JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(SEPTEMBER 23-SEPTEMBER 29, 2019)

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TABLE OF CONTENTS

1. *Narayanamma and Another v. Govindappa and Others, (2019 SCC OnLine SC 1260)*

Decided on : -26.09.2019

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

(An illegal agreement cannot be enforced by a Court because on the basis of the principles of the principles of *ex turpi causa non oritur action* and *ex dolo malo non oritur action*, no Court will lend its aid to a man who finds his cause of action upon an immoral or an illegal act.)

Facts

On 20.10.1976, the suit property was given as a grant in favour of Bale Venkataramanappa. The said grant was under the provisions of the Reforms Act. On 13.09.1983, the premium was paid by Bale Venkataramanappa and the grant was confirmed in his favour with a non-alienation clause of 15 years. On 15.09.1983, there was a mutation entry in the revenue records entering the name of said Bale Venkataramanappa with an endorsement that the land shall not be alienated for a period of 15 years. On 23.04.1990, Bale Venkataramanappa, by a registered mortgage deed, mortgaged the suit land in favour of the plaintiff for a sum of Rs. 20,000/-. The mortgage deed recites about the receipt of the entire mortgaged amount by Bale Venkataramanappa. Under the mortgage deed, Bale Venkataramanappa had agreed to repay the loan within a period of one year. However, within a period of one month, Bale Venkataramanappa executed an agreement to sell dated 15.05.1990 in favour of the plaintiff. The agreement to sell recited that he was in need of money for his legal necessities and to repay his hand loans and for his domestic needs and, therefore, he had agreed to sell the suit property for a sum of Rs. 46,000/-. He acknowledged the receipt of entire amount of consideration, i.e., Rs. 46,000/-. The recital in the agreement to sell read that at the time of execution of the agreement, the possession of the suit property was handed over to the plaintiff. Further, the recital read that the plaintiff shall take the consent of the officers of the Tribunal or the concerned officers at his own cost for transferring the property in the name of the plaintiff.

After the death of Bale Venkataramanappa, the plaintiff filed an application on 12.05.1997 before the Tehsildar, Hoskote, for mutating his name in place of Bale Venkataramanappa. The Tehsildar, without any notice, carried out the mutation and entered the name of the plaintiff in the revenue records. The defendants challenged the same before the Assistant Commissioner, Doddabalapura Division. The said appeal was allowed on 27.06.2008. Accordingly, the revenue records were corrected and the defendants' names were entered on 24.10.2009. The said Order came to be challenged by the plaintiff before the High Court by way of Writ Petition Nos. 22243-22244 of 2011. The High Court vide Order dated 26.07.2011, dismissed the said petitions.

Issue before the Hon'ble Supreme Court

Whether the agreement to sell dated 15.05.1990 executed by Bale Venkataramanappa in favour of the plaintiff would be enforceable in law or not?

Judgment and Observations

The Hon'ble Court held the agreement to be contrary to the provisions of the Reforms Act and, therefore, illegal and observed as follows :-

> **13.** A perusal of the said provision would clearly show that, notwithstanding anything contained in any law, no land of which the occupancy has been granted to any person under the said Chapter shall, within 15 years from the date of the final order passed by the Tribunal under sub-section (4) or subsection (5) or sub-section (5-A) of Section 48-A of the Reforms Act be transferred by sale, gift, exchange, mortgage, lease or assignment. However, the land may be partitioned among members of the holders of the joint family. No doubt, that subsection (2) of Section 61 of the Reforms Act permits the registered occupant or his successor-in-title, to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government, a financial institution, a co-operative land development bank, a co-operative society or a company as defined in Section 3 of the Companies Act, 1956 in which not less than 51% of the paid-up share capital is held by the State Government or a Corporation owned or controlled by the Central Government or the State Government or both. However, such a loan can be taken only for the purpose of development of land or improvement of agricultural practices or for raising educational loan to prosecute higher studies of the children of such person. It further provides that, in the event of such a person making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it shall be lawful to cause his interest in the land be attached and sold and the proceeds to be utilised in the payment of such loan. Sub-section (3) of the said Section specifically provides that any transfer or partition of land in contravention of subsection (1) shall be invalid and such land shall vest in the State Government free, from all encumbrances and shall be disposed in accordance with the provisions of Section 77 of the Reforms Act.

The Hon'ble Court then discussed the judgment of ***Kedar Nath Motani* v. *Prahlad Rai***[1], ***Nathu Prasad* v. *Ranchhod Prasad***[2] and ***Immani Appa Rao* v. *Gollapalli Ramalingamurthi***[3] and the principles of *ex turpi causa non oritur action* and *ex dolo malo non oritur action* and reiterated the principle that no Court will lend its aid to a man who finds his cause of action upon an immoral or an illegal act and held as follows :-

> **16.** It could thus be seen, that this Court has held that the correct position of law is that, what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. This Court further held, that if the illegality is trivial or venial and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. It

[1] (1960) 1 SCR 861.
[2] (1969) 3 SCR 11.
[3] (1962) 3 SCR 739.

has further been held, that a strict view must be taken of the plaintiff's conduct and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. However, if the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose is achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.

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18. This Court held that, which principle is to be applied in the facts of the case would depend upon the question, as to which principle is more consistent with public interest. The Court finds that, when both the parties before the Court are confederates in the fraud, the Court will have to find out which approach would be less injurious to public interest. The Court observed that, whichever approach is adopted, one party would succeed and the other would fail and, therefore, it is necessary to enquire as to which party's success would be less injurious to public interest. The Court in the facts of the said case finds that if the decree was to be passed in favour of respondent No. 1 (who was the plaintiff), it would be actively assisting respondent No. 1 to give effect to the fraud to which he was a party and it has been held that in that sense the Court would be allowed to be used as an instrument of fraud and that is clearly and patently inconsistent with public interest.

19. It has further been held, that if both the parties are equally guilty and the fraud intended by them had been carried out, the position would be that, the party raising the defence is not asking the Court's assistance in any active manner. It has been held, that all the defence suggested is that a confederate in fraud shall not be permitted to obtain a decree from the Court because the documents of title, on which the claim is based really conveys no title at all. In the facts of the said case, it was held, that though the result thereof would be assisting the defence therein to retain their possession, for such an assistance would be purely of passive character and all that the Court would do in effect is that on the facts proved, it proposes to allow possession to rest where it lies. It has been held that, latter course appears to be less injurious to public interest than the former one.....

Applying the principles discussed hereinabove, the Hon'ble Court allowed the appeal and held as follows:-

26. However, the ticklish question that arises in such a situation is: "the decision of this Court would weigh in side of which party"? As held by Hidayatullah, J. in *Kedar Nath Motani* (supra), the question that would arise for consideration is as to whether the plaintiff can rest his claim without relying upon the illegal transaction or as to whether the plaintiff can rest his claim on something else without relying on the illegal transaction. Undisputedly, in the present case, the claim of the plaintiff is entirely based upon the agreement to sell dated 15.05.1990, which is clearly hit by Section 61 of the Reforms Act. There is no other foundation for the claim of the plaintiff except the one based on the agreement to sell, which is hit by Section 61 of the Act. In such a case, as observed by Taylor, in his "Law of Evidence" which has been approved by Gajendragadkar, J. in *Immani Appa Rao* (supra), although illegality is not pleaded by the defendant nor

sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action *ex turpi causa non oritur actio* i.e. No polluted hand shall touch the pure fountain of justice. Equally, as observed in Story's Equity Jurisprudence, which again is approved in *Immani Appa Rao* (supra), where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim in *pari delicto potior est conditio defendentis et possidentis*.

27. It could thus be seen that, the trial Judge upon finding that the agreement of sale was hit by Section 61 of the Reforms Act, had rightly dismissed the suit of the plaintiff.

28. Now, let us apply the another test laid down in the case of *Immani Appa Rao* (supra). At the cost of repetition, both the parties are common participator in the illegality. In such a situation, the balance of justice would tilt in whose favour is the question. As held in *Immani Appa Rao* (supra), if the decree is granted in favour of the plaintiff on the basis of an illegal agreement which is hit by a statute, it will be rendering an active assistance of the court in enforcing an agreement which is contrary to law. As against this, if the balance is tilted towards the defendants, no doubt that they would stand benefited even in spite of their predecessor-in-title committing an illegality. However, what the court would be doing is only rendering an assistance which is purely of a passive character. As held by Gajendragadkar, J. in *Immani Appa Rao* (supra), the first course would be clearly and patently inconsistent with the public interest whereas, the latter course is lesser injurious to public interest than the former.

2. *D. Sasi Kumar v. Soundararajan, 2019 SCC OnLine SC 1243*

Decided on : -23.09.2019

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

(The bonafide requirement[4] of the tenanted premises by the landlord as a ground for eviction should exist at the time of the petition and not till the date of the final adjudication of rights)

Facts

The landlord contending to be the owner of the petition schedule premises had filed the petition under Sections 10(3)(a)(iii) and 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ('Act', 1960' for short) seeking for an order to direct the tenant to vacate and deliver the peaceful possession of the petition schedule property to the landlord. The manner in which the landlord had become the owner of the property based on a partition deed dated 24.02.1997 was referred. The tenant was in occupation of the premises for non-residential purpose on a monthly rental of Rs. 600/-. The landlord contended that the premises is bonafide required by him for setting up a garment shop and in that regard had further contended that since the premises requires alterations to be made in that regard, the landlord also intended to demolish the existing structure and put up a construction suitable for his purpose. The tenant had appeared and opposed the said petition by filing his objection statement, denying the entire case of the landlord including his claim to ownership over the property as well as the jural relationship. It was contended that the intention of the landlord is only to secure higher rent and as such the claim cannot be considered as a bonafide requirement.

The Rent Control Court on having taken note of the rival contentions had framed two points for its consideration. The entire consideration revolved on the claim made by the landlord for own use and occupation as also the alternate premises available to the tenant. The Court of the Rent Controller on analysing the documents and the evidence of the parties arrived at the conclusion that the claim as put forth by the landlord is established and accordingly on allowing the petition had directed eviction of the tenant by granting two months time to vacate.

The tenant claiming to be aggrieved was before the Appellate Authority in the statutory appeal. The Appellate Authority having adverted to the contentions reappreciated the oral as well as the documentary evidence. In that background making detailed reference to the legal position from the decisions cited before, it had upheld the order dated 19.01.2011 passed by the Rent Control Court and had dismissed the appeal. Against such concurrent orders the tenant approached the High Court in the Civil Revision Petition. The High Court once again referring to the evidence and the conclusion reached by the courts below had differed from

[4] Section 19 (1) (c) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 also gives the landlord a right for eviction if the premises if required "reasonably and in good faith" by the landlord.

the same and accordingly allowed the petition by holding that the bonafide requirement as claimed by the landlord had not been proved. Against the order of the High Court, the landlord approached the Supreme Court.

Observations and Decision

The Hon'ble Court observed that the High Court should not have reappreciated the evidence in Civil revision as the scope of the same is very limited and does not extend to reappreciation of evidences. The Hon'ble Court, in this regard observed as follows :-

> **7.** At the outset it is to be taken note that the Civil Revision Petition before the High Court is not to be considered as in the nature of an appeal. The scope of consideration is only to take note as to whether there is any perversity in the satisfaction recorded by the original Court, namely, the Rent Controller and in that light as to whether the Appellate Authority under the statute has considered the aspect in the background of the evidence to arrive at the conclusion to its satisfaction. The reappreciation of the evidence in the Civil Revision Petition to indicate that another view is possible would not arise. To that extent, a perusal of the impugned order indicates that the High Court in fact has proceeded as if the entire evidence required reappreciation by it. In that background what is necessary to be taken note at this juncture is as to whether the Rent Controller has considered the matter in its correct perspective by satisfying himself of the bonafide claim, as required under Section 10(3)(e) of the Act, 1960 and the hardship if any to the tenant as contemplated under the proviso thereto.

Apart from adjudicating the disputed facts of the case, the Hon'ble Court further made observations regarding the date and period of the bonafide requirement of the landlord as a ground for eviction and held as follows:-

> **11.** ***Further the High Court has also erroneously arrived at the conclusion that the bonafide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights.*** Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011. The appeal was thereafter disposed of by the Appellate Authority in the year 2013. The High Court had itself taken time to dispose of the Revision Petition, only on 06.03.2017. The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in the case of *Gaya Prasad* v. *Pradeep Srivastava*, (2001) 2 SCC 604 has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bonafide requirement of landlord is the date of application for eviction, which we hereby reiterate.
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> (emphasis supplied)

3. *Canara Nidhi Limited v. M. Shashikala and Others, 2019 SCC OnLine SC 1244*

Decided on : -23.09.2019

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

(The proceedings under Section 34 of the Act are summary in nature. The grounds for setting aside the award are specific. It is imperative for expeditious disposal of cases that the arbitration cases under Section 34 of the Act should be decided only with reference to the pleadings and the evidence placed before the arbitral tribunal and the grounds specified under Section 34(2) of the Act.)[5]

Issue

In the application under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) seeking to set aside the award, whether the parties can adduce evidence to prove the specified grounds in sub-section (2) to Section 34 of the Act?

Observations and Decision

The Hon'ble Court referred to the cases of ***Fiza Developers & Inter-Trade (P) Ltd.* v. *AMCI (India) (P) Ltd.***[6] and ***Emkay Global Financial Services Limited* v. *Girdhar Sondhi***[7] answered the question in the negative and held as follows :-

> **9.** The proceedings under Section 34 of the Act are summary in nature. The scope of enquiry in the proceedings under Section 34 of the Act is restricted to a consideration whether any of the grounds mentioned in Section 34(2) or Section 13(5) or Section 16(6) are made out to set aside the award. The grounds for setting aside the award are specific. It is imperative for expeditious disposal of cases that the arbitration cases under Section 34 of the Act should be decided only with reference to the pleadings and the evidence placed before the arbitral tribunal and the grounds specified under Section 34(2) of the Act.
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> **11.** In *Fiza Developers*, the question which arose for consideration by the court was whether issues as contemplated under Order XIV Rule 1 of Civil Procedure Code should be framed in the application under Section 34 of the Act. The court held that framing of issues as contemplated under Order XIV Rule 1 CPC is not required in an application under Section 34 of the Act which proceeding is summary in nature. In paras (14), (17), (21) and (24) of *Fiza Developers*, it was held as under:—
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> > **"14.** In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross-examination by the other side, before hearing arguments.

[5] Vide the Amendment Act of 2019, Section 34 (2) (a) has been amended and the words ***"furnishes proof that"***, have been substituted by the words ***"establishes on the basis of the record of the arbitral tribunal that"***.
[6] 2009) 17 SCC 796.
[7] (2018) 9 SCC 49.

> Framing of issues in such proceedings is not necessary. We hasten to add that when it is said issues are not necessary, it does not mean that evidence is not necessary.
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> **17.** The scheme and provisions of the Act disclose two significant aspects relating to courts vis-à-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal.
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> **21.** We may therefore examine the question for consideration by bearing three factors in mind. The first is that the Act is a special enactment and Section 34 provides for a special remedy. The second is that an arbitration award can be set aside only upon one of the grounds mentioned in sub-section (2) of Section 34 exists. The third is that proceedings under Section 34 requires to be dealt with expeditiously.
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> **24.** In other words, an application under Section 34 of the Act is a single issue proceeding, where the very fact that the application has been instituted under that particular provision declares the issue involved. Any further exercise to frame issues will only delay the proceedings. It is thus clear that issues need not be framed in applications under Section 34 of the Act."

17. After referring to Justice B.N. Srikrishna Committee's report and other judgments and observing that the decision in *Fiza Developers* must be read in the light of the amendment made in Section 34(5) and Section 34(6) of the Act and amendment to Section 34 of the Arbitration Act, 1996, in *Emkay Global Financial Services Limited* v. *Girdhar Sondhi* **(2018) 9 SCC 49,** it was held as under:—

> **"21.** It will thus be seen that speedy resolution of arbitral disputes has been the reason for enacting the 1996 Act, and continues to be the reason for adding amendments to the said Act to strengthen the aforesaid object. Quite obviously, if issues are to be framed and oral evidence taken in a summary proceeding under Section 34, this object will be defeated. It is also on the cards that if Bill No. 100 of 2018 is passed, then evidence at the stage of a Section 34 application will be dispensed with altogether. Given the current state of the law, we are of the view that the two early Delhi High Court judgments in *Sandeep Kumar* v. *Ashok Hans* 2004 SCC OnLine Del 106, *Sial Bioenergie* v. *SBEC Systems* 2004 SCC OnLine Del 863, cited by us hereinabove, correctly reflect the position in law as to furnishing proof under Section 34(2)(*a*). So does the Calcutta High Court judgment in *WEB Techniques and Net Solutions (P) Ltd.* v. *Gati Ltd.* 2012 SCC OnLine Cal 4271. We may hasten to add that if the procedure followed by the Punjab and Haryana High Court judgment in *Punjab SIDC Ltd.* v. *Sunil K. Kansal* 2012 SCC OnLine P&H 19641 is to be adhered to, the time-limit of one year would

> only be observed in most cases in the breach. We therefore overrule the said decision. We are constrained to observe that *Fiza Developers* was a step in the right direction as its ultimate ratio is that issues need not be struck at the stage of hearing a Section 34 application, which is a summary procedure. However, this judgment must now be read in the light of the amendment made in Sections 34(5) and 34(6). So read, we clarify the legal position by stating that an application for setting aside an arbitral award will not ordinarily require anything beyond the record that was before the arbitrator. However, if there are matters not contained in such record, and are relevant to the determination of issues arising under Section 34(2)(*a*), they may be brought to the notice of the Court by way of affidavits filed by both parties. Cross-examination of persons swearing to the affidavits should not be allowed unless absolutely necessary, as the truth will emerge on a reading of the affidavits filed by both parties. We, therefore, set aside the judgment in *Girdhar Sondhi* v. *Emkay Global Financial Services Ltd.* 2017 SCC OnLine Del 12758 of the Delhi High Court and reinstate that of the learned Additional District Judge dated 22-9-2016. The appeal is accordingly allowed with no order as to costs."

Observing as aforesaid, the Hon'ble Supreme Court allowed the appeal and set aside the order of the High Court.

4. *Authorised Officer, Indian Bank v. D. Visalakshi and Another, 2019 SCC OnLine SC 1242*

Decided on : -23.09.2019

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

(The CJM is competent to process the request of the secured creditor to take possession of the secured asset under Section 14 of the SARFAESI Act, 2002 even though only Chief Metropolitan Magistrate and District Magistrate have been expressly mentioned in the section)

Issue

Whether the Chief Judicial Magistrate (for short, "CJM") is competent to process the request of the secured creditor to take possession of the secured asset under Section 14[8] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002?

Observations and Decision

There were conflicting views of several High Courts on this issue and, therefore, this decision of the Hon'ble Court settles the position of law on this issue.

The Hon'ble Court referred to the case of ***All India Judges' Association* v. *Union of India***[9] and held :-

> **44.** It is no more *res integra* that the CJM is equated with the CMM for the purposes referred to in the Cr.P.C.; and those expressions are used interchangeably being synonymous of each other.
> .....

The Hon'ble Court further referred to several cases on various points of law and also to the decisions of the High Courts on the issue of this case and held as follows :-

> **45.** Be it noted that Section 14 of the 2002 Act is not a provision dealing with the jurisdiction of the Court as such. It is a remedial measure available to the secured creditor, who intends to take assistance of the authorised officer for taking possession of the secured asset in furtherance of enforcement of security furnished by the borrower. The authorised officer essentially exercises administrative or executive functions, to provide assistance to

[8] **14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-** (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--
…….

[9] (2002) 4 SCC 247.

> the secured creditor in terms of State's coercive power to effectuate the underlying legislative intent of speeding the recovery of the outstanding dues receivable by the secured creditor. At best, the exercise of power by the authorised officer may partake the colour of quasi-judicial function, which can be discharged even by the Executive Magistrate. The authorised officer is not expected to adjudicate the contentious issues raised by the concerned parties but only verify the compliances referred to in the first proviso of Section 14; and being satisfied in that behalf, proceed to pass an order to facilitate taking over possession of the secured assets.
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> **46.** It is well established that no Civil Court can interdict the action initiated in respect of any matter, which a Debt Recovery Tribunal or Debt Recovery Appellate Tribunal is empowered by or under the 2002 Act, to determine and in particular, in respect of any action taken or to be taken in pursuance of any power conferred by or under the 2002 Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. That has been ordained by Section 34 of the 2002 Act.

Finally, after referring to the case of ***Janardhan* v. *State of Maharashtra***[10], the Hon'ble Court held :-

> **54.** Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of Cr.P.C., would not be inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.
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> **55.** Having said this, we need not to dilate on other decisions pressed into service regarding the approach to be adopted in the matter of interpretation of statutes.
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> **56.** To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks).

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[10] (1978) 2 SCC 465.

5. *Govindbhai Chhotabhai Patel and Others v. Patel Ramanbhai Mathurbhai, 2019 SCC OnLine SC 1245*

Decided on : -23.09.2019

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

(In the absence of any intention in the Will, the beneficiary would acquire the self-acqired property of the donor as self-acquired property in terms of *C.N. Arunachala Mudaliar case.*

In the absence of specific denial of execution of the gift deed, the Donee is under no obligation to examine one of the attesting witnesses of the gift deed, even when forgery and fabrication have been alleged in relation to the deed.)

Facts

The appellants are sons of *Chhotabhai Ashabhai Patel*-(donor) who died on December 6, 2001. During his life time, he purportedly executed a gift deed dated November 15, 1977 in favour of defendant *Ramanbhai Mathurbhai Patel*[2](done).

The parties went to trial on the following issues:

i. Whether the plaintiffs prove that the disputed gift deed is fabricated?
ii. Whether the plaintiffs prove that the suit properties are ancestral properties and late Chhotabhai Ashabhai had no right to execute the gift deed?
iii. Whether the plaintiffs prove that the defendant has no right, title or interest over the said property?
iv. Whether the plaintiffs prove that they are entitled to get the relief as prayed for?
v. Whether the defendant proves that the plaintiffs have no right to file the present suit?
vi. What order and decree?

The High Court framed five substantial questions of law and after giving findings on such substantial questions of law, the judgment and decree passed by the learned Trial Court on February 10, 2014 and the judgment and decree passed by the First Appellate Court on October 9, 2017 were set aside.

The findings recorded by the High Court, *inter alia*, are that execution of the gift deed was not specifically denied in the suit filed. Therefore, it is not necessary for the Donee to examine one of the attesting witnesses in terms of proviso to Section 68 of the Indian Evidence Act, 1872. It is also held that the suit property is not ancestral property. The property was purchased by Ashabhai Patel, father of the Donor and it is by virtue of Will executed by Ashabhai Patel, property came to be owned by the Donor in the year 1952-1953. The High Court, thus, held that the Donor was competent to execute the gift deed dated November 15, 1977 as the

property was not ancestral in the hands of Donor. This appeal was directed against the order of the High Court.

Observations and Decision

Regarding the nature of self-aquired property bequeathed through gift, the Hon'ble Court referred to the case of ***C.N. Arunachala Mudaliar* v. *C.A. Muruganatha Mudaliar***[11] and held as follows :-

> **12.** This Court in three Judge Bench in *C.N. Arunachala Mudaliar* considered the question as to whether the properties acquired by defendant No. 1 under Will are to be regarded as ancestral or self-acquired property in his hands. It is a case where the plaintiff claimed partition of the property in a suit filed against his father and brother. The stand of the father was that the house property was the self-acquired properties of his father and he got them under a Will executed in the year 1912. It was held that father of a Joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way. The Court while examining the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by gift or testamentary bequest from him, it was held that Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants. It was held that it was not possible to hold that such property bequeathed or gifted to a son must necessarily rank as ancestral property. It was further held that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor.
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> **********
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> **21.** In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the Will in favour of any person. Since the beneficiary of the Will was his son and in the absence of any intention in the Will, beneficiary would acquire the property as self-acquired property in terms of *C.N. Arunachala Mudaliar case*. The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the Will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of Donor has to be treated as self-acquired property. Once the property in the hands of Donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family.

The second issue in the case was *"whether the appellants have specifically denied the execution of the gift deed in terms of proviso to Section 68 of the Evidence Act, to make it mandatory for the defendant to examine one of the attesting witnesses to prove the Gift deed in his favour"*.

Regarding this issue, the Hon'ble Court referred to the provision of Section 68 of the Indian Evidence Act and held as follows :-

[11] AIR 1953 SC 495.

36. Order VI Rule 4 of the Code of Civil Procedure, 1908 warrants that in all cases in which allegation of any misrepresentation, fraud, breach of trust, wilful default, or undue influence, the necessary particulars are required to be stated in the pleadings.

37. In *Badat and Co. Bombay* v. *East India Trading Co.*[13], considering the provisions of Order VIII Rule 3, it was held that written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively and answer the points of substance. If his denial of the said fact is not specific but evasive, the said fact shall be taken to be admitted.

38. The appellants went to trial on the basis of fabrication of gift deed. The appellants have admitted the execution of the gift deed but alleged the same to be forged or fabricated. However, the appellants have not been able to prove any forgery in the execution of the gift deed.

39. *Dashrath Prasad Bajooram* v. *Lallosingh Sanmansingh*[14] was dealing with the issue as to whether defendant No. 1 executed the mortgage deed with proper attestation and for consideration. Considering the proviso to Section 68 of the Evidence Act, the Court held that word 'specific' has to be given some meaning appearing in proviso to Section 68.

.....

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41. The facts of the present case are akin to the facts which were before the Kerala High Court in *Kannan Nambiar*. The appellants have not denied the execution of the document but alleged forgery and fabrication. In the absence of any evidence of any forgery or fabrication and in the absence of specific denial of the execution of the gift deed in the manner held in *Kannan Nambiar*, the Donee was under no obligation to examine one of the attesting witnesses of the gift deed. As per evidence on record, the Donee was taking care of the Donor for many years. The appellants were residing in the United States but failed to take care of their parents. Therefore, the father of the appellants has executed gift deed in favour of a person who stood by him. We find that there is no error in the findings recorded by the High Court.

6. *Nevada Properties Private Limited through its Directors v. Nevada Properties Private Limited through its Directors, 2019 SCC OnLine SC 1247*

Decided on : -24.09.2019

Bench :- 1. Hon'ble Mr. Justice Ranjan Gogoi
2. Hon'ble Mr. Justice Deepak Gupta
3. Hon'ble Mr. Justice Sanjiv Khanna

("Any property" in Section 102 of the CrPC does not include immovable property)

Issue

Whether "any property" in Section 102[12] of the CrPC includes immovable property?

Observations and Decision

Regarding the scheme and nature of the provision, the Hon'ble Court observed ;-

> **5.** Section 102 of the Code is part of a fasciculus of provisions under Chapter VII - 'Process to Compel the Production of Things'. Part A of the said Chapter deals with Summons to produce; Part B deals with Search-warrants; Part C deals with General provisions relating to searches; and Part D, of which Section 102 is the first Section, falls under the part described as Miscellaneous. The marginal note of Section 102 states - "Power of police officer to seize certain property". Sub-section (3) of Section 102 was inserted by Act No. 45 of 1978. It was later amended by section 13(a) of the Cr.P.C. Amendment Act, 2005 (Act 25 of 2005) by adding the expression "or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation." Proviso to sub-section (3) was also added by the Amendment Act, 2005. Sub-section (3) to Section 102 is intended to give greater discretion to the police officer for releasing seized property, where there is a difficulty in securing proper accommodation for the custody of the property or where the continued retention of the property in police custody is not considered necessary for the purpose of investigation. Proviso states that if

[12] **"102. Power of police officer to seize certain property.**
(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
(2) Such police officer, if subordinate to the office in charge of a police station, shall forthwith report the seizure to that officer.
(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.
Provided that where the property seized under subsection (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

> the seized property is of perishable nature and the value of such property is less than five hundred rupees and if the person entitled to the possession of such property is unknown or absent, the police is empowered to sell such property by auction under orders of the Superintendent of Police.

The Hon'ble Court then referred to the decision rendered in ***State of Maharashtra v. Tapas D. Neogy***[13] and held that the case did not decide the issue in the present case as the discussion on the provison was merely an obiter dicta as per the "inversion test" given in ***State of Gujarat v. Utility Users' Welfare Association***[14].

The Hon'ble Court referred to the case of ***R.K. Dalmia v. Delhi Administration***[15] and observed as follows :-

> **12.** This Court in *R.K. Dalmia* v. *Delhi Administration* had interpreted the word 'property' in Section 405 and other sections of the IPC to opine that there was no good reason to restrict the meaning of the word 'property' to movable property when the word was used without any qualification in Section 405 or in other sections of the IPC. At the same time, this Court had cautioned that whether an offence defined in a particular section of the IPC can be committed in respect of any particular kind of property, will depend not on the interpretation of the word 'property' but on the fact that whether that particular kind of property can be subject to acts covered by that section. In that sense, it can be said that the word 'property' in a particular section covers only that type of property in respect of which the offence contemplated in that section can be committed. This, we would observe, is the central and core principle which would have to be applied when we interpret the expression 'any property' used in Section 102 of the Code, which as noticed above and elucidated below is a power conferred upon the police officer and relates to the stage of investigation and collection of evidence to be produced in the Court during trial.

The Hon'ble Court then referred to Sections 145, 146, 165 and Chapter XXXIV of the CrPC and held that ***the expression 'any property' appearing in Section 102 of the Code would not include immovable property.***

The Hon'ble Court, in this regard, held as follows:-

> **19.** The first part of sub-section (1) of Section 102 of the Code relates to the property which may be alleged or suspected to have been stolen. Immovable property certainly cannot be stolen and cannot fall in this part. The second part relates to the property which may be found by a police officer under circumstances which create suspicion of the commission of any offence. We have already referred to the judgments of the Delhi High Court in the case of *P.K. Parmar* (supra), *Ms. Swaran Sabharwal* (supra), and *Jagdish Chander* (supra), which have elucidated and in a restricted and narrow manner defined the requirement for invoking the second part. However, we have come across a decision of this Court in *Teesta Atul Setalvad* v. *State of Gujarat*, on an appeal from the judgment of the Gujarat High Court and

[13] (1999) 7 SCC 685.
[14] (2018) 6 SCC 21. *See* also, *U.P. State Electricity Board* v. *Pooran Chandra Pandey*, (2007) 11 SCC 92; *Commissioner of Income Tax* v. *Sun Engineering Works (P) Ltd.*, (1992) 4 SCC 363.
[15] AIR 1962 SC 1821.

had dealt with a situation when an act of freezing the accounts was a sequel to the crime as the crime was detected earlier. The Gujarat High Court took a somewhat contrary view, by not interfering and directing defreezing, observing that even if the action of the investigating agency at the inception to seize may not be regular, the Court cannot be oblivious to the collection of substantial material by the investigating agency which justifies its action under Section 102 of the Code. Further when the investigation had progressed to a material point, de-freezing the bank accounts on the basis of such arguments would paralyse the investigation which would not be in the interest of justice. After referring to the factual matrix in *Teesta Atul Setalvad* (Supra), this Court observed that the Investigating Officer was in possession of material pointing out to the circumstances that had created suspicion of the commission of an offence, in particular the one under investigation, and therefore exercise of power under Section 102 of the Code would be in law legitimate as it was exercised after following the procedure prescribed in sub-sections (2) and (3) of the same provision.

20. Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word 'seize' would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the Legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure. **Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet.** The Section is a part of the provisions concerning investigation undertaken by the police officer. After the charge sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, *per se*, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the Section and the scope and ambit of the power conferred on the Criminal Court vide Sections 451 to 459 of the Code. The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. **In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised.** We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. **Disputes relating to title,**

possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in Civil Courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (See *Binod Kumar* v. *State of Bihar*[14]). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the Criminal Court during trial. **This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a Civil Court.**

(emphasis supplied)

7. *Andhra Kesari College of Education and Another v. State of Andhra Pradesh and Others, 2019 SCC OnLine SC 1252*

Decided on : -25.09.2019

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

The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

Facts

The present Civil Appeals and Writ Petition had been filed to challenge the *vires* of the Rules framed by the Government of Andhra Pradesh *vide* G.O.M. No. 57 dated 21.03.2005, G.O.M. No. 92 dated 16.11.2006, and G.O.M. No. 98 dated 06.12.2006 (hereinafter referred to as the "impugned G.O.Ms"), for admission to the B. Ed. Course in the State of Andhra Pradesh, and became applicable from the Academic Year 2006 - 2007.

The Petitioner – A Christian Minority Institution filed the present Writ Petition to challenge the impugned G.O.Ms on the following grounds :—

i) As per Clause 3(i) of the G.O.M. No. 57 dated 21.03.2005, the Government of Andhra Pradesh directed that the criteria for determining the minority status of candidates would be as follows:—

> *"As there were reports of students/candidates obtaining religious conversion certificates overnight by exploiting the provisions contained in G.O. 6th above, the following condition is prescribed. For the purpose of determining the minority status of candidates seeking admission into 85% management quota in the B.Ed., minority colleges, the Secondary School Certificates or Transfer Certificates (T.C.) from the school from which they have studied shall be the basis. In the absence of a T.C., the candidate should obtain a certificate from the Head of the Institution in which he/she studies in the proforma prescribed (Annexure-I) to this order. Further, the students submitting bogus minority community certificates shall be dealt with under the relevant sections of the I.P.C. apart from losing their seats following the due procedure."*
>
> (emphasis supplied)

ii) The second principal ground of challenge is that as per G.O.M. No. 92 dated 16.11.2006, Clause 4(viii) provided as follows :—

> *"(viii) The minority status of the students shall be decided as per the orders issued in G.O.M. No. 57 School Education (Trg-A1) Department dated 21.03.2006."*
>
> Clause 5 set out the general guidelines for admission in the order of merit on the basis of the rank assigned in the Ed. CET to the extent of sanctioned seats.
>
> Clause 6 prescribed centralized counselling as the only mode for admission even in respect of minority institutions.

iii) The third ground of challenge is the amendment made to G.O.M. No. 92 dated 16.11.2006 vide G.O.M. No. 98 dated 06.12.2006. The following clause was incorporated by the amendment :—

"(8). In clause (iii)(b), after sub-clause para (10), the following shall be inserted, namely :—

(10 A). The Convenor, Ed. CET-AC Admissions shall conduct the counselling in phases if required till the last rank of Ed. CET. The Convenor, Ed. CET-AC Admissions shall fill the left over seats of the unaided colleges in the presence of a Government nominee by following rule of reservation through counselling process, in case the seats in minority colleges are to be filled up with non-minority candidates."

Observations and Decision

The Hon'ble referred to the judgment rendered in *T.M.A. Pai Foundation* v. *State of Karnataka*[16] wherein it was held as follows :-

> "The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions."
>
> (emphasis supplied)

The Hon'ble Court made the following observations regarding the impugned G.O.M.s:-

(i) G.O.M. No. 57 dated 21.03.2005 had been issued for the purpose of determining the minority status of candidates seeking admission in the Management Quota. The G.O.M. provides that the SSC/Transfer Certificate should be the basis for making a valid claim by a candidate that he or she belongs to the minority religion, to be eligible for admission. Considering the extensive misuse of such certificates, the State Government deemed it appropriate to issue G.O.M. No. 57 dated 21.03.2005 making the SCC Certificate as the basis for determining the minority status of a student, in order to prevent misuse of Conversion Certificates by ineligible candidates, so as to ensure that only *bona fide* students were granted admission in the Management Quota of Minority Institutions. G.O.M. No. 57 prescribed a uniform criteria for determination of the status of all minority students. It safeguards the interest of genuine minority students, so that their seats are not taken away by those who resort to false conversions over-night, for the purpose of securing admission. This would preserve the minority character of the Institution, rather than act as an intrusion of the same.

[16] (2002) 8 SCC 481.

(ii) The impugned G.O.Ms grant full autonomy to the Minority Educational Institutions to provide quality education for the minority community, by filling up 85% seats with meritorious minority students, and granting them priority for admission in such institutions.

(iii) With respect to G.O.M. No. 98, the requirement to fill up the vacant seats by non-minority candidates was based on statistical data which showed that the number of colleges, and the seats available for minorities, were highly disproportionate, and far in excess of the population as per the 2001 census. The distinct possibility of seats remaining unfilled in the Minority Institutions every year, would not be in the interest of the Minority Educational Institutions.

With this object in mind, G.O.M. No. 98 was issued to ensure that the vacant seats in the 85% Management Quota did not remain unfilled during any academic year. The G.O.M. merely stipulated that if the said Quota remained unfilled by minority students, it would be filled from the merit list of successful candidates, as allotted by the Convenor, Ed. CET to promote excellence in education. By this process, an opportunity was granted to the CET qualified non-minority candidates to secure quality education, which would subserve the interest of the nation.

This G.O.M. does not, in any manner, interfere with the right of a Minority Educational Institution to manage its affairs for the benefit of the Minority Community. On the contrary, it ensures that vacant seats are not wasted, and are filled up by meritorious and deserving candidates.

(iv) Furthermore, the presence of a Government Nominee in the counselling process was to ensure that the admission process is fair, transparent, and nonexploitative, and is based on merit. This would not interfere with the admission process of the minority institutions in any manner.

Making the aforementioned observations and referring to the judgment of *T.M.A. Pai Foundation* (supra), the Hon'ble Court observed that the right of minority institutions is not absolute, and is amenable to regulation. The protection granted to Minority Educational Institutions to admit students of their choice is subject to reasonable restrictions.

The Hon'ble Court upheld the *vires* of the impugned G.O.M.s and held :-

- The impugned G.O.Ms do not impose any fetters on the freedom of the minority institutions to profess, propagate, and practice their religion, or the right to establish and administer their educational institutions. The criteria has been prescribed only for the purpose of determining the minority status of the candidates for admission to the B. Ed. Course. This would not amount to a restriction, or impose any fetters in the matter of an individual's choice of religion.

- The impugned G.O.Ms are not violative of Article 30(1) of the Constitution of India. Article 30(1) states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The impugned G.O.Ms do not whittle down the right of the minority institutions in any manner.

8. *Chandana Das (Malakar) v. State of West Bengal and Others, 2019 SCC OnLine SC 1253*

Decided on : -25.09.2019

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

(The medium of instruction, whether it be Hindi, English, Bengali or some other language would be wholly irrelevant to discover as to whether the said school was founded by a linguistic minority for the purpose of imparting education to members of its community)

Facts

These appeals had been referred to a Three Judge Bench in view of a disagreement between T.S. Thakur, J. and R. Banumathi, J., reported as Chandana Das (Malakar) v. State of West Bengal, (2015) 12 SCC 140.

The facts of the case was that the appellants were appointed as teachers on temporary basis in what is known as Khalsa Girls High School, Paddapukur Road, Bhowanipore, Calcutta. Their appointment did not, however, meet the approval of the District Inspector of Schools, Calcutta, according to whom any such appointment could be made only on the recommendations of the School Service Commission established under the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (hereinafter referred to as "the Rules").

Aggrieved by the order passed by the District Inspector, the appellants approached the High Court of Calcutta which were allowed by a learned Single Judge of the High Court by his order dated 29-1-2004 holding that the Institution in which the appellants were appointed being a linguistic minority institution was entitled to select and appoint its teachers. The Single Bench accordingly directed the respondents in the writ petitions to approve the appointment of the appellants as whole-time teachers with effect from 28-7-1999 and release the arrears of salary and other service benefits in their favour with effect from the said date.

Aggrieved by the judgment and order of the learned Single Judge, the State of West Bengal, Director of School Education and District Inspector of Schools preferred CANs Nos. 3861 and 3863 of 2004 against the order passed by the Single Bench which appeals were allowed and disposed of by a Division Bench of that Court by a common order dated 23-9-2004. The High Court held that since the Institution in which the appellants were appointed was a recognised aided Institution, the management of the Institution was bound to follow the mandate of Rule 28 of the Rules aforementioned which permitted appointments against a permanent post only if the candidate was recommended for any such appointment by the School Service Commission.

The Division Bench further held that the appellants having been appointed beyond the sanctioned staff strength at the relevant point of time and dehors the Rules could not claim any approval in their favour. The Court noted that the directions issued by the Director of

School Education, Government of West Bengal did not permit any appointment without the prior permission of the Director. No such permission had been, in the case at hand, obtained from the Director. More importantly, the Division Bench held that since the Institution had not made any claim to its being a minority institution it was not open to the employee writ petitioners to claim any such status on its behalf. The Division Bench further took the view that once a minority community applies for a special constitution under sub-rule (3) of Rule 8 of the said Rules it represents to the State Government that it was not claiming the status of a minority institution. The Single Bench had, therefore, fallen in error in holding that the Institution where the appellants worked was a minority institution or that the appointment made by such an Institution would not be regulated by Rule 28 of the Rules mentioned above. The present appeals, as noticed above, call in question the correctness of the view taken by the Division Bench of the High Court.

The short question that came for determination was whether Khalsa Girls High School, Poddapukur Road, Calcutta is a minority institution, if so, whether the Institution's right to select and appoint teachers is in any way affected by the provisions of the Rules of Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 framed under the provisions of the West Bengal Board of Secondary Education Act, 1963?

Observations and Decision

The Hon'ble Court referred to the Rules of the West Bengal Government, the history and nature of the Institution and the provisions of Article 30. The Hon'ble Court further referred to the judgments of the Supreme Court in ***Ahmedabad St. Xavier's College Society v. State of Gujarat***[17] and in ***T.M.A. Pai Foundation v. State of Karnataka***[18] and, based on the principles laid down therein, held:-

> **30.** A reading of the aforesaid judgment would leave no manner of doubt that if Respondent No. 4 is a minority institution, Rule 28 of the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided) 1969, cannot possibly apply as there would be a serious infraction of the right of Respondent No. 4 to administer the institution with teachers of its choice.

The Hon'ble Court then went on to examine the question *whether it is necessary that there be a declaration as to status of the minority institutions by the competent authority under the West Bengal Board of Secondary Education Act, 1963 before it can claim the status of being a minority institution*.

The Hon'ble Court held as follows :-

(i) In ***N. Ammad v. Emjay High School***[19], there was no provision in the Act which enabled the Government to declare a school as a minority school. The Hon'ble Curt had held that if so, a school which is otherwise a minority school would continue to be so

[17] (1974) 1 SCC 717.
[18] (2002) 8 SCC 481.
[19] (1998) 6 SCC 674.

whether the Government declared it as such or not and, therefore, declaration by the Government is at best only a recognition of an existing fact.

As held in ***Corporate Educational Agency* v. *James Mathew***[20], the certificate of the declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence.

(ii) The fundamental rights cannot be waived as held in ***Olga Tellis* v. *Bombay Municipal Corporation***[21], and in ***K.S. Puttaswamy* v. *Union of India***[22].

(iii) The linguistic minority status would have to be determined State-wise, as held in ***D.A.V. College* v. *State of Punjab***[23], and upheld in *T.M.A. Pai* (supra).

Finally, the Hon'ble Court referred to the cases of ***Bal Patil* v. *Union of India***[24], and ***Brahmo Samaj Education Society* v. *State of West Bengal***[25], and held as follows :-

> **39.** There can be no doubt that qua the State of West Bengal, Sikhs are a linguistic minority vis-à-vis their language, namely, Punjabi, as against the majority language of the State, which is Bengali. The argument of the learned counsel appearing on behalf of the State that the school is, in fact, teaching in the Hindi medium is neither here nor there. What is important is that the fundamental right under Article 30 refers to the "establishment" of the school as a linguistic minority institution which we have seen is very clearly the case, given paragraphs 5(a) and 5(b) of letter dated 19th April, 1976. **Therefore, the medium of instruction, whether it be Hindi, English, Bengali or some other language would be wholly irrelevant to discover as to whether the said school was founded by a linguistic minority for the purpose of imparting education to members of its community.** This argument also, therefore, must be rejected.
>
> (emphasis supplied)

[20] (2017) 15 SCC 595 .
[21] (1985) 3 SCC 545.
[22] (2017) 10 SCC 1.
[23] (1971) 2 SCC 261.
[24] (2005) 6 SCC 690.
[25] (2004) 6 SC 224.

9. *Central Bureau of Investigation (CBI) etc. v. Pramila Virendra Kumar Agarwal and Another, 2019 SCC OnLine SC 1265.*

Decided on : -25.09.2019

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

(The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial.)

Facts

The brief facts are that the first respondent, namely, Smt. Pramila Virendra Kumar Agarwal and Shri Virendra Kumar Agarwal were charged under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('P.C. Act' for short) and Section 109 of IPC. The respondent No. 1 is the wife of the respondent No. 2. They were charged as accused No. 2 and accused No. 1 respectively and are proceeded against in CBI, ACB Special Case No. 21/2010. In the said proceedings both the accused filed separate applications seeking their discharge. The application of accused No. 1 Shri Virendra Kumar Agarwal was registered as Exhibit 13 while that of accused No. 2 Smt. Pramila Virendra Kumar Agarwal was registered as Exhibit 20. The Special Court on consideration of the application for discharge allowed the application of accused No. 1 - Shri Virendra Kumar Agarwal through the order dated 15.01.2013 and discharged him from the offences charged against him under the FIR. Insofar as the application filed by accused No. 2 - Smt. Pramila Virendra Kumar Agarwal the Special Court through the order dated 22.02.2013 had rejected the application.

In that background the appellant herein - CBI claiming to be aggrieved by the discharge of accused No. 1 had filed the Criminal Revision Application No. 284/2013 before the High Court. The accused No. 2, Smt. Pramila Virendra Kumar Agarwal claiming to be aggrieved by the rejection of her application for discharge had filed the Criminal Revision Application No. 323/2013 before the High Court. Since both the Criminal Revision Applications were arising out of the same proceedings before the Special Court, in Special Case No. 21/2010, the High Court had clubbed and considered the same and disposed of through the common order dated 14.12.2015 by which the Revision Application of the accused No. 2 was allowed while the Revision Application of the appellant herein assailing the discharge of accused No. 1 was dismissed. It is in that light the appellant herein – CBI instituted these appeals assailing the said common order dated 14.12.2015.

Observations and Decision

One of the main issues *inter alia* was related to the validity of sanction regarding which the Hon'ble Court held as follows :-

> **13.** Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction

being defective. In that regard, the decision in the case of *Dinesh Kumar* v. *Chairman, Airport Authority of India*, (2012) 1 SCC 532 relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. **The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial.** In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial.

10. State of Rajasthan v. Sahi Ram, 2019 SCC OnLine SC 1267

Decided on : -27.09.2019

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

(In cases related to NDPS, if the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before the Court and in such a case, the non-production would not be fatal to the prosecution.)

Facts

On receiving source information on 20.06.2006 that in a white coloured Tavera, three persons were coming from Madhya Pradesh along with contraband material namely poppy straw and were proceeding towards Jodhpur, the information was reduced to writing and a copy was immediately forwarded to the superior officers in terms of requirements of Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the NDPS Act").

A team was thereafter constituted which reached the Railway crossing near petrol pump Nimbahera. Two private persons named Kishan Lal and Chaman Lal were asked to associate as Panchas. At 9.40 AM, the vehicle was seen coming from Neemuch and was stopped. The vehicle was being driven by the respondent while the other two occupants were identified as Sohan and Kanhaiya Lal. After following mandatory requirements under the provisions of the NDPS Act, the vehicle was searched, during which seven bags of poppy straw, the gross weight being 223 kgs were found behind the driver's seat. From every bag two samples of 500 grams were taken and two such samples were sealed. Remaining quantity of 2500 grams was put in a separate pouch. The bags weighing about 223 kgs were also sealed. Punchnama to that effect was recorded which bore the signatures of the respondent and other persons.

After completing investigation, charge-sheet was filed against the respondent and against said Sohan and Kanhaiya Lal for the offence punishable under Section 8 read with 15 of the NDPS Act while the investigation was kept pending against one Shyam Sunder, his wife Vimla, the owners of the vehicle and one Pappu Raja. By Order dated 25.05.2015, said Sohan and Kanhaiya Lal were marked as absconding accused in the trial.

The prosecution examined eighteen witnesses in support of its case. PW15, Surender Singh, from Police Station Nimbahera had entered the information in Rojnamcha and had intimated the superior officials. After considering the relevant evidence on record, the Special Judge, NDPS Case No. 2, Chittorgarh vide judgment dated 01.08.2015 found that the case was established against the respondent herein and he was convicted for offence punishable under Section 8 read with 15 of the NDPS Act. By a separate order of even date, the respondent was sentenced to suffer rigorous imprisonment for fifteen years and to pay fine of Rs. 1,50,000/-; in default whereof he was directed to suffer further rigorous imprisonment for one year.

The respondent being aggrieved filed S.B. Criminal Appeal No. 774 of 2015 before the High Court. Only one ground was urged in support of the appeal that the Muddamal i.e., contraband material in question was not produced before the Court and that the evidence on record did not support the case about the seizure and recovery of 223 kgs. of contraband. The High Court accepted the submission and concluded that only two samples-packets and one bag of poppy straw weighing 2.5 kg were produced and exhibited while the entire contraband material was not produced and exhibited. Relying on the decisions of the Supreme Court in ***Noor Aga* v. *State of Punjab***[26], ***Jitendra* v. *State of Madhya Pradesh***[27], ***Ashok alias Dangra Jaiswal* v. *State of Madhya Pradesh***[28] and ***Vijay Jain* v. *State of Madhya Pradesh***[29] it was observed that failure to exhibit Muddamal and contraband material was fatal to the case of prosecution. This order of the High Cpurt had been assailed in the present case.

Observations and Decision

The Hon'ble referred to the cases relied upon by the Hon'ble High Court in arriving at its decision and after analyzing the judgments, the Hon'ble Supreme Court held :-

> **18.** It is true that in all the aforesaid cases submission was advanced on behalf of the accused that failure to produce contraband material before the Court ought to result in acquittal of the accused. However in none of the aforesaid cases said submission singularly weighed with this Court to extend benefit of acquittal only on that ground. As is clear from decision of this Court in *Jitendra*, apart from the aforesaid submission other facets of the matter also weighed with the Court which is evident from paras 7 to 9 of the decision. Similarly in *Ashok*, the fact that there was no explanation where the seized substance was kept (para 11) and the further fact that there was no evidence to connect the forensic report with the substance that was seized, (para 12) were also relied upon while extending benefit of doubt in favour of the accused. Similarly, in *Vijay Jain*, the fact that the evidence on record did not establish that the material was seized from the appellants, was one of the relevant circumstances. In the latest decision of this Court in *Vijay Pandey*, again the fact that there was no evidence to connect the forensic report with the substance that was seized was also relied upon to extend the benefit of acquittal.
>
> **19.** It is thus clear that in none of the decisions of this Court, non-production of the contraband material before the Court has singularly been found to be sufficient to grant the benefit of acquittal.

Based on this observation, the Hon'ble Court held that the conclusion drawn by the High Court was completely unsustainable and it erred in extending the benefit of doubt to the accused. The Hon'ble Court held :-

> **20.** Turning to the facts in the present matter, the evidence of PW15 Surender Singh shows that from and out of 7 bags of poppy husk, samples weighing about 500 grams were taken out of each bag. Out of these 3500 grams thus taken out, two samples of 500 grams were

[26] (2008) 16 SCC 417.
[27] (2004) 10 SCC 562.
[28] (2011) 5 SCC 123.
[29] (2013) 14 SCC 527.

independently sealed while rest 2500 grams were also sealed in a separate pouch. These samples were marked A, B and C respectively. The bags were also independently sealed and taken in custody and Exbt-5 seizure memo which recorded all these facts was also signed by the accused. We have gone through the cross-examination of the witness. At no stage even a suggestion was put to the witness that either the signatures of the accused were taken by fraud, coercion or mis-representation or that the signatures were not of the accused or that they did not understand the purport of the seizure memo. It would therefore be difficult to even suggest that the seizure of contraband weighing 223 kgs was not proved by the prosecution. In our view this fact stood conclusively proven.

21. ***If the seizure of the material is otherwise proved on record and is not even doubted or disputed the entire contraband material need not be placed before this Court. If the seizure is otherwise not in doubt, there is no requirement that the entire material ought to be produced before the Court. At times the material could be so bulky, for instance as in the present material when those 7 bags weighed 223 kgs that it may not be possible and feasible to produce the entire bulk before the Court. If the seizure is otherwise proved, what is required to be proved is the fact that the samples taken from and out of the contraband material were kept intact, that when the samples were submitted for forensic examination the seals were intact, that the report of the forensic experts shows the potency, nature and quality of the contraband material and that based on such material, the essential ingredients constituting an offence are made out.***

22. In the aforesaid premises the conclusion drawn by the High Court was completely unsustainable and the High Court erred in extending the benefit of acquittal to the respondent. We, therefore, allow this appeal, set aside the view taken by the High Court and restore the order of conviction as recorded by the trial court against the respondent in its judgment and order dated 01.08.2015. The minimum sentence of imprisonment for the offence punishable under Section 8 read with 15 of the NDPS Act is 10 years.

23. Considering the facts on record, in our view the appropriate sentence would be Rigorous Imprisonment for 10 years as substantive sentence. We order accordingly, keeping the other parts of sentence namely sentence of fine and sentence in default of payment of fine as ordered by the trial court, intact and unchanged.

(emphasis supplied)

11. *Guru alias Gurubaran and Others v. State Rep. by Insp. of Police, 2019 SCC OnLine SC 1269*

Decided on : -27.09.2019

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

(The fact that the accused persons came armed, the benefit of Exception 4 of Section 300 cannot be extended to them because even if it is assumed that they may not have come with the intention of killing, the fact that they were armed, clearly indicates that the occurrence did not take place in the heat of passion, upon a sudden quarrel.)

Facts

This appeal was filed by Accused Nos. 1, 2, 3, 5 and 9 against the judgment of the High Court whereby Guru @ Gurubaran (A-1) and Durai @ Durairajan (A-2) had been convicted under Section 302, Indian Penal Code (IPC). As far as Vettri @ Vetrivell (A-3) is concerned, he was convicted under Section 324 IPC on two. Narayanan (A-5) and Srinivasan (A-9) along with other accused were convicted under Section 323 IPC. All the sentences were to run concurrently.

The prosecution case is that Parasuraman (PW-14), son of deceased Saroja and Munusamy Pillai (PW-1), was in love with Uma, the younger sister of A-1. They both got married and after the marriage, PW-14 lived in his wife's house. However, Saroja (deceased) did not approve of this. Thereafter, PW-14 came back to his house. On 03.03.1998, it is alleged that Jayaraman (A-4) assaulted Nagarajan (PW-2), brother of Saroja and brother-in-law of PW-1. To settle the dispute, a Panchayat was called the next day. It is admitted that this Panchayat was called at the instance of A-1. The Panchayat was to be conducted in the evening. However, since the Pradhan of the Panchayat was indisposed, the Panchayat could not be held. Thereafter, PW-2, his sister Saroja (deceased), his wife Rani (PW-7), Murugan (PW-13) and Naveen Kumar, son of PW-2 and PW-7 stood outside the house of PW-2 talking amongst themselves. According to him, PW-13 had come to the village because of the Panchayat. While they were standing there, A-1 came armed with a sickle (*Koduval*), A-2 armed with an Iron Pipe, A-3 armed with a sickle (*Koduval*) and A-4 to A-9 carrying thick wooden staffs in their hands. It is alleged that A-1 attacked deceased Saroja with a sickle on the front portion of her head and said that it was only because of her that the younger sister of A-1 has to live separately from her husband. A-2 gave a blow on the back of the neck of Saroja with an iron pipe. The other accused are alleged to have attacked Saroja with wooden staffs in their hand. When the family members of Saroja tried to protect her, all the 9 accused surrounded her and, as such, they could not protect her. According to the eye-witnesses, they were also attacked by the members of the aggressive party. The version of all the eyewitnesses is similar.

However, there were some discrepancies with regard to the manner in which the said incident took place. According to PW-1, on the date of Panchayat, first a verbal altercation took place between the two sides and then the attack took place whereas, according to PW-2 and some of

the other eye-witnesses, the attack took place without any provocation. The Hon'ble Supreme Court was of the considered view that for the purpose of deciding this appeal, it can even presume that there was some verbal altercation between the two sides.

The occurrence was not denied. The main defence was that there was a free fight on both sides and that there is no evidence to show that there is prior meeting of minds. The accused had not been convicted under Section 34 or Section 149 IPC and, therefore, each individual accused can only be convicted for the injury attributed to that individual.

The doctor states that these injuries caused the death. The first injury was a lacerated wound and it was urged that this injury could not have been caused by sickle (*Koduval*), which is a sharp-edged weapon. A sickle is an instrument mainly meant for cutting grass and crops. The inner side is sharp but the outer side is blunt. While using it as an instrument of agriculture only, the sharp edge is used but while using it as a weapon of offence, more often than not, it will be the outer side which will be used to hit the victim. The doctor had opined that the injury could have been caused by a sickle which is MO-1 and, therefore, according to the Hon'ble Supreme Court, the medical evidence fully corroborated the version of all the eyewitnesses.

It was next urged that the offence was not of murder but may amount to culpable homicide not amounting to murder. It had been urged that the case would fall within Exception 4 to Section 300 IPC.

Observations and Decision

Regarding the benefit of Exception 4 to Section 300, the Hon'ble Court observed :-

> **7. We are of the view that the accused cannot take benefit of this Exception. It has come in evidence that all the accused persons came armed. Two were armed with sickles, one with an iron pipe and the other with wooden staffs. Even if it is assumed that they may not have come with the intention of killing, the fact that they were armed, clearly indicates that the occurrence did not take place in the heat of passion, upon a sudden quarrel.** As pointed out above, both sides were coming to attend a Panchayat to settle a dispute. Where was the need to carry arms if the intention was only to settle a dispute? Even otherwise, we feel that Exception 4 is not applicable because the manner in which the blow was given right on the middle of the head, brings this case squarely within clause "Fourthly" of Section 300 IPC, which reads as follows:
>
> "**300. Murder** - xxx xxx xxx
>
> Secondly - xxx xxx xxx
>
> Thirdly - xxx xxx xxx
>
> Fourthly - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

8. A-1 should have known that the act which he is performing, of hitting the deceased on the head with a sickle with such great force causing fracture of the skull, is so dangerous that it would have imminently caused death. Therefore, we find no reason to alter the sentence or conviction of Guru @ Gurubaran (A-1).

(emphasis supplied)

Regarding the conviction of Durai @ Durairajan (A-2), the Hon'ble Court held :-

9. However, as far as Durai @ Durairajan (A-2) is concerned, since the High Court has held that neither Section 34 nor Section 149 IPC are applicable, each accused will only be responsible for his own acts and injuries. In this behalf, reference was made to a judgment of this Court in the case of *Atmaram Zingaraji* v. *State of Maharashtra*. There is no appeal by the State. As far as A-2 is concerned, he is alleged to have given a blow with an iron pipe on the back of the neck of the deceased. This resulted in injury numbers 2 and 3. They are merely abrasions and could not have caused death. Therefore, the accused can only be held guilty of having committed the offence under Section 324 IPC. He has already undergone imprisonment for around 11 years and, therefore, his conviction under Section 302 IPC is altered to Section 324 IPC and the sentence is reduced to the period of incarceration already undergone.

12. *Director of Elementary Education, Odisha and Others v. Pramod kumar Sahoo, 2019 SCC OnLine SC 1259*

Decided on : -26.09.2019

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

(Neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions)

Facts

The respondent was appointed under the Rehabilitation Assistance Scheme bearing order dated August 06, 1988 after death of his father Basanta Kumar Sahoo. He joined on August 10, 1988 as Primary School Teacher in pursuance of the said order in the pay scale of Rs. 780/- - Rs. 1140/- with D.A. as admissible. The respondent has intermediate qualification at that time and had appeared for B.A. examination when he was appointed as Primary School Teacher against the Matric Teachers Certificate Post. The said pay scale is payable to Untrained Teachers having Matric qualification, whereas pay scale of Rs. 840/- - Rs. 1240/- is the pay scale granted to Trained Matric Teachers.

The Orissa Revised Scales of Pay (Amendment) Rules, 1990 were published by the Government of Odisha on September 12, 1990 amending the Orissa Revised Scales of Pay Rules, 1989. The aforesaid Amendment Rules of 1990 laid down a separate scale of pay for all posts of Trained Matric Teachers and non-Trained Matric Teachers. Thereafter, a corrigendum was issued on August 27, 1992 stating the scales of pay for the Untrained Intermediate Teacher and Trained Matric Teacher.

The respondent claimed that he is entitled to pay scale of Rs. 840/-- Rs. 1240/- from the very day of his appointment and pay scale of Rs. 1080-1800 after Orissa Revised Scales of Pay Rules, 1989 as amended in the year 1990. Since the said pay scale was not granted to him, he invoked the jurisdiction of the Tribunal when he filed O.A. No. 831(C) of 1998. The basis of argument is that he is intermediate and, thus, he is to be treated as a Trained Teacher which will entitle him to the pay scale of Rs. 1080/- - Rs. 1800/-.

Before the learned Tribunal, the counsel for the appellant conceded that the Teachers having intermediate qualification are entitled to the scale of pay as is available to Trained Matric Teachers. On the basis of such concession, the learned Tribunal allowed the Original Application on February 19, 2010.

The appellant filed an application, inter alia, on the ground that wrong submission was made by the counsel for the appellant. Such application was dismissed on the ground that the remedy of the appellant was either by filing an application of review or modification but since such application has been filed after two years of the order having been passed by the Tribunal, the same was dismissed on the ground of laches as well as there is no error apparent on the face of the order. Thereafter, the appellant filed the review petition which was dismissed on

January 22, 2015. It is thereafter the writ petition was filed which was dismissed by the High Court of Orissa vide the order impugned in the present appeal.

Observations and Decision

It was the contention of the Appellant that the concession given by the State counsel before the Tribunal was erroneous concession in law and, does not bind the appellant. Reference was made to ***Himalayan Coop. Group Housing Society v. Balwan Singh***[30] herein, the Supreme Court had held as under:

> "32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions...."
>
> (emphasis supplied)

The Hon'ble Court also referred to the cases of ***Shyam Babu Verma v. Union of India***[31] and ***M.P. Rural Agriculture Extension Officers Association v. State of M.P.***[32] and held :-

> 11. The concession given by the learned State Counsel before the Tribunal was a concession in law and contrary to the statutory rules. Such concession is not binding on the State for the reason that there cannot be any estoppel against law. The rules provide for a specific Grade of Pay, therefore, the concession given by the learned State Counsel before the Tribunal is not binding on the appellant.
>
> 12. The Trained Matric Teacher is the one who has been trained for the purposes of teaching. In the absence of such training, the respondent cannot be said to be a Trained Matric Teacher entitled to the pay scale meant for such teachers. The classification based upon educational qualification for grant of higher pay scale to a trained person or a person possessing higher qualification is a valid classification.....

Based on the observations made hereinabove, the Hon'ble Court allowed the appeal and held that the order passed by the Tribunal as affirmed by the High Court is not sustainable in law.

[30] (2015) 7 SCC 373.
[31] (1994) 2 SCC 521.
[32] (2004) 4 SCC 646.

13. Hemkunwar Bai v. Sumersingh and Others, Cvil Appeal No. 8827/2011

Decided on : -25.09.2019

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

The witnesses need not necessarily know what is contained in the documents at the time of signing the document as witness.

ORIGINAL ORDER OF THE HON'BLE COURT

This appeal is directed against the judgment of the High Court whereby it reversed the judgment and decree of the Trial Court decreeing the suit of the plaintiff - appellant before us. Devisingh was the original owner of the suit property. On the death of Devisingh in the year 1961, the property was mutated in favour of his widow Ratankuwarbai in terms of the Madhya Pradesh Land Revenue Code.

On 06.04.1995, Ratankuwarbai executed two sale-deeds [Exhibit D-1 and D-2] in favour of her nephews - Manohar Singh and Sumer Singh. On the same day, as far as his entire remaining property which was not the subject matter of the two sale deeds, she executed a Will in favour of Inder Singh. It would be pertinent to mention that Manohar Singh, Sumer Singh and Inder Singh are real brothers being the sons of sister of Devisingh.

It is an admitted fact that Ratankuwarbai was suffering from throat cancer and had undergone some treatment and a document dated 17.04.1995 has been placed on record. Unfortunately, Ratankuwarbai expired on 21.07.1995. Soon thereafter, on 18.09.1995 Hemkuwarbai filed a civil suit for declaration that the two sale-deeds and the Will are sham and fraudulent documents and not binding upon her. She claimed to be in possession of the property and she prayed for a declaration that she be declared to be the owner in possession of the suit property and also prayed that the respondents be injuncted from interfering in her possession. The defendants contested the suit and the entire defence is based on the sale deeds and the Will being validly executed documents.

Both sides led evidence and the Trial Court, on consideration of the evidence, came to the conclusion that the defendants had failed to prove the source of the consideration for the sale deeds and transfer of the consideration to Ratankuwarbai. There were also some discrepancies with regard to time as to when the possession of the suit property was allegedly handed over to the defendants. There are some other discrepancies pointed out but those are minor in nature.

The main issue is whether Ratankuwarbai, who was an illiterate lady and suffering from cancer, has executed these documents or not. The defendants examined Antar Singh and Laxman Singh who are witnesses to all the three documents. As far as Laxman Singh is concerned, he clearly stated that at the time of registration of the sale-deeds and the Will, the

sub-Registrar concerned had read out the subject matter of the three documents in short to Ratankuwarbai. He also heard the sub-Registrar at that time. It has been contended that both these witnesses have stated that they were not aware of the contents of the documents, when they signed as witnesses. The witnesses need not necessarily know what is contained in the documents. Furthermore, when these witnesses state that the sub-Registrar had told the gist of the documents to the deceased then they become aware of the nature of the documents at the time of registration thereon. In fact both Antar Singh and Laxman Singh had deposed with regard to transfer of the consideration.

We are not going into the factual aspect of the matter at this stage which is in the nature of the second appeal. The findings were given by the Trial Court which findings have been upset by the High Court. It may be possible to urge both the views but it cannot be said that the finding of the High Court is a perverse finding which could not be given in the facts and circumstances of the case. On the basis of the evidence, the High Court has taken a view which is a possible view. This Court in second appeal does not ordinarily enter into factual aspect of the matter and therefore, we find no merit in the appeal and the same is accordingly dismissed.

The Receiver appointed is discharged and he shall give accounts as per the order of the Trial Court.