JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(October 14-October 31, 2019)

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TABLE OF CONTENTS

1. *Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another, (2019 SCC OnLine SC 1346)*

Decided on : -16.10.2019

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

(To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice.)

Issue

Whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.

Decision and observations

The Apex Court stated that the erstwhile Code of Criminal Procedure, 1898 did not contain a provision by which the police were empowered to conduct a further investigation in respect of an offence after a police report under Section 173 has been forwarded to the Magistrate. With the introduction of Section 173(8) in the CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. This power continues until the trial can be said to commence in a criminal case.

Section 156(3) has remained unchanged even after the advent of the CrPC of 1973. Thus, relying on *State of Bihar* **v.** *J.A.C. Saldhana*,[1] and *Sakiri Vasu* **v.** *State of U.P.*,[2] , the Apex Court stated:

> **27.** It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all

[1] (1980) 1 SCC 554
[2] (2008) 2 SCC 409

> powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, ***the "investigation" referred to in Section 156(1) of the CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.***

However, in ***Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy***,[3] it was stated that the power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in *seisin* of the case. The Apex court then stated that the opinion in ***Devarapalli Lakshminarayana Reddy* v. *V. Narayana Reddy*** cannot be relied upon.

> **30.** Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference - that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h).
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> **31.** Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in *Devarapalli Lakshminarayana Reddy* (supra) cannot be relied upon.

[3] (1976) 3 SCC 252

The Apex court after referring to ***Bikash Ranjan Rout* v. *State through the Secretary (Home), Government of NCT of Delhi,***[4] and other cases stated:

> **49.** There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri* (supra), *Samaj Parivartan Samudaya* (supra), *Vinay Tyagi* (supra), and *Hardeep Singh* (supra); *Hardeep Singh* (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. ***To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out.*** There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* (supra). Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel* (supra), *Athul Rao* (supra) and *Bikash Ranjan Rout* (supra) have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana* v. *State (Delhi Administration)*, (1997) 1 SCC 361 and *Reeta Nag* v. *State of West Bengal*, (2009) 9 SCC 129 also stand overruled.

The Apex Court set aside the impugned High Court judgment insofar as it stated that post-cognizance the Magistrate is denuded of power to order further investigation.

[4] (2019) 5 SCC 542

2. *Shiv Kumar and Another v. Union of India and Others, (2019 SCC OnLine SC 1339)*

Decided on : -14.10.2019

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

(Whether a purchaser of the property after issuance of notification under section 4 of the Land Acquisition Act, 1894 can invoke the provisions contained in section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013)

Facts

A Notification, dated 27.10.1999, was issued for the acquisition of the land situated in the revenue estate of Village Pansali, Delhi, for the public purpose of the Rohini Residential Scheme under planned development of Delhi. It was followed by the declaration under section 6 issued on 3.4.2000. Possession was taken on 12.5.2000. Subsequently, the petitioners purchased the land on 5.7.2001 by way of Registered Sale Deed executed by one Satya Narain, the Power of Attorney holder of original owners. The purchasers then participated in the proceedings for the determination of compensation under sections 9 and 10 of the 1894 Act. The award was passed on 3.4.2002. In the meanwhile, an unauthorized colony came up with the name of Deep Vihar, Pansali, Pooth Kalan, Delhi. The petitioners claimed that they continued in the actual physical possession of the land even after passing of the award on 17.09.2008 and the same formed part of the unauthorized colony. The Government of NCT of Delhi provisionally regularised the colony. The Act of 2013 came in force from 1.1.2014. The respondents never took the actual physical possession of the land; as such, the acquisition has lapsed. The purchasers/petitioners filed a writ petition at the High Court of Delhi. A Division Bench of the High Court has dismissed the writ application.

Decision and Observations

The Apex Court adverted to the legal position concerning the purchases made on 5.7.2001, made after notification under Section 4 had been issued under the Act of 1894. The Apex Court was of the opinion that as settled in so many cases, an incumbent, who

has purchased the land after section 4 notification, has no right to question the acquisition.

On this point the Apex Court referred to ***U.P. Jal Nigam, Lucknow through its Chairman* v. *Kalra Properties (P) Ltd., Lucknow***,[5] ***Sneh Prabha (Smt.)* v. *State of U.P.***,[6] wherein it has been laid down that subsequent purchaser cannot take advantage of land policy. Also, in ***V. Chandrasekaran* v. *Administrative Officer***,[7] the Court has considered various decisions and opined that the purchaser after Section 4 notification could not challenge land acquisition on any ground whatsoever. Later, in ***Rajasthan State Industrial Development and Investment Corpn.* v. *Subhash Sindhi Cooperative Housing Society, Jaipur***,[8] it has been laid down that purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. The Apex Court stated:

> **"14.** It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the Policy."

The Apex Court then referred to Section 24 of the Act of 2013, which deals with land acquisition made under the Act of 1894.[9] Section 24(2) provides that in case the award has

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[5] (1996) 3 SCC 124
[6] (1996) 7 SCC 426
[7] (2012) 12 SCC 133
[8] (2013) 5 SCC 427
[9] "**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases** - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, —

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken, or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made, and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

been passed five years or more prior to the commencement of the Act, but the physical possession of the land has not been taken, or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. The Apex Court stated that it is not the case set up that compensation had not been paid to purchasers/owners. The only case set up is that physical possession has not been taken and proceedings of taking over possession have been questioned to take advantage of provisions under Section 24(2) of the Act of 2013. Whereas, averment in the writ petition itself indicates that possession had been taken over in the year 2000 and that unauthorized colonies have come up in the area. The Apex Court stated:

> "**26.** [...] Thus, it is clear that possession, if any, is illegal, and in fact, the actual physical possession had been taken, and re-entering in possession in an unauthorized manner can confer no right. There is nothing to doubt that actual physical possession had been taken in 2000. Thus, Section 24(2) is not attracted in the case."
>
> **27.** Even otherwise, proviso to Section 24(2) does not recognize a purchaser after Section 4 notification inasmuch as it provides that where an award has been made, and the compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the Act of 1894, shall be entitled to compensation under the provisions of the Act of 2013. The proviso makes it clear that in case of compensation concerning the majority of landholding has not been deposited, then recorded owner(s) at the time of issuance of notification under section 4 of the Act of 1894 shall have the right to receive the compensation. Purchasers after section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the act of 2013
>
> **28.** The Act of 2013 presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after section 4 notification as sale deed is void under the Act of 1894, cannot claim rehabilitation and resettlement as per policy envisaged under the Act of 2013, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to section 24(2) under the Act of 2013.
>
> **29.** Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim 'possession' and challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void

transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

30. ***Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought under section 24(2) by such incumbents to obtain the land***. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is *ab initio* void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

31. 'Void is, *ab initio*,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights under section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in *U.P. Jal Nigam* (supra) which is followed in *M. Venkatesh* (supra) and other decisions and consequently claim declaration under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

(emphasis supplied)

The Apex court in paragraph 34 of the judgment also considered the fact that the claims have been made on the transactions based on the power of attorneys and referred to ***Suraj Lamp and Industries Pvt. Ltd. through Director* v. *State of Haryana,***[10] wherein the Court has considered the question of the validity of transactions in the form of power of attorney and has held that no rights could be accrued on such transactions as this is not a legal mode of transfer. Therefore, the Apex Court held that No right can be claimed based on a transfer made by way of execution of Power of Attorney, Will, etc., as it does not create any interest in immovable property.

[10] (2012) 1 SCC 656

3. *Ebha Arjun Jadeja and Others v. State of Gujarat, (2019 SCC OnLine SC 1349)*

Decided on : -16.10.2019

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

(The bar under Section 20-A(1) of TADA Act applies to information recorded under Section 154 of CrPC)

Facts

Appellant no. 1, Ebha Arjun Jadeja, was wanted in a criminal case registered against him under Section 25(1B)(a) and 27 of the Arms Act, 1959 and under Section 3 and 5 of TADA Act etc. The prosecution version is that on 10.04.1995 when Police Inspector along with some other police personnel was doing night round, he received some information that appellant no. 1, who was absconding in Crime No. II-3/1994, was coming to his village in a motor vehicle. The vehicle was asked to stop. Accused no. 1 was found sitting on the driver's seat. The police cordoned the motor vehicle in which two other persons (appellant nos. 2 and 3) were also sitting. All these three persons were asked to get down and disclose their identities. On making personal search of these three persons, recoveries were made of the arms. The three accused persons could not produce any licence and the arms were seized. Though the first information report (FIR) was recorded under the Arms Act, in the very same FIR, the officer also recorded as follows:

> "One 9 MM semi automatic prohibited foreign made pistol and its cartridges loaded in it and Japan made revolver and its cartridges in a loaded condition were found from Mer Ebha Arjan. Out of which, it becomes from the smell coming from the barrel of the pistol and box that the same is used before some time for firing. From the two persons with Jadeja Ebha Arjan, namely, Mer Bachu Bhima and Mer Keshu Chana also, two country made tamanchas are found and Mer Ebha Arjan is a gang leader of gundas in Porbandar area and in that circumstances, the persons as above are found in an Ambassador car no. GJ-M-8905 and it appears that they are going to commit any terrorist activity and so all the three persons were legally arrested for the offence under Sections 25(1)(Ba), 27 of the Arms Act and Section 135 of the Bombay Police Act and motor car Ambassador no. GJM-8905 valuing at Rs. 100000/- was also seized in this case.
>
> Hence, it is my complaint against them for the offence under Sections 25(1)(BA), 27 of the Arms Act and Section 135 of the Bombay Police Act. My witnesses are panchas with me and the police personnel and others who are found during the investigation.
>
> The above persons were found in possession of weapons and cartridges from out of the weapons and explosives mentioned in Arms Rules 1962 Schedule-1 Class-

> 1 and Class-3(A) Column no. 2 and 3 in public area and hence, as the offence under Section 5 of TADA Act is also made out and so, arrangement is made for obtaining the sanction of the District Superintendent of Police, Porbandar under Section 20(A)(1) of the Act, by making a report along with copies of the panchnama and F.I.R. and identification sheets of the accused."

Thereafter on the same day i.e. 10.04.1995, the District Superintendent of Police granted sanction to add Section 5 of TADA Act to the offences already registered. The grievance of the appellants is that in terms of Section 20-A(1) of TADA Act, no information about commission of offence under the Act could have been recorded without approval of the District Superintendent of Police. Therefore, it is contended that the entire initiation of the action wherein the Crime No. II.28/1995 was recorded without sanction of the District Superintendent of Police, vitiates the entire proceedings in so far as they have been initiated under TADA Act. The appeal by the accused is directed against the order passed by the Designated TADA Court whereby the application filed by the accused that they should be discharged due to non-compliance of Section 20-A(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act") was dismissed.

Decision and Observations

The provisions of Section 20-A(1) of TADA Act[11] are mandatory. It starts with a non-obstante clause. It forbids the recording of information about the commission of offence under TADA Act by the police without prior approval of the District Superintendent of Police. If Section 20-A(1) of TADA Act is not complied with, then it vitiates the entire proceedings.On this point the Apex Court referred to ***Rangku Dutta @ Ranjan Kumar Dutta v. State of Assam***[12]. In ***Ashrafkhan v. State of Gujarat***[13] while dealing with the issue of the consequences of non-compliance of Section 20-A(1) of TADA Act it was held that non-compliance of Section 20-A was not a curable defect and could not be cured in terms of Section 465 of Code of Criminal Procedure, 1973 (CrPC). Thereafter in ***Hussein***

[11] "**20-A.** ***Cognizance of offence.***—(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.
(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police."
[12] (2011) 6 SCC 358
[13] (2012) 11 SCC 606

Ghadially v. *State of Gujarat*[14] while dealing with Section 20-A of TADA Act it was held as follows:

> **"29.** The upshot of the above discussion, therefore, is that the requirement of a mandatory statutory provision having been violated, the trial and conviction of the petitioners for offences under TADA must be held to have been vitiated on that account....."

Further, the Apex Court stated that information will have to be given to the District Superintendent of Police but this information can be in the nature of a communication specifically addressed to the District Superintendent of Police and not in the nature of information being recorded in the Register or Book meant for recording of information under Section 154 of CrPC. The Apex Court then elaborated that what is prohibited under Section 20-A(1) of TADA Act is the recording of information. It can be presumed that the Legislature while introducing Section 20-A(1) in TADA Act was also aware of the provisions of Section 154 of CrPC. Therefore, the clear-cut intention was that no information of commission of an offence under TADA Act would be recorded by the police under Section 154 of CrPC without sanction of the competent authority. The reason why Section 20-A(1) was introduced into TADA Act in the year 1993 by amendment was that because the provisions of TADA Act were very stringent, the Legislature felt that a senior official should look into the matter to ensure that an offence under TADA is made out and then grant sanction. The Apex court then stated that each case has to be decided on its own facts and elaborated on various situations that may take place with regard to recording of information :

> **18.** The bar under Section 20-A(1) of TADA Act applies to information recorded under Section 154 of CrPC. This bar will not apply to a *rukka* or a communication sent by the police official to the District Superintendent of Police seeking his sanction. Otherwise, there could be no communication seeking sanction, which could not have been the purpose of TADA Act.
>
> **19.** Each case is to be decided on its own facts. The police official, not being the District Superintendent of Police, may receive information of commission of an offence and may reach the scene of a crime. He can record the information on the spot and then send a rukka to the police station for recording of FIR. There may be cases of serious offences like murder, rape, offences under Narcotic Drugs and Psychotropic Substances Act, 1985, Protection of Children from Sexual Offences (POCSO) Act, 2012 etc. where any delay in investigation is fatal. In these cases, the

[14] (2014) 8 SCC 425

police officer is entitled to record the information some of which may indicate an offence under TADA Act, also because non-recording of the information with regard to the main offence may delay the investigation and hamper proper investigation in the matter. In such cases, while recording the information and recording the FIR, for the offences falling under TADA Act, the police officials concerned can approach the District Superintendent of Police for sanction under Section 20-A(1) of TADA Act. The investigation in serious cases of murder, rape, smuggling, narcotics, POCSO Act etc. cannot be delayed only because TADA Act is also involved.

20. At the same time, where the information basically discloses an offence under TADA Act and the other offence is more in the nature of an ancillary offence then the information cannot be recorded without complying with the provisions of Section 20-A(1) of TADA Act. This will have to be decided in the facts of each case. In the case in hand, the only information recorded which constitutes an offence is the recovery of the arms. The police officials must have known that the area is a notified area under TADA Act and, therefore, carrying such arms in a notified area is itself an offence under TADA Act. It is true that this may be an offence under the Arms Act also but the basic material for constituting an offence both under the Arms Act and TADA Act is identical i.e. recovery of prohibited arms in a notified area under TADA Act. The evidence to convict the accused for crimes under the Arms Act and TADA Act is also the same. There are no other offences of rape, murder etc. in this case. Therefore, as far as the present case is concerned, non-compliance of Section 20-A(1) of TADA Act is fatal and we have no other option but to discharge the appellants in so far as the offence under TADA Act is concerned. We make it clear that they can be proceeded against under the provisions of the Arms Act.

21. As pointed out by us above, the situation may be different where, to give an example, the police official finds a dead body, sees that a murder has taken place, apprehends a person, who is running away after committing the murder and from that person a prohibited arm is recovered in a notified area. In such a situation, the main offence is the offence of murder and the offence of carrying a prohibited weapon in a notified area is the secondary offence under TADA Act. Here, the police official can record the information and arrest the person for committing an offence under Indian Penal Code, 1860 but before proceeding under TADA Act he will have to take sanction under Section 20-A(1) of TADA Act.

The Apex Court concluded:

22. In view of the above, the appeal is allowed, the order of the Designated TADA Court is set aside and the appellants are discharged from the offences under TADA Act but they may be proceeded against under other provisions of law, if required. Pending application(s), if any, stand(s) disposed of.

4. *John D'Souza v. Karnataka State Road Transport Corporation, (2019 SCC OnLine SC 1347)*

Decided on : -16.10.2019

Bench :- 1. Hon'ble Mr. Justice Sanjay Kishan Kaul
2. Hon'ble Mr. Justice Surya Kant

(The Labour Court or Tribunal while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment, for such a power can be exercised by the Labour Court or Tribunal only under Section 11A of the Act.)

Issue

Scope and ambit of the enquiry to be held by a Labour Court or Industrial Tribunal while granting or refusing approval for the discharge or dismissal of a workman under Section 33(2)(b) of the Industrial Disputes Act, 1947

Decision and Observations

The Apex court mentioned Section 10,[15] the Second schedule of the Act which lists the matters which fall within the jurisdiction of Labour Court, including the one at Sr. No. 3,

[15] "**10. Reference of disputes to Boards, Courts or Tribunals.**- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,-

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for enquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c);

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government."

i.e **Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed.** Chapter-IV lays down the procedure, powers and duties of different authorities for adjudication of the industrial disputes under Section 10 of Chapter-III. In this regard, Section 11(3) of the Act vests the Board, Labour Court and Tribunal the powers of a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, for the purpose of securing evidence.[16] Section 11A of the Act unequivocally empowers the Labour Court, Tribunals and National Tribunals to set aside the order of discharge or dismissal of a workman and direct his reinstatement on such terms and conditions, as it thinks fit, or to award any lesser punishment in lieu of such discharge or dismissal, provided that the Labour Court or the Tribunal, as the case may be, is satisfied that the order of discharge or dismissal, was not justified. Section 33 (2) is relevant here.[17]

The Apex Court stated:

> **22.** The composite Scheme of the Statute bears out that when an 'industrial dispute' pertaining to "Discharge or 'dismissal' of workmen including reinstatement of or 'grant of relief' to workmen wrongfully dismissed" arises (See Sr. No. 3 of Second Schedule), such dispute is referable for adjudication to the

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[16] "**11. Procedure and power of conciliation officers, Boards, Courts and Tribunals.-**

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(3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath;
(b) compelling the production of documents and material objects;
(c) issuing commissions for the examination of witnesses;
(d) in respect of such other matters as may be prescribed,

and every inquiry or investigation by a Board, Court, [Labour Court, Tribunal or National Tribunal] shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)."

[17] **"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-**

(1) …..
(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman]-
(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Labour Court in exercise of the jurisdiction vested in it under Section 10(1)(c) of the Act. The Labour Court shall have the powers of Civil Court to secure evidence for deciding such dispute. Most importantly, the doctrine of proportionality is statutorily embedded in Section 11A of the Act, which further empowers the Labour Court, subject to its satisfaction, to set aside the order of discharge or dismissal and reinstate a workman on such terms and conditions as it thinks fit or to award a lesser punishment in lieu thereof. All such awards or orders are enforceable under the Act.

23. The Legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and 11A of the Act, for adjudication of an 'industrial dispute' stemming out of an order of discharge or dismissal of a workman. Having done so, it can be safely inferred that neither the Legislature intended nor was there any legal necessity to set-up a parallel remedy under the same Statute for adjudication of the same 'industrial dispute' by the same Forum of Labour Court or Tribunal via Section 33(2)(b) of the Act. To say it differently, Section 33(2)(b) has been inserted for a purpose other than that for which Section 10(1)(c) and (d) have been enacted. Section 33(2)(b), thus, is neither meant for nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman.

Then the Apex court elaborated on the object behind the incorporation of section 33 in the following terms:

24. Having held so, it should not take long to trace out the legislative object behind incorporation of Section 33, including sub-section (2) thereof. The caption of Section 33 itself sufficiently hints out that the primary object behind this provision is to prevent adverse alteration in the conditions of service of a workman when 'conciliation' or any other proceedings in respect of an 'industrial dispute' to which such workman is also concerned, are pending before a Conciliation Officer, Board, Arbitrator, Labour Court or Tribunal. The Legislature, through Section 33(1)(a) and (b) has purposefully prevented the discharge, dismissal or any other punitive action against the workman concerned during pendency of proceedings before the Arbitrator, Labour Court or a Tribunal, even on the basis of proven misconduct, save with the express permission or approval of the Authority before which the proceedings is pending. Sub-section (2) of Section 33 draws its colour from sub-Section(1) and has to be read in conjunction thereto. Sub-section (2), in fact, dilutes the rigours of sub-section (1) to the extent that it enables an employer to discharge, dismiss or otherwise punish a workman for a proved misconduct not connected with the pending dispute; in accordance with Standing Orders applicable to the workman or in absence thereof, as per the terms of contract; provided that such workman has been paid one month wages while passing such order and before moving application before the Authority concerned 'for approval of the action'. In other words, the Authority concerned (Board, Labour Court or Tribunal, etc.) has to satisfy itself while considering the employer's application that the 'misconduct' on the basis of which punitive action has been taken is not the matter sub-judice before it and that the action has been taken in accordance with

the standing orders in force or as per terms of the contract. The laudable object behind such preventive measures is to ensure that when some proceedings emanating from the subjects enlisted in Second or Third Schedule of the Act are pending adjudication, the employer should not act with vengeance in a manner which may trigger the situation and lead to further industrial unrest.

25. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the Forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a nonexistent misconduct.

26. The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an 'industrial dispute' referrable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.

Regarding the scope of enquiry vested in a Labour Court or Tribunal under Section 33(2)(b), the Apex Court referred to following decisions such as ***Martin Burn Ltd.* v. *R.N. Bangerjee***[18], ***Punjab National Bank Ltd.* v. *Workmen***[19], ***Mysore Steel Works Pvt. Ltd.* v. *Jitendra Chandra Kar***[20], ***Lalla Ram* v. *D.C.M. Works Ltd***.[21] and held that:

32. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be

[18] 1958 SCR 514
[19] (1960) 1 SCR 806
[20] (1971) 1 LLJ 543
[21] (1978) 3 SCC 1

undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise *ratio - decendi* of the decisions of this Court in (i) *Punjab National Bank*, (ii) *Mysore Steel Works Pvt. Ltd.* and (iii) *Lalla Ram's cases* (supra).

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36. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act.

The Apex Court held:

40. The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment, as erroneously done in the instant case, for such a power can be exercised by the Labour Court or Tribunal only under Section 11A of the Act.

The Apex Court concluded:

41. Consequently, the Labour Court shall in the instant case re-visit the matter afresh within the limit and scope of Section 33(2)(b), as explained above and keeping in mind that the exercise in hand is not adjudication of an 'industrial dispute' under Section 10(1)(c) or (d) read with Section 11A of the Act. However, if the Labour Court finds that the domestic inquiry held against the appellant is suffering from one of the incurable defects as illustrated by this Court in *Mysore Steel Works Pvt. Ltd.* or *Lalla Ram's cases*, then it may look into the evidence adduced by the parties for the purpose of formation of its prima facie opinion.

5. *State of Punjab v. Baljinder Singh and Another, (2019 SCC OnLine SC 1408)*

Decided on : -15.10.2019

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

(If a person found to be in possession of a vehicle containing contraband is subjected to personal search, which may not be in conformity with the requirements under Section 50 of the Act; but the search of the vehicle results in recovery of contraband material, which stands proved independently; would the accused be entitled to benefit of acquittal on the ground of non-compliance of Section 50 of the Act even in respect of material found in the search of the vehicle.)

Facts

The case of the prosecution in brief is that on 19.8.2009 ASI Rakesh Kumar along with other police officials in connection with patrolling duty were present at Sirhind bye-pass, Rajpura. A vehicle was seen coming from Ambala side. On seeing the police party, the driver of the vehicle tried to reverse the vehicle. On suspicion, the vehicle was stopped. One lady was sitting with the driver. On enquiry, the driver and passenger disclosed their identities. ASI Rakesh Kumar suspected them to be carrying some contraband in the bags lying in the vehicle. He apprised the accused of their right to get the search conducted in the presence of Magistrate or gazetted Police Officer. However, accused reposed confidence in him. Joint consent statement of accused was reduced into writing. On search, 7 bags containing poppy husk were recovered. Two samples of 250 grams each from each bag were separated and the residual poppy husk of each bag weighed 34 kgs. All the sample parcels and bulk parcels were sealed with the seals bearing impression 'RK' Specimen seal was prepared and the seal after use was handed over to HC Malwinder Singh. The case property was taken into possession. Ruqa was sent to the police station, on the basis of which FIR was registered. The case property was deposited in the Malkhana. On receipt of chemical report and after completing all the formalities, challan was put up in Court against the accused.

Thus, according to the prosecution, accused Baljinder Singh, driver of the vehicle and Khushi Khan who was accompanying the driver, were guilty of offences punishable

under Section 15 of the Narcotic and Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"). The contraband material found in seven bags contained poppy husk. The personal search of both the accused was undertaken after their arrest, which did not lead to any recovery of contraband.

The case of the prosecution was accepted by the Judge, Special Court, Patiala. By its judgment dated 8.9.2011, the Trial Court concluded that the aforesaid two accused were guilty of the offence punishable under Section 15 of the Act and sentenced them to suffer 12 years' rigorous imprisonment with fine in the sum of Rs. 2 lakhs each, in default whereof, they were further directed to undergo further rigorous imprisonment for two years.

In the appeals preferred by the accused, the High Court observed that the personal search of the accused was not conducted before the Magistrate or a Gazetted Officer and as such there was complete infraction of Section 50 of the Act. Granting benefit on that count, the High Court set aside the order of conviction and sentence recorded by the Trial Court and acquitted both the accused of the charge levelled against them.

The present appeals arose out of the judgment of the High Court setting aside the order of conviction and sentence recorded by the Trial Court against the respondents, namely, Baljinder Singh and Khushi Khan.

Decision and Observations

The Apex Court referred to section 50 of the NDPS Act[22] and stated that it affords protection to a person in matters concerning "personal search" and stipulates various

[22] 50. Conditions under which search of persons shall be conducted.
(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
(4) No female shall be searched by anyone excepting a female.
(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of

safeguards. It is only upon fulfilment of and strict adherence to said requirements that the contraband recovered pursuant to "personal search" of a person can be relied upon as a circumstance against the person. On this point the Apex court referred to ***State of Punjab* v. *Baldev Singh***[23] and ***Vijaysinh Chandubha Jadeja* v. *State of Gujarat***[24] and held that an illicit article seized from the person during personal search conducted in violation of the safe-guards provided in Section 50 of the Act cannot by itself be used as admissible evidence of proof of unlawful possession of contra-band.

However, the Apex court referred to ***Ajmer Singh* v. *State of Haryana***[25] and stated that regarding the applicability of the requirements under Section 50 it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises. The Apex court said:

> **20.** The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh[26] clearly states that the conviction may not be based

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taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior

[23] (1999) 6 SCC 172

[24] (2011) 1 SCC 609

[25] (2010) 3 SCC 746

[26] 57. On the basis of the reasoning and discussion above, the following conclusions arise:

(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.

(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during

"only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

21. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

22. The decision of this Court in *Dilip's case [Dilip v. State of M.P, (2007) 1 SCC 450]* however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in

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search operations and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.

(5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the court on the basis of the evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50 and, particularly, the safeguards provided therein were duly complied with, it would not be permissible to cut short a criminal trial.

(6) That in the context in which the protection has been incorporated in Section 50 for the benefit of the person intended to be searched, we do not express any opinion whether the provisions of Section 50 are mandatory or directory, but hold that failure to inform the person concerned of his right as emanating from sub-section (1) of Section 50, may render the recovery of the contraband suspect and the conviction and sentence of an accused bad and unsustainable in law.

(7) That an illicit article seized from the person of an accused during search conducted in violation of the safeguards provided in Section 50 of the Act cannot be used as evidence of proof of unlawful possession of the contraband on the accused though any other material recovered during that search may be relied upon by the prosecution, in other proceedings, against an accused, notwithstanding the recovery of that material during an illegal search.

(8) A presumption under Section 54 of the Act can only be raised after the prosecution has established that the accused was found to be in possession of the contraband in a search conducted in accordance with the mandate of Section 50. An illegal search cannot entitle the prosecution to raise a presumption under Section 54 of the Act.

(9) That the judgment in *Pooran Mal case* [(1974) 1 SCC 345] cannot be understood to have laid down that an illicit article seized during a search of a person, on prior information, conducted in violation of the provisions of Section 50 of the Act, can by itself be used as evidence of unlawful possession of the illicit article on the person from whom the contraband has been seized during the illegal search.

(10) That the judgment in *Ali Mustaffa case* [(1994) 6 SCC 569] correctly interprets and distinguishes the judgment in *Pooran Mal case* [(1974) 1 SCC 345]and the broad observations made in *Pirthi Chand case* [(1996) 2 SCC 37] and *Jasbir Singh case* [(1996) 1 SCC 288] are not in tune with the correct exposition of law as laid down in *Pooran Mal case* [(1974) 1 SCC 345]."

said judgment in *Dilip's case* is not correct and is opposed to the law laid down by this Court in *Baldev Singh* and other judgments.

23. Since in the present matter, seven bags of poppy husk each weighing 34 kgs. were found from the vehicle which was being driven by accused-Baljinder Singh with the other accused accompanying him, their presence and possession of the contraband material stood completely established.

24. In the circumstances, the acquittal recorded by the High Court, in our considered view, was not correct. We, therefore, set aside the view taken by the High Court.

6. *State of West Bengal v. Indrajit Kundu and Others, (2019 SCC OnLine SC 1364)*

Decided on : -18.10.2019

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice R. Subhash Reddy

(The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents.)

Facts

The present appeal is preferred by the State of West Bengal through Principal Secretary, Home Department, aggrieved by the judgment and order dated 30.07.2019 passed by the High Court at Calcutta in C.R.R. No. 3473 of 2008. By the impugned order, the respondents-accused were discharged of the charge framed against them under Section 306 read with Section 34 of Indian Penal Code. The victim, daughter of the de facto complainant was a painter and artist. To improve her proficiency in English, first respondent was appointed as her English teacher. Respondent Nos. 2 and 3 are his parents. There developed intimacy between the victim and first respondent - Indrajit in course of coaching. It is the allegation of the complainant that as the deceased victim and first respondent had decided to marry, to finalise the proposal of marriage the victim had gone to the house of first respondent on 05.03.2004. It is alleged that when the victim went to the house of first respondent, respondent Nos. 2 and 3 who are the parents of the first respondent came out to raise shouts and addressed the victim as a call-girl. The words uttered by respondent Nos. 2 and 3, as per the de facto complainant are "you are a call-girl, why my son would marry you, we would give our son in marriage elsewhere". It is alleged in the complaint that at that time, first respondent did not protest against the version of his parents and his daughter returned home and became mentally perturbed. On 06.03.2004 at about 1.00 p.m. the victim had committed suicide. There were two suicide notes. In one suicide note, the deceased has stated that parents of first respondent abused her in silly words by calling her a call-girl. In another note, which was addressed to the first respondent, has stated that the father of first respondent stigmatized her as a call-girl and first respondent has not responded to such utterances. Further it is stated

that first respondent is a coward. After conducting investigation, charge-sheet was filed under Section 306/34 IPC against all the three accused. Case was committed to the 7th Fast Track Court, Sessions Court, Calcutta, numbered as Sessions Case No. 11 of 2006.

Accused-respondents earlier filed application for discharge, the same was rejected by the Trial Court by order dated 19.04.2007. Thereafter, respondents have filed an application under Section 482 Cr.P.C. before the High Court in C.R.R. No. 1817 of 2007 which was disposed of with the direction to respondents-accused to raise all the points before the learned Trial Court. At the stage of framing of charges respondents have raised objections claiming that no case is made out against them to frame charge for the alleged offence under Section 306/34 IPC. The learned Additional District and Sessions Judge by order dated 04.09.2008 overruled the objections of the respondents observing that as there is a probability of accused being convicted, charge can be framed. It is observed in the order that there is a reasonable likelihood for accused persons to be convicted under Section 306 IPC. Against the said order, respondents have approached the High Court again under Section 401/482 Cr.P.C. in C.R.R. No. 3473 of 2008.

By the impugned order, the High Court by recording a finding that terming the deceased as a call-girl, there was no utterance which can be interpreted to be an act of instigating, goading or solicitation or insinuation, the deceased to commit suicide. By discussing the case law on the subject, the High Court allowed the application by setting aside the order of the Trial Court and discharged the respondents-accused from the charge.

Decision and Observations

The Apex Court stated that the present case does not present any picture of abetment allegedly committed by respondents. The suicide committed by the victim cannot be said to be the result of any action on part of respondents nor can it be said that commission of suicide by the victim was the only course open to her due to action of the respondents. There was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. The Apex Court referred to ***Swamy Prahaladdas* v. *State of M.P***[27] wherein the court while considering utterances like "to go and die" during the quarrel between husband and wife, uttered by husband held that utterances of such

[27] 1995 Supp (3) SCC 438

words are not direct cause for committing suicide. Similarly, in the case of ***Sanju Alias Sanjay Singh Sengar* v. *State of M.P.***[28] when a quarrel took place between husband and wife in which husband had told the deceased "to go and die", it was held that the suicide committed two days thereafter was not proximate to the quarrel though the deceased was named in the suicide note and that the suicide was not the direct result of quarrel when the appellant used abusive language and told the deceased to go and die. The Apex court also referred to ***Ramesh Kumar* v. *State of Chhattisgarh***[29] wherein the Court has considered the scope of Section 306 and the ingredients which are essential for abetment as set out in Section 107 IPC. While interpreting the word "instigation", it has been held as:

> "20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

On 05.03.2004 when the deceased went to the premises of first respondent, his parents who are respondent Nos. 2 and 3 addressed her as a call-girl. Applying the judgments referred above, the Apex Court was of the view that such material is not sufficient to proceed with the trial by framing charge of offence under Section 306/34 IPC. It is also clear from the material that there was no goading or solicitation or insinuation by any of the respondents to the victim to commit suicide. The Appeal was dismissed.

[28] (2002) 5 SCC 371

[29] (2001) 9 SCC 618

7. *State of Jharkhand and Others v. HSS Integrated SDN and Another,(2019 SCC OnLine SC 1363)*

Decided on : -18.10.2019

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

(Award passed by the Arbitral Tribunal can be interfered with in the proceedings under Sections 34 and 37 of Arbitration Act only in a case where the finding is perverse and/or contrary to the evidence and/or the same is against the public policy)

Facts

This special leave petition arises out of the contractual dispute between the petitioners-State and the respondents in relation to a consultancy agreement over construction of six-lane Divided Carriage Way of certain parts of Ranchi Ring Road. Respondent Nos. 1 and 2 acted as a consortium for providing such consultancy and supervisory services. An agreement was entered into between the parties on 28.08.2007. The original work period under the said agreement was for 36 months, i.e. from 01.10.2007 to 30.09.2010. There was a dispute with respect to the non-performance and unsatisfactory work done by the respondents. However, the respondents were granted extension of contract twice. Thereafter, a letter dated 25.11.2011 was issued by the Executive Engineer to the respondents and other contractors entrusted with the task of construction, granting a second extension of time of contract for construction work. The respondents were called upon to make compliances with the issues pointed out, at the earliest. In the said communication dated 25.11.2011, it was stated that if the deficiencies are not removed and/or complied with, in that case, there shall be suspension of payment under Clause 2.8 of the General Conditions of Contract (for short 'the GCC'). On 05.12.2011, a review meeting was held between the parties, followed by a letter dated 07.12.2011 issued by the respondents-original claimants in reply/compliance of the aforesaid letter dated 25.11.2011. It was the case on behalf of the respondents-original claimants that without properly considering the said letter of the respondents-original claimants dated 07.12.2011, petitioners herein issued letter dated 12.12.2011 invoking Clause 2.8 of the GCC for suspension of payment, alleging certain deficiencies. It was the case on behalf of the respondents-original claimants that by letter dated 27.12.2011, they replied to the

suspension notice and complied with the deficiencies. In reply to the aforesaid letters, the petitioners issued letters dated 23.12.2011 and 28.12.2011 asking the claimants to ensure compliance of the pending issues. That by letter/communication dated 09.02.2012, the petitioners served a notice upon the respondents terminating the contract with effect from 12.03.2012. The said termination notice was issued under Clause 2.9.1(a) and (d) of the GCC. The respondents-original claimants replied to the said termination notice by letters dated 16.02.2012 and 24.02.2012 and requested the petitioners to re-consider the matter. However, the dispute between the parties was not resolved. The respondents-original claimants served a legal notice dated 10.03.2012 and invoked the arbitration clause 2.9.1(a). Pursuant to the order passed by the High Court, the Arbitral Tribunal was constituted.

The Arbitral Tribunal comprised of nominees of the rival parties and a retired Judge of the Jharkhand High Court as the Presiding Arbitrator. The respondents-original claimants claimed a total sum of Rs. 5,17,88,418/- under 13 different heads, excluding interest. The petitioners also filed a counter-claim for Rs. 6,00,78,736/- under five heads. The claim of the original claimants primarily involved the unpaid amount in respect of the work executed under the contract, loss of profit and over-head charges, apart from other consequential claims arising out of termination. It was the specific case on behalf of the original claimants that the termination was absolutely illegal and not being in according with the terms of the contract. The counter-claim filed by the petitioners-State was for reimbursement on account of unsatisfactory performance by the respondents. That, on appreciation of evidence, the Arbitral Tribunal gave a specific finding that the termination of the contract was illegal and without following the procedure as required under the contract. That, thereafter Arbitral Tribunal proceeded to consider the claims on merits and ultimately allowed the claims to the extent of Rs. 2,10,87,304/- under different heads. In view of the finding arrived at by the Arbitral Tribunal that the termination of the contract was illegal and without following due procedure as required under the contract and in view of allowing the claims of the claimants partly, the Arbitral Tribunal dismissed the counter claims submitted by the petitioners.The award declared by the learned Arbitral Tribunal has been confirmed by the First Appellate Court in a proceeding under Section 34 of the Arbitration Act. The same has been further confirmed

by the High Court by the impugned judgment and order in an appeal under Section 37 of the Arbitration Act.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the appeal under Section 37 of the Arbitration Act and consequently confirming the award passed by the Arbitral Tribunal, the original respondents-State and others have preferred the present special leave petition.

Decision and Observations

The Apex Court observed that the main controversy is with respect to the termination of the contract vide letter/communication dated 09.2.2012 terminating the contract with effect from 12.03.2012 invoking Clause 2.9.1(1) and (d) of the GCC. That, on appreciation of evidence and considering the various clauses of the contract, the Arbitral Tribunal has observed and held by giving cogent reasons that the termination of the contract was illegal and contrary to the terms of the contract and without following due procedure as required under the relevant clauses of the contract. The said finding of fact recorded by the Arbitral Tribunal is on appreciation of evidence. The said finding of fact has been confirmed in the proceedings under Sections 34 and 37 of the Arbitration Act. Thus, there are concurrent findings of fact recorded by the Arbitral Tribunal, First Appellate Court and the High Court that the termination of the contract was illegal and without following due procedure as required under the relevant provisions of the contract.

The Apex court then referred to *NHAI* v. *Progressive-MVR* (2018) 14 SCC 688 wherein it has been observed and held that even when the view taken by the arbitrator is a plausible view, and/or when two views are possible, a particular view taken by the Arbitral Tribunal which is also reasonable should not be interfered with in a proceeding under Section 34 of the Arbitration Act.

In the case of *Maharashtra State Electricity Distribution Co. Ltd.* v. *Datar Switchgear Ltd.* (2018) 3 SCC , it has been held that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of the evidence on record are not to be scrutinized as if the Court was sitting in appeal. The following paragraph is relevant:

> **51.** Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submission that Respondent 2 had adequate lists of locations available but still failed to install the contract objects was not acceptable. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. These are findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent 2 which had invested whopping amount of Rs. 163 crores in the project. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid. ***The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinised as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto*** [See — *Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204 and *S. Munishamappa* v. *B. Venkatarayappa*, (1981) 3 SCC 260].

The Apex Court stated that the ***award passed by the Arbitral Tribunal can be interfered with in the proceedings under Sections 34 and 37 of Arbitration Act only in a case where the finding is perverse and/or contrary to the evidence and/or the same is against the public policy.*** (see *Associate Builders* v. *DDA* (2015) 3 SCC 49 etc.)

In the present case, the categorical findings arrived at by the Arbitral Tribunal are to the effect that the termination of the contract was illegal and without following due procedure of the provisions of the contract. The findings are on appreciation of evidence considering the relevant provisions and material on record as well as on interpretation of the relevant provisions of the contract, which are neither perverse nor contrary to the evidence in record. Therefore, as such, the First Appellate Court and the High Court have rightly not interfered with such findings of fact recorded by the learned Arbitral Tribunal.

The Apex Court concluded :

18. Once it is held that the termination was illegal and thereafter when the learned Arbitral Tribunal has considered the claims on merits, which basically were with respect to the unpaid amount in respect of the work executed under the contract and loss of profit. Cogent reasons have been given by the learned Arbitral Tribunal while allowing/partly allowing the respective claims. It is required to be noted that the learned Arbitral Tribunal has partly allowed some of the claims and even disallowed also some of the claims. There is a proper application of mind by the learned Arbitral Tribunal on the respective claims. Therefore, the same is not required to be interfered with, more particularly, when in the proceedings under Sections 34 and 37 of the Arbitration Act, the petitioners have failed.

19. Once the finding recorded by the learned Arbitral Tribunal that the termination of the contract was illegal is upheld and the claims made by the claimants have been allowed or allowed partly, in that case, the counter-claim submitted by the petitioners was liable to be rejected and the same is rightly rejected.

8. *M. Srikanth v. State of Telangana and Another, (2019 SCC OnLine SC 1373)*

Decided on : -21.10.2019

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

A dispute with regard to the inheritance under a will and deed of confirmation cannot be decided in a criminal proceeding. The same can be done only in an appropriate civil proceeding.

Facts

The Respondent No. 2, Fatima Hasna, in the criminal appeal arising out of S.L.P. (Crl.) No. 9156 of 2017 (hereinafter referred to as "the complainant"), is the sister of accused No. 1, Akramuddin Hasan. The complainant had filed a private complaint against nine persons including accused No. 1. The allegations in the said complaint in a nutshell is that the house bearing No. 3-5-1102 at Narayanaguda, Hyderabad, originally belonged to Afzaluddin Hassan, the father of the complainant, who died on 28.05.1996. Afzaluddin Hassan, possessed the same upon death of his mother, Khairunnisa Begum Saheba as per the oral gift dated 12.12.1966 and deed of confirmation of the said oral gift. It was the case of the complainant that upon death of her father, Afzaluddin Hassan, the said property was inherited by her as well as her three sisters and accused No. 1, her brother. It is further averred in the complaint, that her father had entered into a development agreement on 25.05.1989 with M/s. Banjara Construction Company Pvt. Ltd. However, the same was cancelled during his lifetime. It is further averred by her that after the death of her father, accused No. 3, Abid Rassol Khan, tried to trespass into the property and for that on her complaint, Crime No. 159/1996 came to be registered for the offence punishable under Sections 448 and 380 of the IPC on 14.06.1996.

Thereafter, she came to know about the existence of a document thereby assigning the rights by M/s. Banjara Construction Company Pvt. Ltd. in favour of M/s. NRI Housing Company Pvt. Ltd., represented through accused No. 3, Abid Rasool Khan. For the said incident another complaint vide Crime No. 177/1996, came to be registered for the offence punishable under Sections 418 and 420 read with Section 120-B of the IPC against seven persons including M/s. Banjara Construction Company Pvt. Ltd. and accused No. 3 in the present case. With regard to the said cause of action, the complainant had also filed Original Suit No. 1989/1996 against accused No. 3 and others for permanent injunction. The complainant's sisters had filed O.S. No. 1403/1999 against M/s. Banjara Construction Company Pvt. Ltd. of which accused No. 3, Abid Rasool Khan, was the Managing Director. According to the complainant, certain interim orders were also passed in the said original suits.

It is further the case of the complainant in the complaint, that her brother accused No. 1, Akramuddin Hasan, who had falsely created a will in Urdu purported to be executed by their paternal grandmother, Khairunnisa Begum Saheba, in favour of their parents

Afzaluddin Hassan and Liaquathunnisa Begum for their lifetime and vested remainder to accused No. 1. It is the case of the complainant, that the said will is registered and said to have been executed on 02.04.1950. Further, it is the case, that accused No. 1 had also created another forged and fabricated document styled as deed of confirmation (Hiba Bil Musha) dated 08.03.1990 vide which the property is orally gifted to accused No. 1 on 29.08.1989 and also handed over physical possession thereof.

It is further the case of the complainant, that accused No. 1, posing himself to be the owner of the premises, on the basis of the alleged oral will and deed of confirmation, created a registered lease on 01.12.2008, bearing document No. 3107/2008 permitting accused No. 4 to sub-lease the said land in favour of accused No. 5, Hindustan Petroleum Corporation Ltd. ("HPCL"). Accused No. 6 and accused No. 9 are the employees/officers of accused No. 5 - HPCL whereas, accused Nos. 7 and 8 are the attesting witnesses. On the basis of the said complaint, the Chief Metropolitan Magistrate directed the registration of an FIR on 24.11.2010.

Various criminal petitions came to be filed before the High Court. Criminal Petition No. 6047/2013 was filed by accused No. 7, Khaja Mohiuddin and accused No. 8, G.V. Prasad. Criminal Petition No. 6064/2013 came to be filed by accused No. 3, Abid Rasool Khan. Criminal Petition No. 6609/2013 came to be filed by accused No. 4, M. Srikanth, who is the appellant in the criminal appeal arising out of SLP (Crl.) No. 9156/2017. Criminal Petition No. 8743/2013 was filed by accused No. 5 - HPCL and its officers, accused No. 6, S.K. Srui and accused No. 9, R. Umapathi. By the impugned Order, the High Court allowed the Criminal Petitions of all the applicants except accused Nos. 3 and 4.

Being aggrieved by the dismissal of his petition, accused No. 4, so also the original complainant, being aggrieved by the impugned Order by which the petitions of accused Nos. 5, 6, 7, 8 and 9 have been allowed, approached the Hon'ble Supreme Court.

Observations and Decision

The Hon'ble Court referred to the case of ***State of Haryana v. Bhajan Lal***[30], wherein the Hon'ble Court had laid down the principles which are required to be taken into consideration by the High Court while exercising its jurisdiction under Section 482 of the Cr.P.C. for quashing the proceeding. The Hon'ble Court observed that according to *Bhajan Lal* (supra), where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it had been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the court would be justified in quashing the proceedings.

[30] 1992 Supp (1) SCC 335.

The Hon'ble court further referred to the case of ***Sardool Singh v. Nasib Kaur***[31], whrein it had been held as follows :-

> "**2.** A civil suit between the parties is pending wherein the contention of the respondent is that no will was executed whereas the contention of the appellants is that a will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. **The civil court is therefore seized of the question as regards the validity of the will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court.** We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled *Smt. Nasib Kaur* v. *Sardool Singh*. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts."
>
> (emphasis supplied)

In the present case, the Hon'ble Court, after going through the facts of the case and through the judgments of the Court, observed and held as follows :-

> 24. The learned Judge himself in Paragraph 8, after observing that it is nobodies case that the signatures on the documents in question are forged or anybody has impersonated for the purpose of cheating, goes on to observe thus:
>
> > "8.....The allegation in nutshell in this regard is that accused No. 1 is not the absolute owner of the properties, but for one of the co-owner or co-sharer along with the de facto complainant and other sisters of them and he falsely claimed as if he is the owner for purpose of cheating by using as if genuine forged and fabricated documents of so called will and so called deed of confirmation. The so called will is of the year 1950 and the so called deed of confirmation is of year 1989-1990 and the alleged oral gift prior to that is of 1966...."
>
> 25. We fail to understand, as to how after observing the aforesaid, the learned Judge could have refused to quash the proceedings against accused No. 4. Not only that, but on the basis of the said observations, the learned Judge himself has observed that it will not be in the interest of justice to permit the Police authorities to arrest the accused for the purposes of investigation. We are of the considered view, that the learned Judge, having found that the entire allegations with regard to forgery and

[31] 1987 Supp SCC 146

fabrication and accused No. 1 executing the lease deed on the basis of the said forged and fabricated documents were only against accused No. 1, ought to have exercised his jurisdiction to quash the proceedings qua accused No. 4 also. We find that the learned Judge ought to have applied the same parameters to the present accused No. 4, which had been applied to the other accused whose applications were allowed.

26. Insofar as the criminal appeals arising out of the special leave petitions filed by the original complainant is concerned, we absolutely find no merit in the appeals. The learned single Judge has rightly found that there was no material to proceed against accused No. 5 - HPCL and its officers accused Nos. 6 and 9 as also accused Nos. 7 and 8, who have been roped in, only because they were the attesting witnesses. The learned single Judge has rightly exercised his jurisdiction under Section 482 of the Cr.P.C.

27. Insofar as original accused No. 4 is concerned, we have no hesitation to hold, that his case is covered by categories (1) and (3) carved out by this Court in the case of Bhajan Lal (supra). As already discussed hereinabove, even if the allegations in the complaint are taken on its face value, there is no material to proceed further against accused No. 4. We are of the considered view, that continuation of criminal proceedings against accused No. 4, M. Srikanth, would amount to nothing else but an abuse of process of law. As such, his appeal deserves to be allowed.

28. In the result, the criminal appeal arising out of S.L.P. (Crl.) No. 9156/2017 filed by accused No. 4 is allowed. The criminal proceedings in Crime No. 311/2010 of P.S., Central Crime Station, Hyderabad, against accused No. 4 are quashed and set aside. The criminal appeals arising out of S.L.P. (Crl.) Nos. 9160-61/2017 filed by the original complainant are dismissed.

9. *Om Prakash and Another v. Amar Singh and Another, (2019 SCC OnLine SC 1374)*

Decided on : -21.10.2019

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

(In execution proceedings, the concerned court's order has to be obtained before providing police assistance to deliver possession to the decree holder)

Issue

Whether delivery of possession to the decree holder with police assistance was vitiated in absence of any orders by the Court for providing such police assistance?

Observations and Decision

The Hon'ble Court observed and held as follows :-

> **13.** Order 21 Rule 25 of the CPC provides for endorsement by the officer entrusted with the execution that if he is unable to execute the process, the court shall examine the reasons for the alleged inability and pass appropriate orders. No report was submitted by the bailiff asking for police assistance in execution for reasons specified. Likewise, there is no report under Order 21 Rule 35(3) CPC requesting for police assistance for effectuating delivery of possession. There is no material if the application before the Tehsildar was made by the bailiff or the decree holder. Be that as it may, we are constrained to hold that the procedure adopted by the police with regard to the delivery of possession by resorting to a manner outside the procedure of the court, using the court orders as an umbrella was wholly unwarranted. The executive authorities were completely unjustified in their over enthusiasm without asking for proper court orders regarding police assistance despite the fact that they were fully aware that possession was to be delivered in pursuance of a court order. At this belated point of time, we are not inclined or persuaded to order further enquiry into that aspect of the matter. The anxiety expressed by the High Court cannot be said to be unfounded or without substance. We fully endorse the anguish of the High Court, but in the peculiar facts and circumstances of the present case, the apparent absence of the semblance of any right, title or interest in the judgment debtor to be on the lands in question, in exercise of our discretionary jurisdiction decline to interfere with the order dated 11.10.2013 recording delivery of possession. This order is being passed in the peculiar facts of the present case. We may not be understood to have pardoned or overlooked the executive authorities for the manner in which they have acted and any misadventure in future without appropriate orders of a court will be obviously at their own risks, costs and consequences.
>
> **14.** We, therefore, set aside that part of the order of the High Court by which possession has been directed to be redelivered to judgment debtor, and the execution proceedings

have been revived for fresh delivery of possession to the decree holder. With that modification of the impugned order, the appeals and contempt petition stand disposed of.

10. State of Madhya Pradesh v. Udham and Others, (2019 SCC OnLine SC 1378)

Decided on : -22.10.2019

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

(Sentencing in Criminal Cases)

Facts

The prosecution's case is that the complainant lodged a report on 15.04.2008 that at around 9 p.m., while he was sitting inside his house with three other people, the respondents-accused barged in, carrying weapons. More specifically, respondent nos. 1 and 3 were carrying axes, while respondent nos. 2 and 4 were carrying sticks. The respondents-accused asked the complainant why he had not kept his cow tied, and subsequently, on respondent no. 4's exhortation, the respondents-accused attacked the complainant and the others present at that time resulting in various injuries to them. Respondents-accused then allegedly threatened the complainant that if he did not keep his cow confined, he would be killed.

The Trial Court tried the respondents-accused and ultimately convicted them for the offences under Section 326 read with Section 34 of IPC as well as the offence under Section 452 of IPC. The respondents-accused were sentenced to undergo 3 years rigorous imprisonment and a fine of Rs. 250/- (Rupees Two Hundred and Fifty Only) each for the offence under Section 326 read with Section 34 of IPC. They were further sentenced to undergo rigorous imprisonment for 1 year with a further fine of Rs. 250/- (Rupees Two Hundred and Fifty Only) each for the offence under Section 452 of IPC. In case of default of payment of fine, they were to undergo further rigorous imprisonment for 6 months. All sentences were made to run concurrently by the Trial Court.

Being aggrieved, the respondents-accused filed an appeal before the High Court, challenging only the quantum of sentence imposed on them by the Trial Court. Vide impugned order, the High Court partly allowed the appeal and reduced the sentence to the period of imprisonment already undergone by them, which was a period of 4 days, while enhancing the fine amount imposed upon them by Rs. 1500/- (Rupees One Thousand Five Hundred Only) each. The respondents-accused were directed to deposit the enhanced fine within a period of 30 days, failing which they were to undergo simple imprisonment for a period of 30 days.

Aggrieved by the impugned order, the State filed the present appeal challenging the order of the High Court reducing the sentence awarded to the respondents-accused. The learned counsel for the appellant-State submitted that the High Court erred in not considering the gravity of the offence and the facts and circumstances of the case, particularly the fact that the respondents-accused had undergone imprisonment of only 4 days.

Observations and Decision

The Hon'ble Court referred to the judgment rendered in ***Accused 'X' v. State of Maharashtra***[32], with respect to sentencing in India, wherein it had been held as follows :-

> "**49.** Sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch. [Nicola Padfield, Rod Morgan and Mike Maguire, "Out of Court, Out of Sight? Criminal Sanctions and No Judicial Decision-making", *The Oxford Handbook of Criminology* (5th Edn.).] This process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. **It is established that sentencing is a socio-legal process, wherein a Judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the Judges to give punishment, it becomes important to exercise the same in a principled manner**. We need to appreciate that a strict fixed punishment approach in sentencing cannot be acceptable, as the Judge needs to have sufficient discretion as well.
>
> 50. Before analysing this case, we need to address the issue of the impact of reasoning in the sentencing process. The reasoning of the trial court acts as a link between the general level of sentence for the offence committed and to the facts and circumstances. The trial court is obligated to give reasons for the imposition of sentence, as firstly, **it is a fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning**. Further, the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons..."
>
> (emphasis supplied by Court)

Regarding sentencing, the Hon'ble Court made the following observations :-

> **11.** We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the Courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not

[32] (2019) 7 SCC 1.

be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.

12. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.

Regarding the sentencing in the present case, the Hon'ble Court observed and held as follows :-

14. Coming to the appropriate sentence which is to be imposed on the respondents-accused in this case, the facts of this case need closer scrutiny. The respondents-accused entered the house of the complainant, attacked the others present with axes and with sticks. Four people, including the complainant, were injured. The injuries caused were incised wounds on the hands and backs of the victims, an incised wound next to the ear of one of the victims and bruising, etc. The respondents-accused were convicted for the offence under Section 326 read with Section 34 of IPC, which carries a maximum sentence of life imprisonment, or of imprisonment of a term which may extend to ten years, and fine. They were also convicted under Section 452 of IPC, which carries a maximum sentence of seven years along with fine.

15. The respondents-accused herein were males of age 33 years, 33 years, 28 years and 70 years respectively at the time of the incident. The main allegation as against the respondent nos. 1 and 3 is that they had used an axe to attack the victim. In this scuffle there is no dispute that some of the respondents-accused herein were also injured profusely. Further the motivation seems to be that the cow belonging to the victims had entered the household of the accused and the respondent no. 1 with his co-accused are proved to be the aggressor herein. From the perusal of the record, the injuries on some of the victims are not specifically attributed. The respondent group was numerically matched with that of the victims and there were two respondents-accused within the group carrying lathis. The bodily integrity was compromised as a result of the injury caused, but there was no evidence led to indicate any permanent embellishments of any part. The scope of intrusion of privacy due to the assault is also minimal. There was no material destruction involved in the crime.

16. In this context, we need to note that the facts of the case highlighted above, however, need to be balanced with the fact that this was the first offence committed by the respondents-accused and that the motive, which is stated to be trivial. There is a requirement to treat the crime committed herein differently than other objectionable situations such as police atrocities etc. [refer to *Yashwant* v. *State of Maharashtra*, AIR 2018 SC 4067] Having regard to the fact that the occurrence of the crime is of the year 2008 and the respondents-accused have been, in a way, only ordered to undergo four days of jail term with a fine of Rs. 1,500/-, we need to enhance the same to commensurate with the guilt of the respondents-accused.

17. Comparatively, having perused certain precedents of this Court, we are of the considered opinion and accordingly direct that for the commission of the offence under Section 326 of IPC read with Section 34 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs. 75,000/- (Rupees Seventy-Five Thousand Only) each within a period of 1 month, on default of payment of which they are to suffer simple imprisonment for 3 months. For the offence under Section 452 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) each within a period of 1 month, on default of payment of which they are to suffer simple imprisonment for 3 months.

18. For the offence under Section 326 of IPC read with Section 34 of IPC, the respondent no. 4, who is presently aged around 80 years, is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month. For the offence under Section 452 of IPC, respondent no. 4 is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs. 15,000/- (Rupees Fifteen Thousand Only) within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month.

19. The above sentences are to run concurrently. Further, the respondents are directed to be taken into custody forthwith, to serve out their remaining sentence, as imposed hereinabove.

20. Accordingly, the appeal is partly allowed and the impugned order of the High Court is modified in the afore-stated terms.

(emphasis supplied)

11. *Municipal Corporation of Greater Mumbai and Others v. M/S Sunbeam High Tech Developers Pvt. Ltd., (2019 SCC OnLine SC)*

Decided on : -24.10.2019

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

Whether if a municipal corporation demolishes a structure in exercise of powers vested in it but in violation of the procedure prescribed, can the High Court direct the 'owner/occupier' of the building to reconstruct the demolished structure?

Issue

Whether if a municipal corporation demolishes a structure in exercise of powers vested in it but in violation of the procedure prescribed, can the High Court direct the 'owner/occupier' of the building to reconstruct the demolished structure?

Observations and Decision

Regarding the issue, the Hon'ble Court held as follows :-

> **16.** We make it clear that we do not approve the action of the Municipal Corporation or its officials in demolishing the structures without following the procedure prescribed by law, but the relief which has to be given must be in accordance with law and not violative of the law. If a structure is an illegal structure, even though it has been demolished illegally, such a structure should not be permitted to come up again. If the Municipal Corporation violates the procedure while demolishing the building but the structure is totally illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of law. However, we again reiterate that the illegal structure cannot be permitted to be re-erected.
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> **17.** Assuming that the structure is not illegal then also the Court will first have to come to a finding that the structure was constructed legally. It must come to a clear-cut finding as to the dimensions of the structure, what area it was covering and which part of the plot it was covering. In those cases the High Court, once it comes to the conclusion that the structure which has been demolished was not an illegal structure, may be justified in permitting reconstruction of the structure, but while doing so the Court must clearly indicate the structure it has permitted to be constructed; what will be the length of the structure; what will be its width; what will be its height; which side will the doors and windows face; how many number of storeys are permitted etc. We feel that in most cases the writ court may be unable to answer all these questions. Therefore, it would be prudent to permit the structure to be built in accordance with the existing by-laws. Directions can be issued to the authorities to issue requisite permission for construction of a legal structure within a time bound period of about 60 days. This may vary from case to case depending upon the nature of the structure and the area where it is being built.
>
> **18.** Blanket orders permitting re-erection will lead to un-planned and haphazard construction. This will cause problems to the general public. Even if the rights of

> private individuals have been violated in as much as sufficient notice for demolition was not given, in such cases structures erected in violation of the laws cannot be permitted to be re-erected. We must also remember that in all these cases, the High Court has not found that the structures were legal. It has passed the orders only on the ground that the demolition was carried out without due notice. As already indicated above, compensation for demolished structure or even the cost of the new structure to be raised, if any, can be imposed upon the municipal authorities which should be recovered from the erring officials, but in no eventuality should an unplanned structure be permitted to be raised.

The Hon'ble Court also held that till the State frames laws in this regard, the following directions need to be implemented:-

> **20.** All concerned viz., the State, the Municipal authorities and the High Court need to take note and advantage of advancement in technology. We have been informed that disputes with regard to the dimensions and nature of the structure arise especially in those cases where rural or suburban areas are included at a later stage in the municipalities. Some of these structures have no sanctioned plans. The Development Control and Promotion Regulations for Greater Mumbai, 2034, provide that no permission shall be required to carry out tenantable repairs to the existing buildings which were constructed with the approval of the competent authority, or are in existence since 17.04.1964 in respect of residential structures, and 01.04.1962 in respect of non-residential structures, as required under Section 342 of the MMC Act. We have already noted what is meant by tenantable repairs. This is explained in Section 342 of the MMC Act. Only repairs envisaged in the explanation are permitted to be carried out without permission and all other repairs have to be carried out with permission. Since these old buildings do not have plans it is difficult to find out whether the construction carried out is actually tenantable repairs or the structures are being constructed/reconstructed for which permission is required.
>
> **21.** There is no difficulty to find a solution to this problem if the State is inclined to do so. Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.
>
> **22.** All over the country we find that when people raise illegal constructions it is claimed that the said construction has been existing for long. The answer is to get Geomapping done. The relevant technology is Geographic Information System (GIS). If on Google Maps one can get a road view, we see no reason as to why this technology cannot be used by the municipal corporations. At the first stage we direct that all the cities in Maharashtra where the population is 50 lakhs or more the municipal authorities will get Geomapping done not only of the municipal areas but also of areas 10 Kms. from the outer boundary. This can be done by satellite, drones or vehicles. Once one has the whole city geomapped it would be easy to control illegal constructions. We further direct the State of Maharashtra to ensure that sufficient funds are made available to the municipal

corporations concerned and this exercise should be completed within a period of one year from the date of this order.

23. We also would like to give further directions regarding the manner in which the evidence of illegal construction/reconstruction etc., is collected and notices are issued and served. We, therefore, issue the following directions:-

1) It will be obligatory for all Municipal Corporations in the State of Maharashtra where the population is 50 lakhs or more to get geomapping and geo-photography of the areas under their jurisdiction done within a period of one year. Geomapping will also be done of an area of 10 Kms. from the boundary of such areas. The records should be maintained and updated by the Municipal Corporations within such time period as the Municipal Corporation deems fit, keeping in mind the specific circumstances of the area under its jurisdiction.
2) Whenever any new area, which is not already geomapped, is brought under the jurisdiction of a particular municipality, it will be the duty of the concerned Municipal Corporation to ensure that geomapping of the area is conducted and the geomapping records of such area are created at the earliest.
3) In cases where buildings are already existing and it is alleged by the Municipal Corporation that the building has been constructed in violation of applicable laws:-

    3.1. The Commissioner/Competent Authority on coming to know that an illegal building has been constructed, shall issue a show cause notice giving 7 days in terms of Section 351 to the owner/occupier/builder/contractor etc. Along with this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs and images should digitally display the time and date of taking the photographs;

    3.2. In case the notice is not replied to within the time prescribed, i.e., 7 days, then the building shall be immediately demolished by the Municipal Corporation;

    3.3 In case the owner files a reply to the notice, the Commissioner/Competent Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor etc. giving him further 15 days' notice before demolition of the property. During this period the owner/occupier/builder/contractor etc. can approach the appellate/revisional authority or the High Court.

4) In those cases where according to the municipal corporation there is ongoing construction which is being carried on in violation of the applicable laws:-

    4.1. The Commissioner/Competent Authority on coming to know that there is ongoing construction in violation of the applicable laws shall issue a show cause notice giving 24 hours in terms of Section 351 to the owner/occupier/builder/contractor/architect etc. Alongwith this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs

and images should digitally display the time and date of taking the photographs;

4.2. The Commissioner/Competent Authority can also issue an interim 'stop-construction' order along with the notice or any time after issuing the notice. Such order shall also include the relevant pictures of the alleged violation(s). Photographs and images should digitally display the time and date of taking the photographs;

4.3. In case the notice is not replied to within the time prescribed, i.e., 24 hours, then the building shall be immediately demolished by the Municipal Corporation;

4.4. In case the owner/occupier/builder/contractor/architect etc. files a reply to the notice, the Commissioner/Competent Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor/architect etc. giving him further 7 days' notice before demolition of the property. During this period the owner/occupier/builder/contractor/architect etc. can approach the appellate/revisional authority or the High Court.

5) In regard to service of notice we direct as follows :-

5.1. Wherever possible notice shall be served personally on the person who is raising or has raised the illegal structure including the owner/occupier/builder/contractor/architect etc.;

5.2. Notice, in addition to the traditional mode, can also be sent through electronic means, both by e-mail and by sending a message on the mobile phones. Even a message to a foreman or person in-charge of the construction at the site will be deemed to be sufficient notice;

5.3. In the notice, the municipal authorities shall also give an e-mail ID and phone number where the noticee can send his reply through e-mail or messaging services. This will hopefully do away with all disputes with regard to alleged non-service of notice.

6) Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. They will also provide an e-mail ID and mobile phone number on which notice(s), if any, can be sent. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.

12. *Miss XYZ v. State of Gujarat and Another, (Criminal Appeal 1619/2019)*

Decided on : -25.10.2019

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

Quashing of FIRs in serious offences as Rape

Facts

This appeal is filed by the 2nd respondent in R/Special Criminal Application No.9897 of 2017 filed before the High Court of Gujarat, at Ahmedabad. By the impugned order, High Court has allowed R/Special Criminal Application by quashing FIR No. CR-I-60-2017 registered on the file of Mahila Police Station, Ahmedabad City, District Ahmedabad.

The appellant herein, is the informant. On her complaint the aforesaid crime is registered against the 2nd respondent for the alleged offence punishable under Sections 376, 499 and 506(2) of the Indian Penal Code, 1860.

According to the complaint :-

She is a permanent resident of Jodhpur, Rajasthan State and had come to Ahmedabad in Gujarat City for employment and she met the 2nd respondent, who is the Managing Director of the G.S.P. Crop Science Pvt. Ltd. After conducting interview she was appointed as his Personal Assistant in the month of November, 2014. When the appellant was not well, the 2nd respondent started visiting her residence and when she was in sleep, the 2nd respondent had taken inappropriate pictures of her and, thereafter, started blackmailing her. When she visited Odhav, Kathwada and Nandesari, Baroda on official work of the company, the 2nd respondent used to take advantage of the situation when the appellant was alone, and used to blackmail her by threatening to make her pictures viral and to terminate her employment. As the financial condition of the appellant was not stable, she did not disclose this to anyone. Sexual exploitation by blackmailing continued thereafter frequently. In view of serious threat by the 2nd respondent to her life, she left for Jodhpur and her marriage was fixed with one Mr.Shoukin Malik in the month of December, 2016. The 2nd respondent having come to know about the marriage of the appellant with Shoukin Malik, he contacted Mr.Shoukin Malik on telephone and informed him that the appellant is not of good character, she had physical relationship

with him and with other boys. As Mr.Shoukin Malik refused to meet the 2nd respondent, the 2nd respondent sent her nude/inappropriate pictures to the residence of Shoukin Malik.

In view of such allegations as referred above made in the complaint, a case was registered against the 2nd respondent for the alleged offence under Sections 376, 499 and 506(2) of IPC. When the complaint was under investigation, the 2nd respondent moved the High Court of Gujarat seeking quashing of FIR itself.

Primarily, it was the case of the 2nd respondent before the High Court that there was absolutely no truth in the allegation of rape as alleged by the appellant and it was only consensual sex between the parties. It was further alleged that in view of the allegations made by the appellant, a settlement is purported to have been arrived at, between them in the month of July, 2016. A written agreement was also entered into and the same is signed by the parties.

It is stated in the agreement that the dispute between the parties is settled and the 2nd respondent has allegedly paid a huge amount to the appellant. It is further the case of the 2nd respondent that whatever the electronic and other materials lying with the parties were agreed to be destroyed. Further it was the case of the 2nd respondent that the alleged telephonic calls made by the 2nd respondent to Mr. Shoukin Malik was absolutely false and baseless. Pleading that the complaint filed and investigation taken up is a gross abuse of process, the 2nd respondent has sought quashing of the proceedings. By referring to the rival contentions of the parties and the material on record, the High Court recorded a finding that the case of the 2nd respondent falls under Exceptions 5 and 7 as carved out in the judgment of this Court in *State of Haryana v. Bhajanlal & Ors.*[33] and further the allegations and facts as mentioned in the FIR, appear to be improbable and the same is malicious prosecution, quashed the proceedings registered against the 2nd respondent.

[33] AIR 1992 SC 604.

Observations and Decision

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

> 13. **Having heard learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the Writ Petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC.** Though the learned counsels have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion,it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against the 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings. During the course of hearing, learned counsel for the appellant, brought to our notice provision/Section 114-A of the Indian Evidence Act, 1872. Section 114-A of the Indian Evidence Act, 1872 deals with the presumption as to absence of consent in certain prosecution for rape. A reading of the aforesaid Section makes it clear that, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and such

woman states in her evidence before the Court that she did not consent, the court shall presume that she did not consent.

14. Though Learned senior counsel Sri Mukul Rohatgi relied on the judgment of this Court dated 21st August,2019 in Criminal Appeal No.1165 of 2019, but we are of the view that the said judgment would not render any assistance to support his case. Whether in a given case power under Section 482 is to be exercised or not, depends on the contents of the complaint, and the material placed on record. In that view of the matter, we are of the view that it is a fit case to set aside the order passed by the High Court and allow the investigating agency to proceed with the further investigation in accordance with law. It is made clear that we have not expressed any opinion on the merits of the complaint, and it is open to the investigating agency and competent court, to proceed in accordance with law.

(emphasis supplied)

13. Savita v. State of Delhi, (Criminal Appeal 186/2019)

Decided on : -14.10.2019

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

Disposing of an appeal without the record of the trial court, even if it is lost, is not sustainable

ORIGINAL ORDER OF THE HON'BLE COURT

1. The instant appeals, by way of special leave, are directed against the common order dated 28.07.2017 passed by the High Court of Delhi at New Delhi in Criminal Appeal No.884 of 2001 and Criminal Appeal No. 10 of 2002 whereby the High Court while disposing of the appeals upheld the conviction and sentence imposed on the appellants-accused by the trial court under Sections 498A and 304 IPC.

2. Today when the matter is taken up for hearing of the bail application in Criminal Appeal No.187 of 2019 both counsels agreed to dispose of the main appeal. In light of the same, we proceeded to dispose of the criminal appeals pending before us.

3. Mr. Siddharth Luthra, learned senior counsel for the appellant submits that as his client has already suffered incarceration for approximately three and half years, he may be enlarged on bail. At the same time, it has been brought to our notice by the learned senior counsel for the appellants that the High Court while disposing of the appeal filed by the appellants-accused upheld the conviction and sentence imposed by the trial court without the record of the trial court, which was lost during the pendency of the appeal before it.

4. Heard Mr. Siddharth Luthra, learned senior counsel appearing on behalf of the appellants and Ms. Sonia Mathur, learned senior counsel appearing on behalf of the respondent. The short question before us is that, whether

the order of High Court disposing of the criminal appeal in the absence of original record can be held sustainable in the eyes of law.

5. **It is not in dispute that the High Court has disposed of the appeal filed by the appellant herein without the record of the trial court, which was lost during the pendency of the appeal before it. The chronology of events also indicates that there is some effort were made by the State to re-construct the record of the trial court but the reconstruction of the record could not be completed. However, learned senior counsel for the respondent-State submits that some of the records are available.**

6. Having heard learned senior counsel for the parties and perusing the material placed before us, we are of the view that disposing of the appeal filed by the appellant-accused without the record of the trial court is not sustainable.

7. We accordingly set aside the impugned order passed by the High Court and remand the matter back to the High Court for hearing of the appeals afresh after reconstruction of the record of the trial court.

8. Both the parties are directed to co-operate with the Registry of the High Court of Delhi in the process of reconstruction of trial court's record.

9. We direct the Registrar (Judicial) of the High Court of Delhi to take all necessary steps to complete the process of reconstruction of record of the trial court within a period of six months from today and place the matter before the appropriate Bench for disposal of the same on merits.

10. Further, keeping in view the facts and circumstances of the Criminal Appeal No.187 of 2019 and particularly the fact that the appellant has already suffered incarceration for a period of approximately 27 months out of a total sentence of 10 years Rigorous Imprisonment, awarded by the trial court which has been affirmed by the High Court, we think it is a fit case to grant bail to the appellant herein. The appellant is accordingly directed to

be enlarged on bail on such terms and conditions to be imposed by the trial Court.

11. This Court vide order dated 16.07.2018 has granted bail to the appellant – Savita in Criminal Appeal No.186 of 2019, the same shall continue till the disposal of the appeal by the High Court.

12. We make it clear that we have not expressed any opinion on the merits of the matter and the same shall be decided by the High Court on its own merits.

13. The appeals stand disposed of accordingly. As a sequel to the above, pending interlocutory applications if any also stand disposed of.

(emphasis supplied)

14. Samaresh Prasad Chowdhury v. UCO Bank and Others, (Civil Appeal No. 8181/2019)

Decided on : -21.10.2019

Bench :- 1. Hon'ble Mr. Justice K.M.Joseph
2. Hon'ble Mr. Justice A.S. Bopanna

(There is no power to set aside ex-parte order, as far as the State Commission is concerned. Section 22A of the Consumer Protection Act only empowers the National Commission in this regard.)

ORDER
(AS PASSED BY THE HON'BLE COURT)

Leave granted.

The appellant calls in question the order of the High Court, by which the learned single Judge, according to the appellant, has made observations against him which are unwarranted, both on facts and in law.

The appellant is a Judicial Member of the State Consumer Disputes Redressal Commission, West Bengal. According to the appellant, in a case filed against the first respondent-bank on account of non-appearance on behalf of the first respondent-bank, the bank came to be proceeded *ex-parte*.

The case of the first respondent was that though it had approached by filing vakalatnama and seeking to set aside the order which was passed *ex-parte*, it was not being heeded to.

The complaint of the appellant is that the learned single Judge without appreciating the true state of facts and law, has made observations against him. The learned counsel would submit that on authorities, such observations were uncalled for. He would submit that the case of the appellant is that there is no power to set aside *ex-parte* order, as far as the State Commission is concerned. The amendment which was brought about only empowered the National Commission under Section 22A of the Consumer Protection Act, 1986.

We have also heard the learned counsel appearing for the first respondent.

We are of the view that there is merit in the case of the appellant. The observations which have been made against the appellant herein appear to have been unjustified having regard to the actual statutory provisions contained in the Act in question, as interpreted by this Court in a three-Judge Bench decision in *Rajeev Hitendra Pathak vs. Achyut Kashinath Karekar*, (2011) 9 SCC 541.

In view of the above, the appeal is allowed. We direct that all the observations which have been made in the impugned order against the appellant will stand expunged.