the backpack carried by Rajesh Dhiman. The polythene bags were weighed and found to be 3kg 100gms. After separating some samples, the *charas* was duly sealed and handed over to Karam Chand (PW3) who later deposited it at the police station. After completion of personal search of the appellants, they were formally arrested.

The Special Judge through judgment dated 28.12.2002 acquitted the appellants holding that charges under the NDPS Act had not been proved beyond reasonable doubt. The trial Court viewed that the witnesses on the spot had either not been examined or turned hostile. Thus, each individual element of the prosecution case, namely, from preparation of personal search memo to consent memo to recovery memo to notifying appellants' relatives about their arrest or handing over of seal to PW3 had come under cloud for want of independent corroboration. Failure to include any other locally-resident as a neutral witness in terms of Section 100(4) of the Code of Criminal Procedure, 1973 ("CrPC"), was also held to cast serious aspersions on the prosecution version. Relying upon a decision of the Rajasthan High Court in *Gyan Chand* v. *State of Rajasthan* 1993 Cri LJ 3716, Special Judge was also critical of the fact that the complainant himself was the investigating officer which caused serious prejudice to the fairness of the investigation. The trial Court thus concluded that since two versions had emerged, the one which was favourable to the accused ought to be preferred.

Consequently, it held that no *charas* was recovered from the appellants as deposed by the independent witness.

However, the High Court in appeal, set-aside the acquittal and convicted the appellants for possession of *charas* under Section 20 of the NDPS Act. The High Court observed that although association of independent witnesses in NDPS cases is always desirable but their non-examination would not *per se* be fatal to the prosecution case, especially when due efforts are made by the police to secure their presence. Adverting to the facts of the case in hand, the High Court found no reason to draw an adverse inference against non-examination of independent witnesses as PW8 had deposed that an unsuccessful attempt was made to join persons from the locality, and Shiv Ram had been won over. The High Court re-appreciated the entire evidence on record and firmly held that the chain of events commencing from seizure of contraband to its chemical analysis, was complete in all respects. In the absence of any allegation of bias, it was held to be wrong to discard the otherwise impeccable statements of the official witnesses. The High Court dissected a catena of judgments and opined that the police officers' testimonies ought to be subjected to a vigorous standard of scrutiny and corroboration; which, after careful and cautious appraisal, had been met in the instant case. The quantity of *charas* recovered was held to be 'commercial' and consequently a sentence of 10 years rigorous imprisonment and fine of Rs. 1,00,000 (rupees one lakh) was imposed on each of the appellants.

Decision and observations

The Apex court was posed with the question ***whether bias was caused by complainant also being the investigating officer.*** The Apex court on this point opined as follows:

> **10.** Suffice to say that the law on this point is no longer *res integra* and the controversy, if any, has been set at rest by the Constitutional Bench of this Court in *Mukesh Singh* v. *State (Narcotic Branch of Delhi)*[2020 SCC OnLine SC 700]. The earlier position of law which allowed the solitary ground of the complainant also being the investigating officer, to become a spring board for an accused to be catapulted to acquittal, has been reversed. Instead, it is now necessary to demonstrate that there has either been actual bias or there is real likelihood of bias, with no sweeping presumption being permissible. It would be worthwhile to extract the following conclusions drawn in the afore-cited judgment:
>
> > *"102. From the above discussion and for the reasons stated above, we conclude and answer the reference as under:*
> >
> > *I. That the observations of this Court in the cases of* Bhagwan Singh *v.* State of Rajasthan, *(1976) 1 SCC 15;* Megha Singh *v.* State of Haryana, *(1996) 11 SCC 709; and* State by Inspector of Police, NIB, Tamil Nadu *v.* Rajangam, *(2010) 15 SCC 369 and the acquittal of the accused by this Court on the ground that as the informant and the investigator was the same, it has vitiated the trial and the accused is entitled to acquittal are to be treated to be confined to their own facts. It cannot be said that in the aforesaid decisions, this Court laid down any general proposition of law that in each and every case where*

the informant is the investigator there is a bias caused to the accused and the entire prosecution case is to be disbelieved and the accused is entitled to acquittal;

II. ***In a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on the sole ground that informant is the investigator, the accused is not entitled to acquittal.*** *The matter has to be decided on a case to case basis. A contrary decision of this Court in the case of* Mohan Lal *v.* State of Punjab, *(2018) 17 SCC 627 and any other decision taking a contrary view that the informant cannot be the investigator and in such a case the accused is entitled to acquittal are not good law and they are specifically overruled."*

[emphasis supplied]

11. We, therefore, see no reason to draw any adverse inference against PW8 himself investigating his complaint. The appellants' claim of bias stems from the purported delays, non-compliance of statutory mandates and non-examination of independent witness. In effect, the appellants are seeking to circuitously use the very same arguments which have individually been held by the High Court to be factually incorrect or legally irrelevant. Although in some cases, certain actions (or lack thereof) by the Investigating Officer might indicate bias; but mere deficiencies in investigation or chinks in the prosecution case can't be the sole basis for concluding bias. The appellants have at no stage claimed that there existed any enmity or other motive for the police to falsely implicate them and let the real culprits walk free. Further, such a huge quantity of charas could not have been planted against the appellants by the police on its own.

The Apex court dismissed the appeals.

4. *State of Rajasthan and Others v. Heem Singh, 2020 SCC OnLine SC 886*

Decided on: 29.10.2020

Bench: 1. Hon'ble Mr. Justice **D. Y. Chandrachud**

2. Hon'ble Ms. Justice Indira Banerjee

(To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate.)

Facts

The appeal is from a judgment dated 24 April 2019 of a Division Bench of the High Court of Judicature for Rajasthan at Jodhpur. The respondent, who was a police constable, filed a petition under Article 226 of the Constitution to challenge his dismissal from service after a disciplinary enquiry. A Single Judge of the High Court, by a judgment dated 1 February 2018, dismissed the petition. The Division Bench reversed the judgment and concluded that there is no evidence in the disciplinary enquiry to sustain the finding that the respondent committed a murder while on leave from duty. Independently, he has also been acquitted in a Sessions trial on the charge of murder. The Division Bench granted the respondent reinstatement in service with no back wages for the seventeen years that elapsed since his termination. The State came in appeal.

Decision and Observations

The Apex court assessed as to whether in arriving at its findings the High Court has transgressed the limitations on its ***power of judicial review over disciplinary matters*** and stated the following:

> **39.** In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil

> standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain.

Further, the Apex court opined on the ***effect of an acquittal on a disciplinary enquiry.***

The Apex Court said, "In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements." The Apex court then referred to ***Inspector General of Police v. S. Samuthiram***[(2013) 1 SCC 598], wherein a two-Judge Bench of the Apex Court held that unless the accused has an "honorable acquittal" in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an "honourable acquittal".[2]

[2] Regarding "honourable acquittal" the following was said in ***Inspector General of Police v. S. Samuthiram***:

> 24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI* v. *Bhopal Singh Panchal* [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. **In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The**

The Apex court said:

> **42.** In the present case, the respondent was acquitted of the charge of murder. The circumstances in which the trial led to an acquittal have been elucidated in detail above. The verdict of the criminal trial did not conclude the disciplinary enquiry. The disciplinary enquiry was not governed by proof beyond reasonable doubt or by the rules of evidence which governed the criminal trial. True, even on the more relaxed standard which governs a disciplinary enquiry, evidence of the involvement of the respondent in a conspiracy involving the death of Bhanwar Singh would be difficult to prove. But there are, as we have seen earlier, circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force.

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expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

25. In *R.P. Kapur* v. *Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. ……..……..…

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. **It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc.** In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

(emphasis added)

5. *Chunthuram v. State of Chhattisgarh, 2020 SCC OnLine SC 883*

Decided on: 29.10.2020

Bench: 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice Krishna Murari
3. Hon'ble Mr. Justice **Hrishikesh Roy**

(When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of section 162 of the Code)

Facts

The Appeal challenges the judgment and order dated 15.2.2008 of the Chhattisgarh High Court, whereby the Criminal Appeal No. 513/2002 was disposed of upholding the conviction of the appellant in terms of the conclusion reached by the learned Additional Sessions Judge, Jashpurnagar (hereinafter referred to as, "the trial Court") in Sessions Case No. 149/2001. The trial Court convicted the appellant and co-accused Jagan Ram, under Sections 302/34 of the Penal Code, 1860 (for short "the IPC") and sentenced them to undergo life imprisonment and fine of Rs. 500/- each and for the conviction under Sections 201/34 IPC three years imprisonment and fine of Rs. 500/- each was ordered. The co-accused Jagan Ram was however acquitted by the High Court. In the resultant criminal appeal, the High Court referred to the testimony of Bhagat Ram (PW-4) who admitted that he could not recognize the second person at the spot and could identify only Chunthuram. On this testimony of the eyewitness, the co-accused Jagan Ram was acquitted. The High Court however upheld the conviction of Chunthuram referring to the testimony of the eye-witness Bhagat Ram (PW-4) as it was corroborated by other evidence.

Decision and Observations

Regarding the ***test identification evidence*** the Apex Court said the following:

> **10.** [...] The Test Identification evidence is not substantive piece of evidence but can only be used, in corroboration of statements in Court. The ratio in *Musheer Khan v. State of Madhya Pradesh*[(2010) 2 SCC 748] will have a bearing on this issue where Justice A.K. Ganguly, writing for the Division Bench succinctly summarised the legal position as follows:
>
> *"**24.** It may be pointed out that identification test is not substantive evidence. Such tests are meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines.*

11. The infirmities in the conduct of the Test Identification Parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of section 162 of the Code. (See *Ramkishan Mithanlal Sharma* v. *The State of Bombay*, (1955) 1 SCR 903)

6. *Tofan Singh v. State of Tamil Nadu , 2020 SCC OnLine SC 882*

Decided on: 29.10.2020
Bench: 1. Hon'ble Mr. Justice **R. F. Nariman**
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Ms. Justice Indira Banerjee

(Officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act;

A statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.)

Issues

1. Whether an officer "empowered under Section 42 of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore statements recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused?

Decision and Observations

Regarding the first question, the Apex court considered judgments on the subject of who would constitute a "police officer" for the purpose of section 25 of the Evidence Act.

The Apex court referred to a significant passage in *State of Punjab* v. *Barkat Ram* (1962) 3 SCR 338 in para 91 of the judgment which is being reproduced below:

> **91.** The Court then held, in a significant passage, that a confession made to any member of the police - of whatever rank - is interdicted by section 25 of the Evidence Act, as follows:
>
> "The police officer referred to in Section 25 of the Evidence Act, need not be the officer investigating into that particular offence of which a person is subsequently accused. A confession made to him need not have been made when he was actually discharging any police duty. Confession made to any member of the police, of whatever rank and at whatever time, is inadmissible in evidence in view of Section 25."

The Apex court referred to *Raja Ram Jaiswal v. State of Bihar* (1964) 2 SCR 752 and stated in para 106 of the judgment, "The test laid down by the majority in *Raja Ram Jaiswal* (supra) for determining whether a person is a police officer under section 25 of the Evidence Act, is whether a direct or substantial relationship with the prohibition enacted by section 25 is

established, namely, whether powers conferred are such as would tend to facilitate the obtaining by such officer of a confession from a suspect or delinquent, and this happens if a power of investigation, which culminates in a police report, is given to such officer."

Badku Joti Savant v. State of Mysore (1966) 3 SCR 698; *Romesh Chandra Mehta* v. *State of West Bengal* (1969) 2 SCR 461; *Illias v. Collector of Customs, Madras* (1969) 2 SCR 613 were also referred to by the Apex court.

The Apex court said:

> **128.** The golden thread running through all these decisions - some of these being decisions of five-Judge Benches which are binding upon us - beginning with *Barkat Ram* (supra), is that where limited powers of investigation are given to officers primarily or predominantly for some purpose *other* than the prevention and detection of crime, such persons cannot be said to be police officers under section 25 of the Evidence Act. What must be remembered is the discussion in *Barkat Ram* (supra) that a "police officer" does not have to be a police officer in the narrow sense of being a person who is a police officer so designated attached to a police station. The broad view has been accepted, and never dissented from, in all the aforesaid judgments, namely, that where a person who is not a police officer properly so-called is invested with all powers of investigation, which culminates in the filing of a police report, such officers can be said to be police officers within the meaning of section 25 of the Evidence Act, as when they prevent and detect crime, they are in a position to extort confessions, and thus are able to achieve their object through a shortcut method of extracting involuntary confessions.

The Apex Court then referred to *Raj Kumar Karwal* v. *Union of India* (1990) 2 SCC 409 in para 130 of the judgment.

> **130.** At this point, we come to the decision in *Raj Kumar Karwal* (supra). In this case, the very question that arises before us arose before a Division Bench of this Court. The question was set out by the Division Bench as follows:
>
> "**1.** Are the officers of the Department of Revenue Intelligence (DRI) who have been invested with the powers of an officer-in-charge of a police station under Section 53 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called 'the Act'), "police officers" within the meaning of Section 25 of the Evidence Act? If yes, is a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the said Act, admissible in evidence as against him? These are the questions which we are called upon to answer in these appeals by special leave."

After referring to para 22 of the judgment in *Raj Kumar Karwal,*[3] the Apex Court said:

[3] **22**…The investigation which so commences must be concluded, without unnecessary delay, by the submission of a report under Section 173 of the Code to the concerned Magistrate in the prescribed form. Any person on whom power to investigate under Chapter XII is conferred can be said to be a 'police officer', no matter by what name he is called. The nomenclature is not important, the content of the power he exercises is the determinative factor. The important attribute of police power is not only the power to investigate into the commission of cognizable offence but also the power to prosecute the offender by filing a report or a charge-sheet under

134. Despite the fact that *Raj Kumar Karwal* (supra) notices the fact that the NDPS Act prescribes offences which are "very severe" and that section 25 is a wholesome protection which must be understood in a broad and popular sense, yet it arrives at a conclusion that the designated officer under section 53 of the NDPS Act cannot be said to be a police officer under section 25 of the Evidence Act. The Division Bench also notices that, unlike all the revenue and railway protection statues where offences are non-cognizable, the NDPS Act offences are cognizable. It also notices that the NDPS Act deals with prevention and detection of crimes of a very serious nature. However, *Raj Kumar Karwal* (supra) did not properly appreciate the following distinctions that arise between the investigative powers of officers who are designated in statutes primarily meant for revenue or railway purposes, as against officers who are designated under section 53 of the NDPS Act : *first*, that section 53 is located in a statute which contains provisions for the prevention, detection and punishment of crimes of a very serious nature. Even if the NDPS Act is to be construed as a statute which regulates and exercises control over narcotic drugs and psychotropic substances, the prevention, detection and punishment of crimes related thereto cannot be said to be ancillary to such object, but is the single most important and effective means of achieving such object. This is unlike the revenue statutes where the main object was the due realisation of customs duties and the consequent ancillary checking of smuggling of goods (as in the Land Customs Act, 1924, the Sea Customs Act, 1878 and the Customs Act, 1962); the levy and collection of excise duties (as in the Central Excise Act, 1944); or as in the Railway Property (Unlawful Possession Act), 1966, the better protection and security of Railway property. *Second,* unlike the revenue statutes and the Railway Act, all the offences to be investigated by the officers under the NDPS Act are cognizable. *Third,* that section 53 of the NDPS Act, unlike the aforesaid statutes,

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Section 173 of the Code. That is why this Court has since the decision in *Badku Joti Savant* accepted the ratio that unless an officer is invested under any special law with the powers of investigation under the Code, including the power to submit a report under Section 173, he cannot be described to be a 'police officer' under Section 25, Evidence Act. Counsel for the appellants, however argued that since the Act does not prescribe the procedure for investigation, the officers invested with power under Section 53 of the Act must necessarily resort to the procedure under Chapter XII of the Code which would require them to culminate the investigation by submitting a report under Section 173 of the Code. Attractive though the submission appears at first blush, it cannot stand close scrutiny. In the first place as pointed out earlier there is nothing in the provisions of the Act to show that the legislature desired to vest in the officers appointed under Section 53 of the Act, all the powers of Chapter XII, including the power to submit a report under Section 173 of the Code. But the issue is placed beyond the pale of doubt by sub-section (1) of Section 36-A of the Act which begins with a non-obstante clause — notwithstanding anything contained in the Code — and proceeds to say in clause (*d*) as under:

> *"36-A. (d) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial."*

This clause makes it clear that if the investigation is conducted by the police, it would conclude in a police report but if the investigation is made by an officer of any other department including the DRI, the Special Court would take cognizance of the offence upon a formal complaint made by such authorised officer of the concerned government. Needless to say that such a complaint would have to be under Section 190 of the Code. This clause, in our view, clinches the matter. We must, therefore, negative the contention that an officer appointed under Section 53 of the Act, other than a police officer, is entitled to exercise 'all' the powers under Chapter XII of the Code, including the power to submit a report or charge-sheet under Section 173 of the Code. That being so, the case does not satisfy the ratio of *Badku Joti Savant* and subsequent decisions referred to earlier."

does not prescribe any limitation upon the powers of the officer to investigate an offence under the Act, and therefore, it is clear that all the investigative powers vested in an officer in charge of a police station under the CrPC - including the power to file a charge-sheet - are vested in these officers when dealing with an offence under the NDPS Act. This is wholly distinct from the limited powers vested in officers under the aforementioned revenue and railway statutes for ancillary purposes, which have already been discussed by this Court in *Barkat Ram* (supra), with reference to the Land Customs Act; *Badku Joti Savant* (supra), with reference to the Central Excise Act; *Romesh Chandra Mehta* (supra), with reference to the Sea Customs Act; *Illias* (supra), with reference to the Customs Act; and *Durga Prasad* (supra) and *Balkishan* (supra) with reference to the Railway Act, to be in aid of the dominant object of the statutes in question, which - as already alluded to - were not primarily concerned with the prevention and detection of crime, unlike the NDPS Act. Also, importantly, none of those statutes recognised the power of the State police force to investigate offences under those Acts together with the officers mentioned in those Acts, as is the case in the NDPS Act. No question of manifest arbitrariness or discrimination on the application of Article 14 of the Constitution of India would therefore arise in those cases, unlike cases which arise under the NDPS Act, as discussed in paragraphs 67 to 70 hereinabove.

135. The Bench also failed to notice section 53A of the NDPS Act and, therefore, falls into error when it states that the powers conferred under the NDPS Act can be assimilated with powers conferred on customs officers under the Customs Act. When sections 53 and 53A are seen together in the context of a statute which deals with prevention and detection of crimes of a very serious nature, it becomes clear that these sections cannot be construed in the same manner as sections contained in revenue statutes and railway protection statutes.

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140. What is clear, therefore, is that the designated officer under section 53, invested with the powers of an officer in charge of a police station, is to forward a police report stating the particulars that are mentioned in section 173(2) CrPC. Because of the special provision contained in section 36A(1) of the NDPS Act, this police report is not forwarded to a Magistrate, but only to a Special Court under section 36A(1)(d). *Raj Kumar Karwal* (supra), when it states that the designated officer cannot submit a police report under section 36A(1)(d), but would have to submit a "complaint" under section 190 of the CrPC misses the importance of the *non obstante* clause contained in section 36A(1), which makes it clear that the drill of section 36A is to be followed notwithstanding anything contained in section 2(d) of the CrPC. It is obvious that section 36A(1)(d) is inconsistent with section 2(d) and section 190 of the CrPC and therefore, any complaint that has to be made can only be made under section 36A(1)(d) to a Special Court, and not to a Magistrate under section 190. Shri Lekhi's argument, that the procedure under section 190 has been replaced only in part, the police report and complaint procedure under section 190 not being displaced by section 36A(1)(d), cannot be accepted. Section 36A(1)(d) specifies a scheme which is completely different from that contained in the CrPC. Whereas under section 190 of the CrPC it is the Magistrate who takes cognizance of an offence, under section 36A(1)(d) it is only a Special Court that takes cognizance of an offence under the NDPS Act. Secondly, the "complaint" referred to in section

36A(1)(d) is not a private complaint that is referred to in section 190(1)(a) of the CrPC, but can only be by an authorised officer. Thirdly, section 190(1)(c) of the CrPC is conspicuous by its absence in section 36A(1)(d) of the NDPS Act - the Special Court cannot, upon information received from any person other than a police officer, or upon its own knowledge, take cognizance of an offence under the NDPS Act. Further, a Special Court under section 36A is deemed to be a Court of Session, for the applicability of the CrPC, under section 36C of the NDPS Act. A Court of Session under section 193 of the CrPC cannot take cognizance as a Court of original jurisdiction unless the case has been committed to it by a Magistrate. However, under section 36A(1)(d) of the NDPS Act, a Special Court may take cognizance of an offence under the NDPS Act without the accused being committed to it for trial. It is obvious, therefore, that in view of section 36A(1)(d), nothing contained in section 190 of the CrPC can be said to apply to a Special Court taking cognizance of an offence under the NDPS Act.

141. Also, the officer designated under section 53 by the Central Government or State Government to investigate offences under the NDPS Act, need not be the same as the officer authorised by the Central Government or State Government under section 36A(1)(d) to make a complaint before the Special Court. As a matter of fact, if the Central Government is to invest an officer with the power of an officer in charge of a police station under sub-section (1) of section 53, it can only do so after consultation with the State Government, which requirement is conspicuous by its absence when the Central Government authorises an officer under section 36A(1)(d). Also, both section 53(1) and (2) refer to officers who belong to particular departments of Government. Section 36A(1)(d) does not restrict the officer that can be appointed for the purpose of making a complaint to only an officer belonging to a department of the Central/State Government. There can also be a situation where officers have been designated under section 53 by the Government, but not so designated under section 36A(1)(d). It cannot be that in the absence of the designation of an officer under section 36A(1)(d), the culmination of an investigation by a designated officer under section 53 ends up by being an exercise in futility.

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158. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers" within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

7. *Satya Deo alias Bhoorey v. State of U.P. (2020 SCC OnLine SC 809)*

Decided on : - 07.10.2020

Bench :- 1. Hon'ble Mr. Justice S. Abdul Nazeer
2. Hon'ble Mr. Justice **Sanjiv Khanna**

(It would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 01.04.2001. He would be entitled to benefit of the 2000 Act.)

Facts

By the order dated 17.08.2018, the Special Leave Petition, challenging the judgment dated 20.4.2018 of the Lucknow Bench of the Allahabad High Court, filed by Keshav Ram and Ram Kuber was dismissed, *albeit* in the case of co-accused Satya Deo@ Bhoorey notice was issued on the plea of juvenility. The impugned judgment had confirmed the conviction of Keshav Ram, Ram Kuber and Satya Deo by the trial court in FIR No. 156/1981 dated 11.12.1981 Police Station Gilaula, Distt. Bahraich, Uttar Pradesh for the offence under Section 302 read with section 34 of the Penal Code, 1860 ('IPC' for short) and the order of sentence directing them to undergo imprisonment for life. By order dated 02.05.2019 leave was granted in the case of Satya Deo.

By order dated 22.11.2019 the trial court was directed to conduct an inquiry to ascertain if Satya Deo was a juvenile on the date of occurrence i.e. 11.12.1981, on the basis of material which would be placed on record.

Pursuant to the directions, the First Additional District and Sessions Judge, Bahraich, Uttar Pradesh has conducted an inquiry and submitted the report dated 06.03.2020. As per the report, the date of birth of Satya Deo is 15.4.1965. Accordingly, he was 16 years 7 months and 26 days of age on the date of commission of the offence i.e. 11.12.1981. The report relies on the Transfer Certificate (in original) issued by Ram Narayan Singh Inter College, Ramnagar Khajuri, Bahraich, and the Admission Register of Primary School, Pairi, which documents were proved by Sh. Krishn Deo, Clerk at Ram Narayan Singh Inter College, Ramnagar Khajuri, Bahraich, and Smt. Anupam Singh, in-charge head-mistress of Primary School, Pairi, respectively. Further, Satya Deo had appeared in class-10 examination vide Roll. No. 9020777, and his date of birth as recorded in the gazette relating to this examination is 15.04.1965.

The First Additional District and Sessions Judge, Bahraich has observed that Satya Deo was not a juvenile as per the Juvenile Justice Act, 1986 (1986 Act) as he was more than 16 year of age on the date of commission of the offence i.e. 11.12.1981.

Observations and Decision

8. The conundrum is in light of the definition of 'juvenile' under the 1986 Act, which was below sixteen years in case of a boy and below eighteen years in case of a girl on the date the boy or girl is brought for first appearance before the court or the competent authority, whereas the 2000 Act, as noticed below, does not distinguish between a boy or girl and a person under the age of eighteen years is a juvenile. Further, under the 2000 Act, the age on the date of commission of the offence is the determining factor. In light of the conflicting views expressed by this Court on application of the 2000 Act to the pending proceedings, vide decisions in *Arnit Das* v. *State of Bihar* [(2000) 5 SCC 488] and *Umesh Chandra* v. *State of Rajasthan [*(1982) 2 SCC 202 *]* , the matter was referred to a Constitution Bench and decided in the case reported as *Pratap Singh* v. *State of Jharkhand [*(2005) 3 SCC 551*]* . The Constitution Bench formulated two points for decision, namely:

"(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court/competent authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding is initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 1-4-2001."

9. On the second question, the Constitution Bench held that the 2000 Act would be applicable in a pending proceeding instituted under the 1986 Act in any court or authority, if the person had not completed eighteen years of age as on 1st April 2001, when the 2000 Act came into force. On the first question, it was held that the reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in a court. Consequently, the 2000 Act would have prospective effect and not retrospective effect except in cases where the person had not completed the age of eighteen years on the date of commencement of the 2000 Act. Other pending cases would be governed by the provisions of the 1986 Act.

10. Subsequent to the decision of the Constitution Bench in *Pratap Singh* (supra), several amendments were made to the 2000 Act by the Amendment Act No. 33 of 2006.

11. In terms of clause (l) to section 2 of the 2000 Act, Satya Deo, being less than 18 years of age, was juvenile on the date of commission of offence.

12. Section 20 of the 2000 Act, which provides a special provision in respect of pending cases, post the amendment vide Act 33 of 2006.....

14. Thus, in respect of pending cases, Section 20 authoritatively commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence. The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the provisions of the 2000 Act.

16. Proviso to Section 7A is important for our purpose as it states that the claim of juvenility may be raised before 'any court' 'at any stage', even after the final disposal of the case. When such claim is made, it shall be determined in terms of the provisions of the 2000 Act and the rules framed thereunder, even when the accused had ceased to be a juvenile on or before commencement of the 2000 Act. Thus it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 01.04.2001. He would be entitled to benefit of the 2000 Act.

17. Section 64 of the 2000 Act was also amended by Act No. 33 of 2006 by incorporating a proviso and explanation and by replacing the words 'may direct' with the words 'shall direct' in the main provision.....

18. [...] However, it is the explanation which is of extreme significance as it states that in all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment on the date of commencement of the 2000 Act, the juvenile's case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) to Section 2 and other provisions and rules made under the 2000 Act irrespective of the fact that the juvenile had ceased to be a juvenile. Such juvenile shall be sent to special home or fit institution for the remainder period of his sentence but such sentence shall not exceed the maximum period provided in Section 15 of the 2000 Act. The statute overrules and modifies the sentence awarded, even in decided cases.

22. In light of the legal position as expounded above and in the aforementioned judgments, this court at this stage can decide and determine the question of juvenility of Satya Deo, notwithstanding the fact that Satya Deo was not entitled to the benefit of being a juvenile on the date of the offence, under the 1986 Act, and had turned an adult when the 2000 Act was enforced. As Satya Deo was less than 18 years of age on the date of commission of offence on 11.12.1981, he is entitled to be treated as a juvenile and be given benefit as per the 2000 Act.

26. Consequently, in light of Section 6 of the General Clauses Act read with Section 25 of the 2015 Act, an accused cannot be denied his right to be treated as a juvenile when he was less than eighteen years of age at the time of commission of the offence, a right which he acquired and has fructified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on 01.04.2001. In terms of Section 25 of the 2015 Act, 2000 Act would continue to apply and govern the proceedings which were pending when the 2015 Act was enforced. (In the present case, we are not required to examine and decide the question whether 2000 Act or the 2015 Act would apply when the offence was committed before the enactment of the 2015 Act but the charge-sheet was filed after enactment of the 2015

Act. The answer would require examination of clause (1) to Article 20 of the Constitution and several other aspects as the 2015 Act provide an entirely different regime in respect of children in conflict with law and the procedure to be followed in such cases. These aspects and issues have not been argued before us.)

29. [...] while we uphold the conviction of Satya Deo, we would set aside the sentence of life imprisonment. We would remit the matter to the jurisdiction of the Board for passing appropriate order/directions under Section 15 of the 2000 Act including the question of determination and payment of appropriate quantum of fine and the compensation to be awarded to the family of the deceased. We make no affirmative or negative comments either way on the order/direction under Section 15 of the 2000 Act.

8. *Hospitality Association of Mudumalai v. In Defence of Environment and Animals and Others etc., (2020 SCC OnLine SC 838)*

Decided on : - 14.10.2020

Bench :- 1. Hon'ble Mr. Justice S.A. Bobde (C.J.)
2. Hon'ble Mr. Justice **S.Abdul Nazeer**
3. Hon'ble Mr. Justice Sanjiv Khanna

(The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor.)

Background

The appellants in these appeals have assailed the final judgment and order dated 07.04.2011 of the High Court of Judicature at Madras, passed in Writ Petition (PIL) No. 10098 of 2008 along with several other writ petitions including Review Application No. 131 of 2010 and Writ Petition No. 23939 of 2010 filed by the Hospitality Association of Mudumalai. The High Court by the impugned judgment has upheld the validity of the Tamil Nadu Government Notification G.O.(Ms.) No. 125, dated 31.08.2010 which had notified an 'Elephant Corridor' in the Sigur Plateau of Nilgiris District and has further directed resort owners and other private land owners to vacate and hand over the vacant possession of the lands falling within the notified elephant corridor to the District Collector, Nilgiris within three months from the date of the judgment.

The appellant in Civil Appeal Nos. 3438-3439 of 2020 (arising out of SLP (C) Nos. 17313-17314 of 2011), is the Hospitality Association of Mudumalai, registered under the Tamil Nadu Societies Registration Act, 1975, situated in the Nilgiris District of Tamil Nadu. The members of this association have established resorts/guest houses in the Nilgiris forest area. The other appellants are either the owners of the resorts/guest houses or the owners of the lands in and around the Nilgiris forest area. Some of them have built dwelling houses on their lands, some of them have encroached upon government lands and put up constructions thereon and some of them are cultivating the said lands.

In the context of elephant preservation in Tamil Nadu, on 14.06.2006, the State's Principal Chief Conservator of Forests and Chief Wildlife Warden ('**PCCF**') had requested that the private/patta lands forming the traditional movement corridors of elephants between the Mudumalai Wildlife Sanctuary and National Park to other parts and also between Eastern and Western Ghats be brought under the control of the Forest Department, by acquiring the lands after paying compensation to the owners. The

PCCF had highlighted the use of these patches of private forest land, which serve as vital migratory routes, for non-forestry use as a serious threat to free movement of elephants. The PCCF addressed another letter dated 6.11.2006 to the State Government, proposing the Survey Nos. of the patta land to be acquired for the purpose of the elephant corridors. Similarly, the Ministry of Environment and Forests, Government of India, by its letter dated 11.08.2006 to the State Government of Tamil Nadu had noted that 88 elephant corridors had been identified by the Wildlife Trust of India's book titled "Right of Passage - Elephant Corridors of India" and requested that necessary action be taken for notification and protection of the elephant corridors situated in Tamil Nadu, as identified in the aforesaid publication.

Pursuant to this communication, the Government of Tamil Nadu issued a Government Order dated 21.08.2007, appointing an Exploratory Committee with Collector of Nilgiris as the Chairman and four other members consisting of District Forest Officer, Nilgiris North Division, Wildlife Warden, Ooty, Officer of the Revenue Department, Ooty and the concerned Tehsildar. This Committee was constituted for exploring the possibility of acquiring the patta lands with the willingness of farmers who could spare their lands for acquisition for elephant corridors.

Observations and Decision

40. Conflicting maps of this corridor were presented before the Madras High Court, which thus directed the State Government to choose between : (i) the elephant corridors identified in the Wildlife Trust of India's book titled "Right of Passage - Elephant Corridors of India" which were referred to by the Central Government in its letter dated 11.08.2006 to the State Government; or (ii) the single elephant corridor identified by the Expert Committee appointed by the High Court. As per the aforesaid book titled "Right of Passage", the following 4 corridors lie in the Sigur Plateau region : (i) Avarahalla - Sigur, (ii) Kalhatti - Sigur at Glencorin, (iii) Moyar - Avarahalla and (iv) Kalmalai - Singara and Avarahalla. The Expert Committee examined all the elephant corridors in the area and identified a single elephant corridor comprising of various elephant corridors in the Sigur Plateau region. The State Government, vide the impugned G.O., notified this single elephant corridor, along the lines of the recommendations made by the Expert Committee.

41. The first limb of the appellants' contentions before us is that there is no statutory power for creating/recognition of new corridors by the State Government. We do not find merit in this argument and, in principle, are in agreement with the findings of the High Court regarding the power of the State Government to take measures, including issuance of the impugned G.O., for protection of wildlife in Tamil Nadu. It is undeniable that the State Government is empowered to take measures to protect forests and wildlife falling within its territory in light of Entries 17A 'Forest' and 17B 'Protection of wild animals and birds' in the concurrent list and the power of the State Government under the Wildlife Act to notify Sanctuaries and other protected areas. It is an admitted position that the land of the appellants has also been notified as private forest in 1991 under the Tamil Nadu Preservation of Private Forests Act, 1949, which prohibits cutting of trees in private forests. Our attention has also been drawn to the decision of this Court in *T.N. Godavaraman Thirumulkpad* v. *Union of India*[2] wherein felling of trees in the state of Tamil Nadu was prohibited in all forests, including forests situated in privately owned lands. The contesting respondents have argued that the construction of the appellants' resorts must have necessarily run afoul of the above decision of this Court. Without

commenting on the factual accuracy of this assertion, given that the classification of the appellants' land as private forest land is not in dispute here, we find no difficulty in holding that the State Government was empowered to protect the habitats situated on the appellants' land by notifying an elephant corridor thereupon.

42. Furthermore, since the impugned decision of the High Court, the Ministry of Environment, Forest and Climate Change vide its Notification S.O. 4498(E) dated 13.12.2019 has declared the entire area in question and adjoining areas around the Mudumalai Tiger Reserve as an Eco-Sensitive Zone. Under this Notification, the State Government of Tamil Nadu has been expressly directed to regulate land use generally, as well commercial establishment of hotels/resorts specifically, in the Eco-Sensitive Zone so established. As was held by this Court in *M.C. Mehta* v. *Union of India*[3] the "Precautionary Principle" has been accepted as a part of the law of our land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for living creatures. The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation. In this light, we have no hesitation in holding that in order to protect the elephant population in the Sigur Plateau region, it was necessary and appropriate for the State Government to limit commercial activity in the areas falling within the elephant corridor.

43. The second limb of the appellants' submissions comprises of questions about the scientific accuracy of the Expert Committee's Report and contentions that the dimensions as well as the location of the single corridor identified therein are at odds with authoritative scientific publications. It has been argued by the appellants that their resorts and other establishments do not fall within the historic corridors identified in these publications. These assertions were dealt with by the High Court which held that there was material on record to show presence of elephants as well as a past incident of human-elephant conflict, which resulted in the death of a French tourist, in the region where the appellants' resorts are located. The High Court also held that any absence of elephants from the areas surrounding the appellants' resorts was, in fact, due to the construction activities of the appellants whereby access of the elephants has been restricted through erection of electric fencing. We see no reason to interfere with the above factual findings of the High Court and also do not find fault in the State Government's adoption of the recommendations of the High Court-appointed Expert Committee, through the impugned G.O.

44. This brings us to the last limb of the submissions of the appellants, which is comprised of factual objections to the acreage of the elephant corridor as notified by the impugned G.O. and the actions taken by the District Collector, Nilgiris in pursuance thereof. The appellants have contended that there has been substantial variance between the acreage recommended for acquisition by the Expert Committee Report and the acreage in the impugned G.O. It is further alleged that the acreage in the newspaper advertisement by the State Government inviting objections to notification of the corridor is also different from the acreage in the impugned G.O. As all the objections received pursuant to the said newspaper advertisement were rejected by the State Government and since the impugned G.O. purported to adopt the recommendations of the Expert Committee, the appellants allege that the said variance in acreage is arbitrary and unreasonable. It has also been alleged that the District Collector, Nilgiris has acted arbitrarily in sealing their resorts after rejecting the documents submitted by the appellant resorts purporting to show approvals and title. Similarly, it has been alleged that the District Collector went beyond the scope of this Court's order dated 24.12.2018 wherein immediate

removal of electric fences and barbed wire was directed. It is the appellants' case that non-electric fences as well as fences beyond the notified elephant corridor area were removed by the District Collector. We are of the view that it is just and proper to hold an inquiry to establish the veracity of the above factual objections of the appellants.

45. Therefore, we appoint a 3-member Inquiry Committee consisting of : (i) Hon'ble Mr. Justice K. Venkatraman, Former Judge of the Madras High Court (Chairman); (ii) Mr. Ajay Desai, Consultant to World Wide Fund for Nature-India and Member of the Technical Committee to come up with a National Elephant Action Plan (NEAP), constituted by the Union Ministry of Environment, Forest and Climate Change (MOEF&CC); and (iii) Mr. Praveen Bhargava, Trustee of Wildlife First and Former Member of National Board for Wildlife to decide the individual objections of the appellants and any other persons claiming to be aggrieved by the actions of the District Collector, Nilgiris pursuant to the impugned G.O. and as recorded before us through her Plan of Action Report and her twin Action Taken Reports, as also the allegations regarding arbitrary variance in acreage of the elephant corridor under the impugned G.O. The State Government is directed to consult the Chairman of the Inquiry Committee and pay remuneration to him and the other Members of the Inquiry Committee. Further, we direct the State Government to provide appropriate secretarial assistance and logistical support to the Inquiry Committee for holding the inquiry within four weeks from today.

46. We leave it to the discretion of the Inquiry Committee to decide the location for its inquiry proceedings. We also authorize the Inquiry Committee to appoint requisite staff on temporary basis to assist the Committee in the inquiry and to fix their salaries. The State Government is directed to pay their salaries. The State Government and the district level authorities are directed to provide their full cooperation and produce any and all files/documents required by the Inquiry Committee to address the grievances of the appellants and any other persons claiming to be similarly aggrieved. The appellants and other persons claiming to be aggrieved by the plan of action/actions of the District Collector, Nilgiris pursuant to the impugned G.O. and the allegations regarding variance in acreage under the impugned G.O, are permitted to file objections containing their grievances before the Inquiry Committee within a period of four months from today. The Inquiry Committee is directed to consider the objections filed before it and pass appropriate orders thereon after granting the parties a reasonable opportunity of being heard. The parties are also permitted to file documents in support of their respective contentions before the Inquiry Committee.

47. The present appeals are disposed of in the aforesaid terms, leaving the parties to bear their own costs. All pending applications shall stand disposed of.

9. *Satish Chander Ahuja v. Sneha Ahuja, (2020 SCC OnLine SC 841)*

Decided on : - 15.10.2020

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

(The definition of shared household given in Section 2(s) of the Domestic Violence Act cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.)

Observations and Decision on the Issues related to the provisions of the Protection of Women from Domestic Violence Act, 2005

(1) Whether definition of shared household under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share?

(2) Whether judgment of this Court in *S.R. Batra* v. *Taruna Batra*, (2007) 3 SCC 169 has not correctly interpreted the provision of Section 2(s) of Protection of Women from Domestic Violence Act, 2005 and does not lay down a correct law?

> **85.** In view of the foregoing discussions, we answer issue Nos. 1 and 2 in following manner:—
>
> (i) The definition of shared household given in Section 2(s) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.
>
> (ii) The judgment of this Court in *S.R. Batra* v. *Taruna Batra* (supra) has not correctly interpreted Section 2(s) of Act, 2005 and the judgment does not lay down a correct law.

(3) Whether the High Court has rightly come to the conclusion that suit filed by the appellant could not have been decreed under Order XII Rule 6 CPC?

(4) Whether, when the defendant in her written statement pleaded that suit property is her shared household and she has right to residence therein, the Trial Court could have decreed the suit of the plaintiff without deciding such claim of defendant which was permissible to be decided as per Section 26 of the Act, 2005?

94. As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in Civil Courts also. In the present suit, it was defence of the defendant that the house being the shared household, she is entitled to reside in the house as per Section 17(1) of Act, 2005. This Court had occasion to consider provision of Section 26 in *Vaishali Abhimanyu Joshi* v. *Nanasaheb Gopal Joshi*, (2017) 14 SCC 373. In the above case, the appellant was married with one Abhimanyu with whom she was residing in suit Flat No. 4, 45/4, Arati Society, Shivvihar Colony, Paud Fata, Pune. The husband filed a suit for divorce against the appellant. The father-in-law filed a suit in Small Cause Court for mandatory injunction praying that defendant be directed to stop the occupation and use of the suit flat. The appellant filed a written statement in the suit claiming that although the flat bears the name of the respondent but she is residing in the suit flat. She filed a counter claim claiming that flat is a shared household and the suit be dismissed. The counter claim was rejected by the Judge, Small Cause Court, against which revision as well as the writ petition was dismissed. This Court noted the question, which arose for consideration in the above case in paragraph 16, which is to the following effect:—

"**16.** As noted above, the only question to be answered in this appeal is as to whether the counter claim filed by the appellant seeking right of residence in accordance with Section 19 of the 2005 Act in a suit filed by the respondent, her father-in-law under the Provincial Small Cause Courts Act, 1887 is entertainable or not. Whether the provisions of the 1887 Act bar entertainment of such counterclaim, is the moot question to be answered....."

96. This Court held that Section 26 has to be interpreted in a manner to effectuate the purpose and object of the Act. This Court held that the determination of claim of the aggrieved person was necessary in the suit to avoid multiplicity of proceedings. This court laid down following in paragraphs 40 and 41:—

"40. Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by the plaintiff in the Judge, Small Cause Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat,

the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counterclaim shall be nothing but denying consideration of claim as contemplated by Section 26 of the 2005 Act which shall lead to multiplicity of proceedings, which cannot be the object and purpose of the 2005 Act.

41. We, thus, are of the considered opinion that the counterclaim filed by the appellant before Judge, Small Cause Court in Civil Suit No. 77 of 2013 was fully entertainable and the courts below committed error in refusing to consider such claim."

97. In view of the ratio laid down by this court in the above case, the claim of the defendant that suit property is shared household and she has right to reside in the house ought to have been considered by the Trial Court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by Act, 2005.

98. We have noticed the law laid down by this Court in *S.M. Asif* v. *Virender Kumar Bajaj* (supra) where this Court in paragraph 8 has laid down following:—

"8. The words in Order 12 Rule 6 CPC "may" and "make such order ..." show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim."

99. The power under Order XII Rule 6 is discretionary and cannot be claimed as a matter of right. In the facts of the present case, the Trial Court ought not to have given judgment under Order XII Rule 6 on the admission of the defendant as contained in her application filed under Section 12 of the D.V. Act. Thus, there are more than one reason for not approving the course of action adopted by Trial Court in passing the judgment under Order XII Rule 6. We, thus, concur with the view of the High Court that the judgment and decree of the Trial Court given under Order XII rule 6 is unsustainable.

(5) Whether the plaintiff in the suit giving rise to this appeal can be said to be the respondent as per definition of Section 2(q) of Act, 2005?

101. There are two conditions for a person to be treated to be respondent within the meaning of Section 2(q), i.e., (i) in a domestic relationship with the aggrieved person, and (ii) against whom the aggrieved person has sought any relief under Act, 2005. It is to be noticed that the expression "any adult male person" occurring in Section 2(q) came for consideration before this Court in *Hiral P. Harsora* v. *Kusum*

Narottamdas Harsora, (2016) 10 SCC 165, where this Court has struck down the expression "adult male". This Court held that "adult male person" restricting the meaning of respondent in Section 2(q) to only "adult male person" is not based on any intelligible differentia having rational nexus with object sought to be achieved. This Court struck down the word "adult male". Hence, it is now permissible under definition of Section 2(q) to include females also.

105. We, thus, are of the view that for the purposes of determination of right of defendant under Sections 17 and 19 read with Section 26 in the suit in question the plaintiff can be treated as "respondent", but for the grant of any relief to the defendant or for successful resisting the suit of the plaintiff necessary conditions for grant of relief as prescribed under the Act, 2005 has to be pleaded and proved by the defendant, only then the relief can be granted by the Civil Court to the defendant.

(6) What is the meaning and extent of the expression "save in accordance with the procedure established by law" as occurring in Section 17(2) of Act, 2005?

106. Section 17 of the Act has two sub-sections which engraft two independent rights. According to subsection (1) notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. This right has been expressly granted to every woman in domestic relationship to fulfill the purpose and objective of the Act. Although under the statute regulating personal law the woman has right to maintenance, every wife has right of maintenance which may include right of residence, the right recognized by sub-section (1) of Section 17 is new and higher right conferred on every woman.

107. The right is to be implemented by an order under Section 19, on an application filed under sub-section (1) of Section 12. Sub-section (2) of Section 17, however, contains an exception in the right granted by sub-section (2), i.e., "save in accordance with the procedure established by law". Sub-section (2) of Section 17, thus, contemplates that aggrieved person can be evicted or excluded from the shared household in accordance with the procedure established by law. What is the meaning and extent of expression "save in accordance with the procedure established by law" is a question which has come up for consideration in this appeal. Whether the suit filed by the plaintiff for mandatory and permanent injunction against the defendant in the Civil Court is covered by the expression "save in accordance with the procedure established by law". We may further notice that the learned Magistrate while passing the interim order on 26.11.2016 in favour of the defendant on her application filed under Section 12 has directed that "the respondent shall not alienate the alleged shared household nor would they dispossess the complainant or their children from the same **without orders of a Competent Court**". The Magistrate, thus, has provided that without the orders of Competent Court the applicant (respondent herein) should not be dispossessed. In the present case, interim order specifically contemplates that it is only by the order of the Competent Court respondent shall be dispossessed.

112. The rules have been framed under the Act, 2005, namely "The Protection of Women from Domestic Violence Rules, 2006". Rule 5 deals with Domestic Incident Report which is to be submitted by protection officer in Form I. The Form I is part of Rule which contains details in various columns to enable the Magistrate to take appropriate decision. Rule 6 provides that every application of the aggrieved person under Section 12 shall be in Form-II or as nearly as possible thereto. Form-II is again part of Rule which contains various details including orders required, residence orders, under Section 19, monetary relief under Section 20, details of previous litigation, if any, and other details to enable the Magistrate to take appropriate decision. Rule 6 sub-Rule (4) provides that for obtaining an interim ex-parte order under Section 23, an affidavit is to be filed in Form-III. The Form-III is an affidavit of an aggrieved person or the person filing affidavit on behalf of his ward, daughter, etc. The Act and the Rules thus provide for a procedure and manner of filing an application for obtaining a relief under Act, 2005. The Act, 2005, is an special Act which provides for manner and procedure for obtaining relief by an aggrieved person.

113. The provision of Section 145 of Cr.P.C. in this context may be noticed. Section 145 of Cr.P.C. provides for procedure where dispute concerning land or water is likely to cause breach of peace. Under Section 145 Cr.P.C. in case Magistrate is satisfied that a dispute likely to cause a breach of the peace exists, he may require the parties to attend the Court and to decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute. Sub-section (6) of Section 145 Cr.P.C. contemplates issuance of the order by the Magistrate declaring such party to be entitled to such possession. Sub-section (6), however, contemplates that the parties to be entitled to possession thereof **until evicted therefrom in due course of law**. The eviction in due course of law was contemplated to be by a competent court.

116. Summarising the law in the context of Sections 145 and 146 Cr.P.C. the effects of the order of Magistrate were recorded by this Court in paragraph 23, relevant part of which for the present case is as follows:

"23. For the purpose of legal proceedings initiated before a competent court subsequent to the order of an Executive Magistrate under Sections 145/146 of the Code of Criminal Procedure, the law as to the effect of the order of the Magistrate may be summarized as under:—

(1) The words 'competent court' as used in Sub-section (1) of Section 146 of the code do not necessarily mean a civil court only. A competent court is one which has the jurisdictional competence to determine the question of title or the rights of the parties with regard to the entitlement as to possession over the property forming subject matter of proceedings before the Executive Magistrate;

(2) A party unsuccessful in an order under Section 145(1) would initiate proceedings in a competent court to establish its entitlement to possession over the disputed property against the successful party, Ordinarily, a relief of recovery of possession would be appropriate to be sought for. In legal proceedings initiated before a competent court consequent upon attachment under Section 146(1) of the Code it is not necessary to seek relief of recovery of possession. As the property is held custodia legis by the Magistrate for and on behalf of the party who would ultimately succeed from the

court it would suffice if only determination of the rights with regard to the entitlement to the possession is sought for. Such a suit shall not be bad for not asking for the relief of possession.

(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and weight before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.

(4) ...."

117. Drawing the analogy from the above case, we are of the opinion that the expression "save in accordance with the procedure established by law", in Section 17(2) of the Act, 2005 contemplates the proceedings in court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the property is maintainable before a Competent Court. We may further notice that in sub-section (2) the injunction is "shall not be evicted or excluded from the shared household save in accordance with procedure established by law". Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted suit by the owner as to whether the women need to be excluded or evicted from the shared household. One most common example for eviction and exclusion may be when the aggrieved person is provided same level of alternate accommodation or payment of rent as contemplated by Section 19 sub-section (f) itself. There may be cases where plaintiff can successfully prove before the Competent Court that the claim of plaintiff for eviction of respondent is accepted. We need not ponder for cases and circumstances where eviction or exclusion can be allowed or refused. It depends on facts of each case for which no further discussion is necessary in the facts of the present case. The High Court in the impugned judgment has also expressed opinion that suit filed by the plaintiff cannot be held to be non-maintainable with which conclusion we are in agreement.

118. In case, the shared household of a woman is a tenanted/allotted/licensed accommodation where tenancy/allotment/license is in the name of husband, father-in-law or any other relative, the Act, 2005 does not operate against the landlord/lessor/licensor in initiating an appropriate proceedings for eviction of the tenant/allottee/licensee qua the shared household. However, in case the proceedings are due to any collusion between the two, the woman, who is living in the shared household has right to resist the proceedings on all grounds which the tenant/lessee/licensee could have taken in the proceedings. The embargo under Section 17(2) of Act, 2005 of not to be evicted or excluded save in accordance with the procedure established by law operates only against the "respondent", i.e., one who is respondent within the meaning of Section 2(q) of Act, 2005.

(7) Whether the husband of aggrieved party (defendant) is necessary party in the suit filed by the plaintiff against the defendant?

120. There can be no dispute with the preposition of law as laid down by this Court in the above two cases. In the present case, although plaintiff has not claimed any relief against his son, Raveen Ahuja, the husband of the respondent, hence, he was not a necessary party but in view of the fact that respondent has pleaded her right of residence in shared household relying on Sections 17 and 19 of the Act, 2005 and one of the rights which can be granted under Section 19 is right of alternate accommodation, the husband is a proper party. The right of maintenance as per the provisions of Hindu Adoption and Maintenance Act, 1956 is that of the husband, hence he may be a proper party in cases when the Court is to consider the claim of respondent under Sections 17 and 19 read with Section 26 of the Act, 2005.

122. The above direction is a little wide and preemptory. In event, the High Court was satisfied that impleadment of husband of defendant was necessary, the High Court itself could have invoked the power under Order I Rule 10 and directed for such impleadment. When the matter is remanded back to the Trial Court, Trial Court's discretion ought not to have been fettered by issuing such a general direction as noted above. The general direction issued in paragraph 56(i) is capable of being misinterpreted. Whether the husband of an aggrieved person in a particular case needs to be added as plaintiff or defendant in the suit is a matter, which need to be considered by the Court taking into consideration all aspects of the matter. We are, thus, of the view that direction in paragraph 56(i) be not treated as a general direction to the Courts to implead in all cases the husband of an aggrieved person and it is the Trial Court which is to exercise the jurisdiction under Order I Rule 10. The direction in paragraph 56(i) are, thus, need to be read in the manner as indicated above.

123. Now, coming to the present case, we have already observed that although husband of the defendant was not a necessary party but in view of the pleadings in the written statement, the husband was a proper party.

(8) What is the effect of orders passed under Section 19 of the Act, 2005 whether interim or final passed in the proceedings initiated in a civil court of competent jurisdiction?

126. Section 17(2) itself contemplates eviction or exclusion of aggrieved person from a shared household in accordance with the procedure established by law. The conclusion is inescapable that a proceeding in a competent court for eviction or exclusion is contemplated by the Statutory Scheme of Act, 2005. Thus, there is neither any express nor implied bar in initiation of civil proceedings in a Court of competent jurisdiction. Further, Section 26 also contemplate grant of relief of right of residence under Section 19 in any legal proceedings before a Civil Court or Family Court or Criminal Court affecting the aggrieved person. The proceedings might be initiated by aggrieved person or against the aggrieved person herself before or after the commencement of Act, 2005. Thus, initiation of the proceedings in Civil Court and relief available under Section 19 of the Act, 2005 is contemplated by the statutory scheme delineated by the Act, 2005. There may be also instances where conflict may arise in the orders issued under D.V. Act, 2005 as well as the judgment of Civil Court. What is the effect of such conflict in the decision is another related issue which needs to be answered? Whether the principle of res judicata can be

pressed in respect to any decision inter parties in respect to criminal and civil proceedings?

127. The applicability of principle of res judicata is well known and are governed by provisions of Section 11 C.P.C., which principle also has been held to be applicable in other proceedings. There can be no applicability of principle of res judicata when orders of Criminal Courts are pitted against proceedings in Civil Court. With regard to criminal proceedings Code of Criminal Procedure also contains provision that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence. The principle enumerated in Section 300 Cr.P.C. may be relevant with respect to two criminal proceedings against same accused, which might have no relevance in reference to one criminal proceeding and one civil proceeding.

128. Sections 40 to 44 of the Indian Evidence Act, 1872 which deal with "judgments of Courts of justice when relevant" throw considerable light on the subject which is under consideration before us.....

131. The proceedings under D.V. Act, 2005 are proceedings which are to be governed by Code of Criminal Procedure, 1973.

132. The procedure to be followed by the magistrate is provided under Section 28 of the D.V. Act and as per Section 28 of the D.V. Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Even sub-section (2) of Section 28 provides that the magistrate can lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. However, for other proceedings, the procedure is to be followed as per the provisions of the Code of Criminal Procedure, 1973. The procedure to be followed under Section 125 shall be as per Section 126 of the Cr.P.C. which includes permitting the parties to lead evidence. Therefore, before passing any orders under the D.V. Act, the parties may be permitted to lead evidence. However, before any order is passed under Section 12, the magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. That does not mean that magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider. Even as per Section 36 of the D.V. Act, the provisions of the D.V. Act shall be **in addition to**, and not in derogation of the provisions of any other law, for the time being in force. Even the magistrate can also pass an interim order as per Section 23 of the D.V. Act.

137. Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the D.V. Act, it can safely be said that the proceedings under the D.V. Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the D.V. Act are independent proceedings, like the proceedings under Section 125 of the Cr. P.C. for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/family court for the reliefs under the Hindu Adoption and Maintenance Act. However, as

observed hereinabove, the findings/orders passed by the one forum has to be considered by another forum.

The Apex Court concluded:

158. From the above discussions, we arrive at following conclusions:—

(i) The pendency of proceedings under Act, 2005 or any order interim or final passed under D.V. Act under Section 19 regarding right of residence is not an embargo for initiating or continuing any civil proceedings, which relate to the subject matter of order interim or final passed in proceedings under D.V. Act, 2005.

(ii) The judgment or order of criminal court granting an interim or final relief under Section 19 of D.V. Act, 2005 are relevant within the meaning of Section 43 of the Evidence Act and can be referred to and looked into by the civil court.

(iii) A civil court is to determine the issues in civil proceedings on the basis of evidence, which has been led by the parties before the civil court.

(iv) In the facts of the present case, suit filed in civil court for mandatory and permanent injunction was fully maintainable and the issues raised by the appellant as well as by the defendant claiming a right under Section 19 were to be addressed and decided on the basis of evidence, which is led by the parties in the suit.

159. In view of the foregoing discussions, we are of the considered opinion that High Court has rightly set aside the decree of the Trial Court and remanded the matter for fresh adjudication. With the observations as above, the appeal is dismissed. No Costs.