JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(October, 2020)

(Part – I)

Prepared by :-

ABHIJEET TUSHAR
ISHA ANUPRIYA
Research Scholars,
JUDICIAL ACADEMY JHARKHAND

TABLE OF CONTENTS

1. Pravasi Legal Cell v. Union of India, (2020 SCC OnLine SC 799) 1

(Directions for the refund of air-fare during the lockdown period, when domestic and international flights' operation was suspended) 1

2. Parvez Noordin Lokhandwalla v. State of Maharashtra and Anr., (2020 SCC OnLine SC 807) 3

(The language of Section 437(3) of the CrPC which uses the expression "any condition… otherwise in the interest of justice" has been construed in several decisions of this court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) of the CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.) 3

3. Magma Fincorp Ltd. v. Rajesh Kumar Tiwari, (2020 SCC OnLine SC 795) 7

(The Financier is the real owner of the vehicle, which is the subject of a Hire Purchase Agreement. The requirement of a proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject matter of a Hire Purchase Agreement, would depend on the terms and conditions of the Hire Purchase Agreement, some of which may stand modified by the course of conduct of the parties. A forum constituted under the Consumer Protection Act has the power to award punitive damages which should, however, be granted only in exceptional circumstances, where the action of the Financier is so reprehensible that punishment is warranted.) 7

4. Gurcharan Singh v. State of Punjab (2020 SCC OnLine SC 796) 11

(To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. 11

In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.) 11

5. Gujarat Majdoor Sabha and Anr. v. State of Gujarat, (2020 SCC OnLine SC 798) 16

(The 'right to life' guaranteed to every person under Article 21, which includes a worker, would be devoid of an equal opportunity at social and economic freedom, in the absence of just and humane conditions of work. A workers' right to life cannot be deemed contingent on the mercy of their employer or the State. The notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and right against forced labour that are secured by Articles 21 and 23 of the Constitution. The notifications issued by Gujarat under Section 5 of the Factories Act was quashed) 16

6. T.K.David v. Kuruppampady Service Co-operative Bank Ltd. and Ors., (2020 SCC OnLine SC 800) 22

(The principle laid down by the Supreme Court in Bussa Overseas and Properties Private Limited of not entertaining special leave petition against an order rejecting the review petition when main judgment is not under challenge has become a precedential principle.) 22

7. Commissioner of Police and Anr. v. Umesh Kumar, (2020 SCC OnLine SC 810) 23

(It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.) 23

8. Amit Sahni v. Commissioner of Police and Ors., (2020 SCC OnLine SC 808) 27

(The erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. such kind of occupation of public ways anywhere for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.) 27

9. Nilay Gupta v. NEET PG Medical and Dental Admission Board 2020 and Ors., (2020 SCC OnLine SC 819) 29

(NRI quota is neither sacrosanct, not inviolable in terms of existence in any given year, or its extent. However, if a medical college or institution or, for that matter, the state regulating authority, such as the board in the present case, decide to do away with it, reasonable notice of such a decision should be given to enable those aspiring to such seats to choose elsewhere, having regard to the prevailing conditions.) 29

10. Karulal and Ors. v. State of Madhya Pradesh, (2020 SCC OnLine SC 818) 35

(The testimony of the related witness, if found to be truthful, can be the basis of conviction. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony.) 35

11. Branch Manager, Bajaj Allianz Life Insurance Company Ltd. and Ors. v. Dalbir Kaur, (2020 SCC OnLine SC 848) 37

(A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form.) 37

12. Bikramjit Singh v. State of Punjab, (2020 SCC OnLine SC 824) 41

(So long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.) 41

13. Anil Bhardwaj v. Hon'ble High Court of Madhya Pradesh and Others, (2020 SCC OnLine SC 832) 47

(The mere inclusion in the select list does not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Section 498A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant unsuitable. Subsequent acquittal after about a year cannot be a ground to turn the clock backward and to entitle him for reconsideration.) 47

14. Ganesan v. State, (2020 SCC OnLine SC 839) 52

(To hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.) 52

15. State of Madhya Pradesh and Ors. v. Bherulal, (2020 SCC OnLine SC 849) 54

(Delay in filing appeals/petitions by the Government – where there are inordinate delays, the Government or State authorities coming before the Court must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.) 54

17. Saravanan v. State, (2020 SCC OnLine SC 840) 56

(Where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. 56

The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail.) 56

1. *Pravasi Legal Cell v. Union of India, (2020 SCC OnLine SC 799)*

Decided on : -01.10.2020

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

(Directions for the refund of air-fare during the lockdown period, when domestic and international flights' operation was suspended)

Decision

22. Though the various contentious issues are raised on both sides and at the same time the suggestions/formulations as suggested by respondent nos. 1 and 2 in the affidavits filed before this Court are by and large acceptable to the majority of stake holders. In ordinary course modalities and timelines for refund on cancellation of tickets are governed by, the Civil Aviation Requirements, i.e. CAR dated 22nd May 2008; 06th August 2010 as revised on 27th February 2019, and the said Requirements are issued by the competent authority in exercise of powers under the provisions of Aircrafts Act, 1934 and the Rules made thereunder. But at the same time we cannot lose sight of the present situation prevailing in the country and across the globe, i.e. the effect of pandemic COVID-19. It cannot be disputed that the civil aviation sector, which is one of the important sectors, is seriously affected in view of the ban imposed for operating flights. Added to the same, air passenger traffic has come down heavily and which is gradually being restored. At this moment any strict enforcement action of the CARs would further restrict/reduce their operations and such enforcement action may further jeopardise the possibilities of generation of cash by airlines which can further adversely affect/delay the refund cycle. Strict enforcement of Civil Aviation Requirements at this moment may not yield any meaningful result for any stake holder. In view of the suggestions and formulations arrived at in the meetings held by respondent nos. 1 and 2, which are acceptable to the majority of stake holders, have to be implemented in letter and spirit. We also feel that such formulations are workable solutions in these peculiar circumstances which are prevailing in the country. The grievances which are raised on behalf of agents can be taken care by this Court by issuing appropriate directions wherever bookings are made by them, so as to see that their interest is safeguarded. Sri Arvind Datar, learned senior counsel, though has argued to extend the timelines for encashment of credit shell at least up to 31st March 2022 or any other shorter period but we are not inclined to accept the same, keeping in mind that the passengers who, with the hope of travel, have booked their tickets by spending their own money. For these reasons we are not inclined to delve any further on any of the contentions and deem it appropriate to dispose of this batch of cases with the following directions:

1. If a passenger has booked a ticket during the lockdown period (from 25th March, 2020 to 24th May, 2020) for travel during lockdown period and the airline has received payment for booking of air ticket for travel during the same period, for both domestic and international air travel and the refund is sought by the passenger against that booking being cancelled, the airline shall refund the full amount collected without any cancellation charges. The refund shall be made within a period of three weeks from the date of cancellation.

2. If the tickets have been booked during the lockdown period through a travel agent for a travel within the lockdown period, in all such cases full refund shall be given by the airlines

immediately. On such refund, the amount shall be passed on immediately by the agent to the passengers.

3. Passengers who booked tickets at any period of time but for travel after 24th May, 2020 - refund of fares to the passengers covered under this category shall be governed by the provisions of Civil Aviation Requirements (CAR).

4. Even for international travel, when the tickets have been booked on an Indian carrier and the booking is ex-India, if the tickets have been booked during the lockdown period for travel within the lockdown period, immediate refund shall be made.

5. If the tickets are booked for international travel on a foreign carrier and the booking is ex-India during the lockdown period for travel within the lockdown period, full refund shall be given by the airlines and said amount shall be passed on immediately by the agent to the passengers, wherever such tickets are booked through agents. In all other cases airline shall refund the collected amount to the passenger within a period of three weeks.

6. In all other cases, the airlines shall make all endeavours to refund the collected amount to the passenger within 15 days from today. If on account of financial distress, any airline/airlines are not able to do so, they shall provide credit shell, equal to the amount of fare collected, in the name of passenger when the booking is done either directly by the passenger or through travel agent so as to consume the same on or before 31st March, 2021. It is open to the passenger either to utilize such credit shell upto 31st March, 2021 on any route of his choice or the passenger can transfer the credit shell to any person including the travel agent through whom he/she has booked the ticket and the airlines shall honour such a transfer.

   6.1. The credit shell issued in the name of the passenger shall be transferable which can be utilized upto 31st March, 2021 and the concerned airline shall honour such a transfer by devising a mechanism to facilitate such a transfer. It is also made clear that such credit shell can be utilized by the concerned agent through whom the ticket is booked, for third party use. It is also made clear that even in cases where credit shell is transferred to third party, same is to be utilized only through the agent who has booked the ticket at the first instance.

7. In cases where passengers have purchased the ticket through an agent, and credit shell is issued in the name of passenger, such credit shell is to be utilized only through the agent who has booked the ticket. In cases where tickets are booked through agent, credit shell as issued in the name of the passenger which is not utilized by 31st March, 2021, refund of the fare collected shall be made to the same account from which account amount was received by the airline.

8. In all cases where credit shell is issued there shall be an incentive to compensate the passenger from the date of cancellation upto 30th June, 2020 in which event the credit shell shall be enhanced by 0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter the value of the credit shell shall be enhanced by 0.75% of the face value per month upto 31st March, 2021.

2. *Parvez Noordin Lokhandwalla v. State of Maharashtra and Anr., (2020 SCC OnLine SC 807)*

Decided on : -01.10.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indira Banerjee

(The language of Section 437(3) of the CrPC which uses the expression "any condition… otherwise in the interest of justice" has been construed in several decisions of this court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) of the CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.)

Facts

A private complaint filed in January 2014 by Mehraj Rajabali Merchant in the court of the JMFC Thane alleging that the appellant has fabricated a Power of Attorney dated 19 December 2011 by forging the signature of his brother, Shalin Lokhandawalla was subsequently registered as an FIR for offences punishable under Sections 420, 467, 468, 469, 470, 471 and 474 of the IPC read with Section 34.

The appellant and the co-accused, Arun Fatehpuria, had preferred an application for grant of anticipatory bail before the Sessions Court Thane, which granted interim protection from arrest to both the accused on 17 February 2018. On 16 April 2018, the Sessions Court at Thane confirmed the interim order and granted anticipatory bail to the co-accused, Arun Fatehpuria, primarily on the basis that the allegations in the complaint depend largely on documentary material, rendering custodial interrogation unnecessary. However, the interim order protecting the appellant was cancelled because the counsel representing the appellant withdrew the application on his behalf.

The appellant is an Indian citizen and holds an Indian passport. He holds a Green Card, enabling him to reside in the US. He has resided in the US since 1985. However, between 10 March 2015 and 10 January 2020, the appellant visited India on sixteen occasions, details of which have been filed on an affidavit dated 7 August 2020 in these proceedings.

The appellant arrived in India on 10 January 2020. He was arrested on 21 February 2020 at the point of departure in Mumbai in pursuance of a look-out notice issued on the basis of the FIR dated 22 April 2014. An application for bail was filed before the Sessions Court in the first week of March 2020 but was rejected on 4 May 2020. On 23 April 2020, the appellant filed an application for bail before the High Court of Judicature at Bombay. The High Court,

by its order dated 19 May 2020, granted temporary bail to the appellant, subject to the following conditions:

"a) The applicant be released on temporary bail for a period of eight weeks in C.R. No. I-156 of 2014 registered with Kapurbavadi Police Station, Thane on his furnishing P.R. Bond of Rs. 25,000/- with one or more sureties to make up the amount.

b) Till the procedure for furnishing sureties is completed, the applicant is permitted to furnish cash bail.

c) Before his actual release from jail, the Applicant is directed to surrender his Passport and/or Green Card issued by the United States of America with the Investigating Agency, if not earlier seized by it or other Government Authorities.

d) After his release from jail, the applicant is directed not to leave jurisdiction of Thane Police Commissionerate without prior permission of the trial Court.

e) Place the Application for regular bail before the regular Court after normal functioning of the Court begins."

On 10 June 2020, the appellant filed an IA before the High Court seeking permission to visit the US for a period of eight weeks. The High Court was hearing only urgent applications during the course of the lock down occasioned by the outbreak of Covid-19. The Registry of the High Court informed him on 15 June 2020 that no urgency was found in the praecipe for urgent listing. The appellant filed fresh praecipes for urgent listing on 17 June 2020 and 19 June 2020. The contention of the appellant has been that under the conditions prescribed by the US Immigration and Nationality Act 1952, he has to return for a short period for revalidating the Green Card.

The High Court, by its order dated 26 June 2020, rejected the application for considering his prayer for relaxing the conditions attaching to the grant of interim bail following which the appellant moved this Court. In pursuance of the order of this Court, the High Court heard the IA and has declined to grant permission to the appellant to visit the US for a period of eight weeks, by its order dated 23 July 2020, against which the appellant approached the Hon'ble Supreme Court.

Observations and Decision

The Hon'ble Court observed :-

> **14.** The language of Section 437(3) of the CrPC which uses the expression "any condition... otherwise in the interest of justice" has been construed in several decisions of this court. Though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437(3) and 439(1)(a) of the CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.

The Hon'ble Court referred to the following judgments of the Supreme Court with respect to the principles which are required to be followed in imposing conditions while granting bail:-

- ***Kunal Kumar Tiwari* v. *The State of Bihar, (2018) 16 SCC 74***
- ***Dataram Singh* v. *State of Uttar Pradesh, (2018) 3 SCC 22***
- ***Sumit Mehta* v. *State (NCT of Delhi), (2013) 15 SCC 570***
- ***Barun Chandra Thakur* v. *Ryan Augustine Pinto, Cr. Appeal No. 1618 of 2019***

The Hon'ble Court further observed :-

> **20.** This Court has passed multiple orders previously allowing an accused enlarged on bail to travel abroad. In *Ganpati Ramnath* v. *State of Bihar*, this Court allowed an accused-applicant to travel abroad for medical treatment, modifying its earlier bail order, noting that the applicant had travelled abroad on the ground of medical necessity on six occasions with the permission of the court and had returned. In *K. Mohammed* v. *The State of Kerala*, this Court allowed the accused-appellant to travel abroad to meet in the exigencies of a family situation. In *Tarun Trikha* v. *State of West Bengal*, this Court allowed the accused-petitioner to travel to Indonesia in connection with his employment and to return once the work was completed. In *Pitam Pradhan* v. *State of A P*, this Court while granting anticipatory bail, permitted the petitioner to travel abroad noting that his job required him to travel abroad at frequent intervals and may lose his employment if he were not permitted to travel abroad.

Regarding the present case, the Hon'ble Court set-aside the order of the Hon'ble High Court and held as follows :-

> **22.** The private complaint which is the genesis of the present proceedings was instituted in January 2014. The gravamen of the allegation is that the appellant has forged and fabricated the Power of Attorney of 19 December 2011 of his brother Shalin. Mr. Jha submits that, as a matter of fact, the Power of Attorney has not been used at any point; his brother was present in India at the time when conveyance was entered into; and that his brother has never raised any objection. However, we are not inclined to go into these factual aspects at the present stage. It would suffice to note that the co-accused was granted bail by the Sessions Judge Thane on 16 April 2018. We are called upon to decide only whether the appellant should be permitted to travel to the US for eight weeks. In evaluating this issue, we must have regard to the nature of the allegations, the conduct of the appellant and above all, the need to ensure that he does not pose a risk of evading the prosecution. The details which have been furnished to the Court by the appellant, indicate that he has regularly travelled between the US and India on as many as sixteen occasions between 2015 and 2020. He has maintained a close contact with India. The view of the High Court that he has no contact with India is contrary to the material on record. The lodging of an FIR should not in the facts of the present case be a bar on the travel of the appellant to the US for eight weeks to attend to the business of revalidating his Green Card. The conditions which a court imposes for the grant of bail - in this case temporary bail - have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional

relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case.

23. Mr. Sachin Patil submitted that the appellant was granted temporary bail for a period of eight weeks by the High Court, by its order dated 19 May 2020, and the appellant has neither furnished surety nor he has surrendered after the expiry of the period of eight weeks.

24. As far as the furnishing of sureties is concerned, Mr. Jha stated, on instructions, that the directions of the High Court have been complied with. In regard to the surrender of the appellant, the Court has been apprised of the fact that as a result of the lock down occasioned by the outbreak of Covid-19, the High Court on the judicial side passed successive orders on 26 March 2020, 15 April 2020 and 15 June 2020 extending its interim orders. In the meantime, to establish his bona fides, the appellant states that he had moved the High Court in successive praecipes for early hearing, while instituting an IA for modification of the conditions imposed on 19 May 2020 and, eventually, it was on the direction of this Court that the High Court passed the impugned order.

25. Having regard to the genesis of the dispute as well as the issue as to whether the appellant is likely to flee from justice if he were to be permitted to travel to the US, we find, on the basis of the previous record of the appellant, that there is no reason or justification to deny him the permission which has been sought to travel to the US for eight weeks. The appellant is an Indian citizen and holds an Indian passport. While it is true that an FIR has been lodged against the appellant, that, in our view, should not in itself prevent him from travelling to the US, where he is a resident since 1985, particularly when it has been drawn to the attention of the High Court and this Court that serious consequences would ensue in terms of the invalidation of the Green Card if the appellant were not permitted to travel. The record indicates the large amount of litigation between the family of the appellant and the complainant. Notwithstanding or perhaps because of this, the appellant has frequently travelled between the US and India even after the filing of the complaint and the FIR. We accordingly are of the view that the application for modification was incorrectly rejected by the High Court and the appellant ought to have been allowed to travel to the US for a period of eight weeks. We accordingly permit the appellant to do so, subject to his furnishing an undertaking to this Court before the date of travel that he will return to India after the expiry of a period of eight weeks and that he shall be available on all dates of hearing before the court of criminal jurisdiction, unless specifically exempted from personal appearance. The undertaking shall be filed in this court before the appellant undertakes travel. On the return of the appellant after eight weeks and if it becomes necessary for him to travel to the US, the appellant shall apply to the concerned court for permission to travel and any such application shall be considered on its own merits by the competent court. The appellant shall travel only upon the grant of permission and subject to the terms imposed. The passport of the appellant shall be handed over to the appellant to facilitate his travel, subject to the condition that he shall deposit it with the investigating officer immediately on his return.

3. *Magma Fincorp Ltd. v. Rajesh Kumar Tiwari, (2020 SCC OnLine SC 795)*

Decided on : -01.10.2020

Bench :- 1. Hon'ble Mr. Justice D.Y. Chandrachud
2. Hon'ble Ms. Justice **Indira Banerjee**

(The Financier is the real owner of the vehicle, which is the subject of a Hire Purchase Agreement. The requirement of a proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject matter of a Hire Purchase Agreement, would depend on the terms and conditions of the Hire Purchase Agreement, some of which may stand modified by the course of conduct of the parties. A forum constituted under the Consumer Protection Act has the power to award punitive damages which should, however, be granted only in exceptional circumstances, where the action of the Financier is so reprehensible that punishment is warranted.)

Issues

1. Whether the Financier is the real owner of the vehicle which is the subject of a hire purchase agreement, and if so, whether there can be any impediment to the Financier, taking repossession of the vehicle, when the hirer does not make payment of instalments in terms of the hire purchase agreement?

2. Whether service of proper notice on the hirer is necessary for repossession of a vehicle which is the subject of a hire purchase agreement, and if so, what is the consequence of non service of proper notice?

Observations and Decision

The Hon'ble Court referred to the provisions, scheme and the object of the Consumer Protection Act and also to the judgments of the Supreme Court on aspects and scope of the Act. Regarding the issues in the case, the Hon'ble Court held as follows :-

> **87.** The question raised by the Financier in this appeal, that is, whether the Financier is the real owner of the vehicle, which is the subject of a Hire Purchase Agreement, has to be answered in the affirmative in view of the law enunciated by this Court in *Haranjit Singh Chadha* (supra), *K.L. Johar & Co.* (supra) and *Anup Sarmah* (supra). The Financier being the owner of the vehicle which is the subject of a Hire Purchase Agreement, there can be no impediment to the Financier taking possession of the vehicle when the hirer does not make payment of instalments/hire charges in terms of the Hire Purchase Agreement. However, such repossession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and musclemen as so called Recovery Agents.
>
> **88.** Whether the service of proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject matter of a Hire Purchase Agreement, would depend on the terms and conditions of the Hire Purchase Agreement, some of which may stand modified by the course of conduct of the parties. If the hire purchase agreement provides for notice on the hirer

before repossession, such notice would be mandatory. Notice may also be necessary, if a requirement to give notice is implicit in the agreement from the course of conduct of the parties.

89. If the hirer commits breaches of the conditions of a hire purchase agreement which expressly provides for immediate repossession of a vehicle without further notice to the hirer, in case of default in payment of hire charges and/or hire instalments repossession would not be vitiated for want of notice. In this case, however a duty to give notice to the Complainant before repossession, was implicit in the Hire Purchase Agreement. The Hire Purchase Agreement was a stereotype agreement in a standard form, prepared by the Financier. The same kind of agreements, containing, identical terms, except for minor modifications are executed by all hirers of vehicles, equipment, machinery and other goods, who enter into hire purchase agreements with the Financier. The Financier who set down the terms and conditions of the hire purchase, construed the hire purchase agreement to contain an implied term for service of notice and accordingly despatched a notice, but did not address it to the correct address of the Complainant as given in the hire purchase agreement.

90. In a case where the requirement to serve notice before repossession is implicit in the hire purchase agreement, non service of proper notice would tantamount to deficiency of service for breach of the hire purchase agreement giving rise to a claim in damages. The Complainant consumer would be entitled to compensatory damages, based on an assessment of the loss caused to the complainant by reason of the omission to give notice. Where there is no evidence of any loss to the hirer by reason of omission to give notice, nominal damages may be awarded.

91. A forum constituted under the Consumer Protection Act has, as observed above, the power to award punitive damages. Punitive damages should, however, be granted only in exceptional circumstances, where the action of the Financier is so reprehensible that punishment is warranted. To cite an example, where a Financier erroneously and/or wrongfully invokes the power to repossess without notice to the hirer, causing thereby extensive pecuniary loss to the hirer or loss of goodwill and repute, a forum constituted under the Consumer Protection Act may award punitive damages.

Regarding the role of the Consumer Forums, the Hon'ble Court observed as follows :-

39. Before a District Forum can grant relief to the consumer of a service, it has to be satisfied that the allegations in the complaint, and/or in other words, the allegations which constitute a valid complaint, that is allegations of unfair or restrictive trade practice adopted by the service provider, or the allegations of deficiency in the service hired, or availed of or agreed to be availed of by the Complainant from the service provider, or the allegations of the service provider charging a price in excess of the price fixed for the service, under any law, for the time being in force or agreed between the parties or allegations of offering spurious services or services hazardous to life or safety, are proved.

40. Section 13(2)(b) of the Consumer Protection Act, 1986 casts an obligation on the District Forum to decide a complaint on the basis of the evidence brought to its notice by the Complainant and the service provider. Irrespective of whether the service provider adduces evidence or not, the decision of the District Forum has to be based on evidence relied upon by the Complainant. The onus of proof is on the Complainant making the allegation. Section 27 of the Consumer Protection Act casts an obligation on the District Forum, the State Commission or the National Commission to dismiss frivolous complaints with costs not exceeding Rs. 10,000/-.

54. The Consumer Protection Act, 1986 creates fora for quick adjudication of consumer disputes. The Act protects consumers from defective goods, deficient services, unfair or restrictive trade practices, or spurious goods or services. The Act also protects consumers of goods and services from being charged a price, in excess of the price fixed by or under any law in force, the price agreed between the parties, or the price declared by the service provider or the supplier of the goods *inter alia* by display, and/or representation.

55. The Consumer Protection Act, 1986, which creates fora for expeditious adjudication and settlement of consumer disputes, is not in derogation of any law in existence, but in addition thereto, as provided in Section 3 thereof. The said Act protects consumers of services from being charged a price in excess of the price fixed for the service under any law or the price agreed between the parties and also redressal of deficiency in the services availed by the Consumer and/or against restrictive or unfair trade practices, and/or spurious services.

56. The Consumer Protection Act, 1986 does not override the Contract Act, 1872, and other enactments in force, applicable to the service availed by the consumer from the service provider.

57. The protection, to which the consumer of a service is entitled under the Consumer Protection Act, is against loss of money, by reason of being denied service, of a quality agreed upon expressly or by necessary implication, *inter alia*, in view of the applicable law, for which the consumer has paid, or has agreed to pay a consideration. The said Act also protects consumers from being overcharged for any service obtained and/or agreed to be obtained.

58. The consumer of a service may also be entitled to damages for any loss suffered by the consumer, by reason of denial or deficiency in service for which the consumer has paid or agreed to pay (if the parties have agreed to deferred payment), charges and/or in other words, price for the service. In cases of breach of contract, liquidated damages may be imposed on the party in breach, if the agreement provides for liquidated damages, that is a fixed amount by way of damages. Where the parties to an agreement have not agreed to liquidated damages, the party in breach of agreement may be directed to pay unliquidated damages which are compensatory. Such compensatory damages are not to punish the party in breach, but to compensate the party not in breach, for losses suffered as a result of the breach.

59. Where, however, the damages caused by the breach are severe and extensive, the party in breach may be required to pay to the party not in breach, such damages as would restore the position of the party not in breach, to the position before the breach occurred.

60. Apart from compensatory damages, an Adjudicating Authority may impose on the party in breach, punitive damages or nominal damages. Punitive damages are awarded where the party in breach of agreement has behaved in a manner, which is reprehensible and calls for punishment. Nominal damages are awarded where there is no real harm done, by reason of the breach of the contract.

61. Section 14 of the Consumer Protection Act, 1986 empowers the District Forum to award compensation to the party not in breach by directing the party in breach to return the price or the charges as may have been paid by the complainant [Section 14(1)(c)]. The said Section also enables the District Forum to award compensatory damages to the consumer for loss or injury suffered by the consumer due to negligence of the party in breach [Section 14(1)(d)]. The Forum may direct removal of the deficiency in service, if the deficiency can be removed and it can direct dis-continuation of unfair trade practices or restrictive practices and direct the same not to be repeated [Section 14(1)(e) and (f)].

62. The proviso to Section 14(1)(d) of Consumer Protection Act, 1986 empowers the District Forum to grant punitive damages in such circumstances as it deems fit. Punitive damages are not generally awarded in cases of breach of contract unless the act is so reprehensible that it calls for punishment of the party in breach, by imposition of punitive and/or exemplary damages. Compensation which is compensatory, has to be assessed taking into account relevant factors, such as the loss incurred by the claimant, though some amount of guess work and/or estimation may be permissible. In the instant case, the District Forum did not even undertake the exercise of assessment of the loss/damages, if any, suffered by the complainant by reason of non-service of notice before taking possession of the vehicle.

4. *Gurcharan Singh v. State of Punjab (2020 SCC OnLine SC 796)*

Decided on : - 01.10.2020

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

(To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous.

In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.)

Facts

The appellant along with his parents was charged under sections 304B and 498A read with section 34 of the IPC. The learned Trial Court ordered acquittal of the appellant's parents. However, even while declaring that there is insufficient material to convict anyone under section 304B & 498A IPC, the trial Court opined that although no charge of abetment was framed against the husband, he can be convicted for abetting suicide of his wife, under section 306 IPC.

The criminal process was set in motion with registration of FIR under section 304B/34 IPC and under section 498A IPC. The case was registered on the basis of statement made by Jail Singh, father of Shinder Kaur(deceased). The appellant was married to Shinder Kaur and they had a son ($2^{1/4}$ years) and a daughter (8/9 months), when she committed suicide on 12.8.1997. According to the prosecution case, Shinder Kaur was harassed after marriage, for insufficient dowry. A few days prior to the occurrence, Shinder Kaur was beaten and was turned out from her matrimonial home by the accused to bring Rs. 20,000/- from her parents for purchase of a plot. Then the Complainant had escorted back his daughter to her matrimonial home by pleading with the accused that he was unable to meet their cash demand. On 13.8.1997, the father received a message that *Shinder Kaur* had died in her matrimonial house. On hearing this, the Complainant Jail Singh along with his wife Surjit Kaur and Chand Singh (brother of Surjit Kaur), rushed to Barnala and saw the dead body of Shinder Kaur in the matrimonial home who had died at about 5 P.M. on 12.8.1997. Since, it was an unnatural death, the Complainant alleged that either the accused had caused the

death of his daughter by giving her some poisonous substance or she had ingested such substance, due to harassment by the accused.

The post mortem report disclosed that death was due to consumption of aluminium phosphide. The husband and the parents-in-law of the deceased were charged and after the case was committed on 28.10.1997, the trial commenced before the Court of Additional Sessions Judge, Barnala.

Adverting to the evidence of Jail Singh(PW2), Chand Singh(PW3) and Surjit Kaur(PW4), who were the father, maternal uncle and mother of the deceased respectively, the Court proceeded to determine whether the unnatural death was the result of Dowry demand. The witnesses testified that Rs. 20,000/- was demanded by the accused from the deceased's family as they wanted to purchase a plot and since this demand could not be met, Shinder Kaur committed suicide. The evidence of PW2, the father of the deceased shows that "*cash loan*" of 20,000/- was asked. It is also seen from the evidence that the appellant Gurcharan Singh is the only son of his parents and they are the owner of a big house with a vegetable garden. The appellant and his father were drivers with Punjab police. What is also of relevance is that during delivery time, the deceased was admitted in the hospital for 10/12 days in November 1996 and her medical treatment was arranged by the husband and the father-in-law. No evidence of any dispute relating to dowry demand or maltreatment of the deceased, during three years of marriage was seen. On this basis, the Trial Court concluded even if Rs. 20,000/- was asked for purchase of plot three years after marriage and few days later the unnatural death takes place, the death cannot be related to demand of dowry.

The Trial Court then posed a question to itself as to why a young lady with two small children would commit suicide unless she has been pushed to do so, by the circumstances in the matrimonial home. It was then observed that the expectation of a married woman will be love and affection and financial security at the hands of her husband and if her hopes are frustrated by the act or by wilful negligence of the husband, it would constitute abetment within the meaning of section 107 IPC, warranting conviction under section 306 IPC.

In the resultant Criminal Appeal, the appellant contended that the conviction cannot be justified unless evidence disclosed some positive act or conduct of the accused, which might have compelled the deceased to commit suicide. On the plea of cordial relationship of the deceased with her husband, the appellate Judge conjectured that if such be the situation, the family members (PW2, PW3, PW4) of the deceased, would not have deposed against the husband. The suggestion that the deceased accidentally consumed pesticide kept for the vegetable garden was brushed aside by the learned Judge. Accordingly, the High Court endorsed the Trial Court's view that deceased was pushed to commit suicide by the circumstances and the atmosphere in the matrimonial home. The appeal was accordingly dismissed by the impugned judgment leading to the present appeal.

Observations and Decisions

Regarding the principles of criminal law involved in the present case, the Hon'ble Court referred to the provisions of the IPC and the judgments of the Supreme Court with respect thereto and observed as follows :-

Section 107

14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, *mens rea* has to be established. To prove the offence of abetment, as specified under Sec 107 of the IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove *mens rea*, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the *mens rea* for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

Section 306

16. The necessary ingredients for the offence under section 306 IPC was considered in the case *SS Chheena* v. *Vijay Kumar Mahajan* where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:—

> "25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

17. While dealing with a case of abetment of suicide in *Amalendu Pal alias Jhantu* v. *State of West Bengal*, Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

> "12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of

> occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.
>
> 13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

18. In the case *Mangat Ram* v. *State of Haryana*, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnanan rightly observed as under:—

> "24. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning."

Applying the aforementioned principles, the Hon'ble Court held as follows :-

10. The submissions of the learned Counsel have been considered. In order to give the finding of abetment under section 107 IPC, the accused should instigate a person either by act of omission or commission and only then, a case of abetment is made out. In the present case however, there is no direct evidence of cruelty against the husband or the in-laws. There is nothing on record to show which particular hope or expectation of the deceased was frustrated by the husband. Evidence is also lacking on wilful neglect of the appellant, which led to the suicidal death. Whereas contrary evidence is available to suggest that care and treatment was given to the deceased in the matrimonial home and in the hospital, and during the three years of marriage, there was no instance of maltreatment, attributable to dowry demand. The demand of Rs. 20,000/- for purchase of a plot (in front of the residence which might have incidentally become available for sale just at that time), after three years of marriage, was ruled out by the trial Court as the possible cause for the suicidal death. In any case, PW2 stated that this sum was a *"cash loan"* asked for buying the plot. Thus, a loan may have been sought by the accused which could not be given. But there is nothing to show that the deceased was harassed on this count, in the matrimonial home. In the face of such material, it is difficult to conclude that Shinder Kaur was pushed to commit suicide by the circumstances or atmosphere created by the appellant.

11. Insofar as the possible reason for a young married lady with two minor children committing suicide, in the absence of evidence, conjectures cannot be drawn that she was pushed to take her life, by the circumstances and atmosphere in the matrimonial home. What might have been the level of expectation of the deceased from her husband and in-laws and the degree of her frustration, if any, is not found through any evidence on record. More significantly, wilful negligence by the husband could not be shown by the prosecution.

19. Proceeding with the above understanding of the law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the

appellant's side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased faced persistent harassment from her husband. Nothing to this effect is testified by the parents or any of the other prosecution witnesses. The Trial Court and the High Court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellant is guilty of abetting the suicide of his wife.

20. In such circumstances, we have no hesitation in declaring that the Trial Court and the High Court erred in concluding that the deceased was driven to commit suicide, by the circumstances or atmosphere in the matrimonial home. This is nothing more than an inference, without any material support. Therefore, the same cannot be the basis for sustaining conviction of the appellant, under section 306 of the IPC.

5. *Gujarat Majdoor Sabha and Anr. v. State of Gujarat, (2020 SCC OnLine SC 798)*

Decided on : - 01.10.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Mr. Justice K.M. Joseph

(The 'right to life' guaranteed to every person under Article 21, which includes a worker, would be devoid of an equal opportunity at social and economic freedom, in the absence of just and humane conditions of work. A workers' right to life cannot be deemed contingent on the mercy of their employer or the State. The notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and right against forced labour that are secured by Articles 21 and 23 of the Constitution. The notifications issued by Gujarat under Section 5 of the Factories Act was quashed)

Facts

A nationwide lockdown was declared by the Central Government from 24 March 2020 to prevent the spread of the COVID-19 pandemic. Economic activity came to a grinding halt. The lockdown was extended on several occasions, among them for the second time on 14 April 2020. On 17 April 2020, the Labour and Employment Department of the State of Gujarat issued a notification under Section 5[1] of the Factories Act to exempt all factories registered under the Act "from various provisions relating to weekly hours, daily hours, intervals for rest etc. for adult workers" under Sections 51, 54, 55 and 56. The stated aim of the notification was to provide "certain relaxations for industrial and commercial activities" from 20 April 2020 till 19 July 2020. The notification in its relevant part is extracted below:

> "…NOW, THEREFORE, in exercise of the powers conferred by Section 5 of the Factories Act, 1948 (LXIII of 1948), the Government of Gujarat hereby directs that all the factories registered under the Factories Act, 1948 shall be exempted from various provisions relating to weekly hours, daily hours, intervals for rest etc. of adult workers under section 51, section 54, section 55 and section 56 with the following conditions from 20th April till 19th July 2020,-
>
> (1) No adult worker shall be allowed or required to work in a factory for more than twelve hours in any day and Seventy Two hours in any week.

[1] **5. Power to exempt during public emergency. –** In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or class or description of factories from all or any of the provisions of this Act except section 67 for such period and subject to such conditions as it may think fit:

Provided that no such notification shall be made for a period exceeding three months at a time.

Explanation.-For the purposes of this section "public emergency" means a grave emergency whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance.

(2) The Periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed six hours and that no worker shall work for more than six hours before he has had an interval of rest of at least half an hour.
(3) No Female workers shall be allowed or required to work in a factory between 7 : 00 PM to 6 : 00 AM.
(4) Wages shall be in a proportion of the existing wages (e.g. If wages for eight hours are 80 Rupees, then proportionate wages for twelve hours will be 120 Rupees)."

On its lapse by the efflux of time, the State government issued another notification on 20 July 2020. Similar in content, the new notification extended the exemption granted to factories from 20 July 2020 till 19 October 2020.

Both these notifications were under challenge before the Supreme Court under Article 32 of the Constitution.

Observations and Decision

Regarding the **scope of power under Section 5** ("public emergency" and "security of State") of the Factories Act, the Hon'ble Court discussed the provisions of Articles 352, 355 and 356 of the Constitution and also to the judgments of the Supreme Court with respect to the meaning and scope of "public emergency", "internal security" and "security of state", such as ***S.R. Bommai v. Union of India***[2], ***Extra-Judicial Execution Victim Families Association v. Union of India***[3], ***Anuradha Bhasin v. Union of India***[4], ***Romesh Thapar v. State of Madras***[5] and also the observations of the ***Sarkaria Commission*** and held as follows :-

> **23.** The power under Section 5 of the Factories Act can be exercised in a "public emergency". The explanation states that to constitute a public emergency, there must be a grave emergency. The emergency must be of such a nature as to threaten the security of India or a part of its territory. The threat to the security of India or a part of the territory must be caused by war, external aggression or an internal disturbance. The expression 'internal disturbance' cannot be divorced from its context, or be read in a manner divorced from the other two expressions which precede it. They are indicative of the gravity of the cause which threatens the security of India or a part of its territory. An internal disturbance must be of a similar gravity. Further, it is necessary to evaluate whether a situation of internal disturbance threatens the security of India, or a part of its territory to qualify as a 'public emergency'. In the absence of any one or more of the constituent elements, the conditions requisite for the exercise of statutory power will not exist.
>
> **26.** Section 5 of the Factories Act provides for the power of exemption from certain provisions of the Act due to the occurrence of a public emergency. The explanation speaks of a grave emergency where the security of India is threatened by war, external aggression or

[2] (1994) 2 SCR 644.
[3] (2016) 14 SCC 536
[4] (2020) 3 SCC 637.
[5] (1950) 1 SCR 594.

internal disturbance. The power conferred by the provision by its very nature, must be used only where there is a grave emergency implicating an actual threat to the security of the state. The purpose of exercising emergency powers is to avert the threat posed by war, external aggression or internal disturbance and such powers must not be used for any other purpose.

Whether the COVID-19 pandemic and the ensuing lockdown imposed by the Central Government to contain the spread of the pandemic, have created a public emergency as defined by the explanation to Section 5 of the Factories Act?

28. The global pandemic caused by COVID-19 is an unprecedented situation with which countries all over the world are grappling. In India, the Central Government imposed a nationwide lockdown on 24 March 2020 for an initial period of 21 days to take effective measures to contain the spread of COVID-19, including, maintenance of essential supplies and services and healthcare facilities. The lockdown was subsequently extended until 31 May 2020. During the lockdown, economic activity in the country was brought to a standstill. There was a widespread migration of labour from the cities, where all avenues for work had closed. There was an unprecedented human migration, countless of the marginalized on foot, to rural areas in search of the bare necessities to sustain life. There has been a loss of incomes and livelihood. The brunt of the pandemic and of the lockdown has been borne by the working class and by the poorest of the poor. Bereft of social security, they have no fall back options. The respondent has in exercise of its powers under Section 5 of the Factories Act issued the impugned notifications purportedly to provide a fillip to industrial and commercial activities.

31. We do not find any merit in the submissions of the respondents. In **Pfizer**, the dispute between the employer and workmen concerned the imposition of onerous working conditions by the factory owner. The case was a private dispute and did not concern the exercise of emergency powers by the State under the Factories Act. The Court merely noted that the dispute had arisen during the time of a national emergency imposed by the President in 1962 and there was a need to gear up the industrial production to meet the needs of the nation. In the present situation, the Respondent has in its written submissions admitted that the purpose of the notifications is not to cope with an overwhelming pressure of work, but only to meet the minimum targets.

32. Even if we were to accept the Respondent's argument at its highest, that the pandemic has resulted in an internal disturbance, we find that the economic slowdown created by the COVID-19 pandemic does not qualify as an internal disturbance **threatening the security of the state**. The pandemic has put a severe burden on existing, particularly public health, infrastructure and has led to a sharp decline in economic activities. The Union Government has taken recourse to the provisions of the Disaster Management Act, 2005.[12] However, it has not affected the security of India, or of a part of its territory in a manner that disturbs the peace and integrity of the country. The economic hardships caused by COVID-19 certainly pose unprecedented challenges to governance. However, such challenges are to be resolved by the State Governments within the domain of their functioning under the law, in coordination with the Central Government. Unless the threshold of an economic hardship is so extreme that it leads to disruption of public order and threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers which are to be used sparingly under the law. Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exist under Section 5. That is absent in the present case.

33. The Respondent's purpose in invoking the emergency powers under the Factories Act is to counter the effects of the economic slowdown caused by the lockdown. In analyzing the scope and intent of Section 5 of the Factories Act and the specific exemptions of Section 51, 54, 55 and 56 envisaged by the impugned notifications, it is necessary to examine the purpose of the Factories Act, in the backdrop of the constitutional scheme of the Indian welfare State. The Factories Act was enacted almost contemporaneous with the framing of the Constitution. The Factories Act is a product of history; of a long struggle of worker unions to secure the right to human dignity in workplaces that ensure their safety and well-being. The first Factories Act was introduced in 1881 and was amended in 1891, 1911, 1934 and 1941. Justice Umesh C Banerjee, as a part of a two-judge bench of this Court, in *S.M. Datta* v. *State of Gujarat*[13] succinctly traced these amendments in the context of the industrial revolution and British imperialism in India. .....

Scheme and Objects of the Factories Act

34. The Factories Act, as it currently stands, was enacted to guarantee occupational health and safety. It ensures the material and physical well-being of workers by fastening responsibilities and liabilities on 'occupiers' of factories. As a legislative recognition of the inequality in the material bargaining power between workers and their employers, the Act is meant to serve as a bulwark against harsh and oppressive working conditions. The Act, primarily applies to establishments employing more than 10 persons. It has been purposively and expansively applied to workers, who may not strictly fall within the purview of the definition, and yet embody similar roles within the establishments. These permissible interpretations have been aligned with the intention of the legislature which has a vital concern in preventing exploitation of labour.

35. The notifications in question, besides specifically exempting all factories from the applicability of Sections 51, 54, 55 and 56, effectively override Section 59 of the Factories Act. The above provisions form a part of Chapter VI which prescribes the 'Working Hours of Adults'. The Chapter, broadly concerned with worker productivity and fair remuneration, prescribes working hours, mandatory days of rest, intervals between stretches of work and adequate compensation for overtime. The notifications, putatively, are a response to the COVID-19 pandemic and exempt *all* factories from the provisions of Sections 51, 54, 55 and 56 which are extracted below:

Constitutional Vision of Social and Economic Democracy

46. The Constitution is a charter which solemnized the transfer of power. But the constitutional vision of *swarajya* transcends the devolution of political power. The Fundamental Rights and Directive Principles of State Policy present a coherent vision of a welfare state that envisages justice- *social, economic and political*. Granville Austin, in his seminal work on the Indian Constitution, has collectively described them as "*the conscience of the Constitution which connects India's future, present, and past by giving strength to the pursuit of social revolution in India*".[18] The colonial experience, and the poverty it sanctified as an incident of state policy, were the driving force in the Constituent Assembly's goal to achieve economic equality and independence.[19] Although the Directive Principles were not intended to be capable of being independently enforced before the courts to invalidate a legislation, they inform state policies; act as a guidepost for legislation and provide sign posts for travelers engaged on the path of understanding the complexities which the Constitution unravels. Eminent legal scholar Upendra Baxi, while reviewing Granville Austin's work on the

Indian Constitution had analysed the dichotomy of justiciability and non-justiciability of Fundamental Rights and Directive Principles. .....

The Factories Act is an integral element of the vision of state policy which seeks to uphold Articles 38,[22] 39,[23] 42,[24] and 43[25] of the Constitution. It does so by attempting to neutralize the excesses in the skewed power dynamics between the managements of factories and their workmen by ensuring decent working conditions, dignity at work and a living wage. Ideas of 'freedom' and 'liberty' in the Fundamental Rights recognized by the Constitution are but hollow aspirations if the aspiration for a dignified life can be thwarted by the immensity of economic coercion.

47. The expression 'worker' as defined in the Factories Act, is broad enough to include persons who are indirectly employed as contract labour and contribute to the manufacturing process at the establishment.[26] The COVID-19 pandemic in India, was accompanied with an immense migrant worker crisis, where several workers (including workers employed or contracted with factories) were forced to abandon their cities of work due to the halt in production which cut-off their meagre source of income. The notifications in question legitimize the subjection of workers to onerous working conditions at a time when their feeble bargaining power stands whittled by the pandemic. Clothed with exceptional powers under Section 5, the state cannot permit workers to be exploited in a manner that renders the hard-won protections of the Factories Act, 1948 illusory and the constitutional promise of social and economic democracy into paper-tigers. It is ironical that this result should ensue at a time when the state must ensure their welfare.

48. In an economy where the State is not the dominant employer of workers, the COVID-19 pandemic opens up unforeseen challenges in securing true equality and dignity to them. Workers in the organized and unorganized sectors of the economy face basic questions about survival and security. The unprecedented nature of these challenges is matched only by the unanticipated nature of the pandemic. The challenges will need to be addressed with ingenuity and commitment. The framers of the Constitution did not envisage one model of economic democracy. Dr. B.R. Ambedkar, as the architect of the Constitution, incorporated a vision which endows the succeeding generations of elected governments with the discretion to design responses in tune with the changing nature of social and economic structures.[27]

49. However, flexibility for succeeding generations to develop their models of economic democracy would not in the vision of the Framers allow a disregard of socio-economic welfare. Dr. Ambedkar, in defending the retention of the word 'strive' in Article 38 of the Directive Principles emphatically noted:

.....

50. The Constitution allows for economic experiments. Judicial review is justifiably held off in matters of policy, particularly economic policy. But the Directive Principles of State Policy cannot be reduced to oblivion by a sleight of interpretation. To a worker who has faced the brunt of the pandemic and is currently laboring in a workplace without the luxury of physical distancing, economic dignity based on the rights available under the statute is the least that this Court can ensure them. Justice Patanjali Sastry immortalized that phrase of this court as the *sentinel on the qui vive* in our jurisprudence by recognizing it in *State of Madras* v. *V G Row*[29]. The phrase may have become weather-beaten in articles, seminars and now, in the profusion of webinars, amidst the changing times. Familiar as the phrase sounds, judges must constantly remind themselves of its value through their tenures, if the call of the constitutional conscience is to retain meaning. The 'right to life' guaranteed to every person under Article 21, which includes a worker, would be devoid of an equal opportunity at social and economic

freedom, in the absence of just and humane conditions of work. A workers' right to life cannot be deemed contingent on the mercy of their employer or the State. The notifications, in denying humane working conditions and overtime wages provided by law, are an affront to the workers' right to life and right against forced labour that are secured by Articles 21 and 23 of the Constitution.

The Hon'ble Court allowed the petition and quashed the impugned notifications and held :-

51. This Court is cognizant that the Respondent aimed to ameliorate the financial exigencies that were caused due to the pandemic and the subsequent lockdown. However, financial losses cannot be offset on the weary shoulders of the laboring worker, who provides the backbone of the economy. Section 5 of the Factories Act could not have been invoked to issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic that did not result in an 'internal disturbance' of a nature that posed a 'grave emergency' whereby the security of India is threatened. In any event, no factory/classes of factories could have been exempted from compliance with provisions of the Factories Act, unless an 'internal disturbance' causes a grave emergency that threatens the security of the state, so as to constitute a 'public emergency' within the meaning of Section 5 of the Factories Act.

6. ***T.K.David v. Kuruppampady Service Co-operative Bank Ltd. and Ors., (2020 SCC OnLine SC 800)***

Decided on : - 05.10.2020

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

(The principle laid down by the Supreme Court in *Bussa Overseas and Properties Private Limited* of not entertaining special leave petition against an order rejecting the review petition when main judgment is not under challenge has become a precedential principle.)

Issue

Whether special leave petition challenging the order of the High Court which rejected the review petition against the Judgment of the Division Bench when the Division Bench judgment has neither been challenged nor can be challenged in the special leave petition?

Observations and Decision

Dismissing the SLP, the Hon'ble Court observed and held as follows :-

11. This Court had earlier considered the question as to whether the special leave petition challenging the order rejecting review petition is maintainable when the main judgment of the High Court is not under challenge. We may refer to judgment of this Court in *Municipal Corporation of Delhi* v. *Yashwant Singh Negi*, (2013) 2 SCR 550. In the above case, a special leave petition was preferred against an order rejecting the review petition. A preliminary objection was raised that special leave petition is not maintainable since the main judgment is not challenged.....

13. We may also notice another elaborate judgment of this Court in *Bussa Overseas and Properties Private Limited* v. *Union of India*, (2016) 4 SCC 696. In the above case also special leave petition was filed against the Division Bench judgment of the High Court rejecting the review petition. .....

15. The rationale for not entertaining a special leave petition challenging the order of High Court rejecting the review petition when main order in the writ petition is not challenged can be easily comprehended. Against the main judgment the SLP having been dismissed earlier the same having become final between the parties cannot be allowed to be affected at the instance of petitioner. When the main judgment of the High Court cannot be effected in any manner, no relief can be granted by this Court in the special leave petition filed against order rejecting review application to review the main judgment of the High Court. This Court does not entertain a special leave petition in which no relief can be granted. It is due to this reason that this Court in *Bussa Overseas and Properties Private Limited* (supra) has held that principle of not entertaining special leave petition against an order rejecting the review petition when main judgment is not under challenge has become a precedential principle. We reiterate the above precedential principle in this case again.

7. *Commissioner of Police and Anr. v. Umesh Kumar, (2020 SCC OnLine SC 810)*

Decided on : - 07.10.2020

Bench :- 1. Hon'ble Mr. Justice **D.Y. Chandrachud**
2. Hon'ble Ms. Justice Indira Banerjee

(It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.)

Facts

A result notifying a list of provisionally selected candidates to the 2013 batch of Constables (Executive) - Male in Delhi Police was initially declared on 13 July 2015 but it was soon found that an error had crept in due to the failure to allocate a bonus mark to every candidate whose height was in excess of 178 centimetres. The allotment of bonus marks was provided in Standing Order No. 212 of 2011, which necessitated a revision of the results. In the revised result, which was declared on 17 July 2015, certain candidates from the original list were ousted while new candidates came in. Both the respondents were part of the list of successful candidates. Yet, there can be no dispute about the factual position that the recruitment process was yet to be concluded. For one thing, the process of verification of character and antecedents and the ascertaining of medical fitness was yet to be carried out. But apart from this, a set of OAs came to be instituted by unsuccessful candidates before the Tribunal highlighting grievances in regard to the manner in which the answer key had been prepared. The authorities agreed before the Tribunal to appoint an Expert Committee. Following the submission of the report of the Expert Committee, the results were revised on 22 February 2016. After a decision was taken by the Competent Authority for revising the result, as many as 123 candidates who had been selected earlier were ousted and 129 new candidates came into the selected list. This process of revising the results was carried out when the recruitment process was yet to be completed for the candidates selected in the result declared on 17 July 2015. This process of the revision of the result was then unsuccessfully challenged in the first batch of OAs before the Tribunal, and subsequently the writ petitions under Article 226 before the High Court.

On 21 March 2016, the respondents filed O.A. No. 1146 of 2016 challenging their non-selection in the revised result declared on 22 February 2016 before the Tribunal. The OA was dismissed on 15 September 2017. Umesh Kumar then filed a writ petition under Article 226 - Writ Petition (C) No. 10143 of 2017 - in the Delhi High Court which was allowed by a judgment dated 6 December 2018. Following its decision in the case of Umesh Kumar, the Delhi High Court also allowed the writ petition instituted by Satyendra Singh - Writ Petition (C) No. 13052 of 2018 - by its judgment dated 19 December 2018. The ultimate directions that have been issued by the Delhi High Court in the first of the two writ petitions are in the following terms:

"For the aforesaid reasons, we find no merits in the submissions of Mr. Satyakam, learned counsel for the respondents. The petition is accordingly allowed and we direct the respondents to appoint the petitioner to the post of Constable (Executive), Delhi Police. He shall be deemed to have been appointed from the date of appointment with his other batch mates and his seniority shall be determined accordingly, on notional basis. However, he shall not be entitled to any arrears of pay and allowances. Compliance be made within next four weeks."

Observations and Decision

Regarding the usual process of public recruitment, the Hon'ble Court observed:-

> **16.** ..... The flip-flops which took place were undoubtedly because of the failure of the authorities to notice initially the norm of allotting 1 bonus mark based on height and due to the failure to prepare a proper answer key. Such irregularities have become a bane of the public recruitment process at various levels resulting in litigation across the country before the Tribunals, the High Courts and ultimately this Court as well. Much of the litigation and delay in carrying out public recruitment would be obviated if those entrusted with the duty to do so carry it out with a sense of diligence and responsibility.

The Hon'ble Court framed the following issue and held as follows:-

> **17.** The real issue, however, is whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative. In *Punjab SEB* v. *Malkiat Singh*[10], this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:
>
> "4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in *Shankarsan Dash* v. *Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] which reads : (SCC pp. 50-51)
>
> "*7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.* Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court,

> and we do not find any discordant note in the decisions in *State of Haryana* v. *Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165], *Neelima Shangla* v. *State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jatinder Kumar* v. *State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899]."

Applying the principle of law as laid down in these cases to the present case, the Hon'ble Court held :-

> **18.** In the present case, after the name of respondents appeared in the results declared on 17 July 2015, the process of recruitment was put in abeyance since the results were challenged before the Tribunal. The process of revising the results during the course of the recruitment was necessitated to align it in accordance with law. An Expert Committee was specifically appointed following the institution of proceedings before the Tribunal. The report of the Expert Committee established errors in the answer key, and thereafter a conscious decision was taken, after evaluating the report, to revise the results on 1 February 2016. In the fresh list which was drawn up, both the respondents have admittedly failed to fulfil the cut-off for the OBC category to which they belong. As the learned ASG submitted before the Court, as many as 228 candidates are ranked above Umesh Kumar on merit while 265 candidates stand above Satyendra Singh. The submission of Mr. Khurshid that these are the only two candidates before this Court would not entitle them to a direction contrary to law since they had no vested right to appointment.
>
> **19.** In regard to respondent Umesh Kumar, it is also brought to our attention that he resigned from the RPF on 16 August 2015 and his resignation was accepted on 25 August 2015. Evidently, the respondent tendered his resignation without any justification when the recruitment process had not been concluded and even before an offer of appointment was made to him. In any event, it would have been open to him seek re-enlistment in the RPF at the material time which he chose to not do.
>
> **20.** In *Rajesh Kumar* (supra), Justice TS Thakur, as the learned Chief Justice of India then was, dealt with a case where the model answer key, and hence the process of evaluation of answer scripts by the Bihar Staff Selection Commission, had been found to be flawed. The Court held:
>
> > "15. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the "model answer key" which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the "model answer key" was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the "model answer key" to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in 'A' series question paper. Other errors were also found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he

> was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key."

21. In *Rajesh Kumar* (supra), the Court then refused the oust those individuals from service who did not make the grade after re-valuation of the result since they had been in service for nearly seven years. However, in the present case, as we have discussed above, the revised result was declared even before offers of appointment were made to the respondents since the entire process of recruitment had been put in abeyance.

22. For the above reasons, we are of the view that the judgments delivered by the Delhi High Court on 6 December 2018 in Writ Petition (C) No. 10143 of 2017 and on 19 December 2018 in Writ Petition (C) No. 13052 of 2018 do not comport with law. The High Court has been manifestly in error in issuing a mandamus to the appellants to appoint the respondents on the post of Constable (Executive) in Delhi Police. The direction was clearly contrary to law. The respondents have participated in the selection process and upon the declaration of the revised result, it has emerged before the Court that they have failed to obtain marks above the cut-off for the OBC category to which they belong. We accordingly allow the appeals and set aside the judgments of the High Court dated 6 December 2018 in Writ Petition (Civil) No. 10143 of 2017 and 19 December 2018 in Writ Petition (Civil) No. 13052 of 2018. Both the Writ Petitions shall stand dismissed. There shall, however, be no order as to costs.

8. *Amit Sahni v. Commissioner of Police and Ors., (2020 SCC OnLine SC 808)*

Decided on : - 07.10.2020

Bench :- 1. Hon'ble Mr. Justice **Sanjay Kishan Kaul**
2. Hon'ble Mr. Justice Aniruddha Bose
3. Hon'ble Mr. Justice Krishna Murari

(The erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. such kind of occupation of public ways anywhere for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.)

Facts

This writ petition was filed with a grievance that the persons opposing the Citizenship Amendment Act and the National Register of Citizens, the details of which were yet to be propounded, had adopted a method of protest which resulted in the closure of the Kalindi Kunj-Shaheen Bagh stretch, including the Okhla underpass from 15.12.2019. It was submitted that the public roads could not be permitted to be encroached upon in this manner and, thus, a direction be issued to clear the same.

Observations and Decision

The Hon'ble Court analysed and discussed the Constitutional provisions related to right to protest and express dissent and the duties and restrictions attached therewith and held as follows :-

> **16.** India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. These rights are subject to reasonable restrictions, which, *inter alia*, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the concerned police authorities in this regard.[3] Additionally, as was discussed in the *Mazdoor Kisan Shakti Sangathan case*, each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be

balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by us to reach a solution where the rights of protestors were to be balanced with that of commuters.

17. However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "*In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable*"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest. Justice K.K. Mathew in the *Himat Lal case*[4] had eloquently observed that "*Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.*"

18. Furthermore, we live in the age of technology and the internet where social movements around the world have swiftly integrated digital connectivity into their toolkit; be it for organising, publicity or effective communication. Technology, however, in a near paradoxical manner, works to both empower digitally fuelled movements and at the same time, contributes to their apparent weaknesses. The ability to scale up quickly, for example, using digital infrastructure has empowered movements to embrace their often-leaderless aspirations and evade usual restrictions of censorship; however, the flip side to this is that social media channels are often fraught with danger and can lead to the creation of highly polarised environments, which often see parallel conversations running with no constructive outcome evident. Both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks - as has been opined by the interlocutors and caused inconvenience of commuters.

19. We have, thus, no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.

Regarding the judgment of the Delhi High Court, the Hon'ble Supreme Court observed:-

20. We are also of the view that the High Court should have monitored the matter rather than disposing of the Writ Petition and creating a fluid situation. No doubt, it is the responsibility of the respondent authorities to take suitable action, but then such suitable action should produce results. In what manner the administration should act is their responsibility and they should not hide behind the court orders or seek support therefrom for carrying out their administrative functions. The courts adjudicate the legality of the actions and are not meant to give shoulder to the administration to fire their guns from. Unfortunately, despite a lapse of a considerable period of time, there was neither any negotiation nor any action by the administration, thus warranting our intervention.

9. *Nilay Gupta v. NEET PG Medical and Dental Admission Board 2020 and Ors., (2020 SCC OnLine SC 819)*

Decided on : - 09.10.2020

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

(NRI quota is neither sacrosanct, not inviolable in terms of existence in any given year, or its extent. However, if a medical college or institution or, for that matter, the state regulating authority, such as the board in the present case, decide to do away with it, reasonable notice of such a decision should be given to enable those aspiring to such seats to choose elsewhere, having regard to the prevailing conditions.)

Facts

A total of 717 seats were initially notified for admission in postgraduate medical courses in government colleges in the Rajasthan State; 427 of were notified as intake in five private colleges in the state. The board, in its notification dated 10-04-2020 had stated that the rescheduling of Central NEET Counselling for the state of Rajasthan had been re-notified; the fresh schedule for the state indicated that counselling fee was to be deposited between 11.04.2020 and 13.04.2020. Concurrently the online registration for first counselling and information for filing of applications by the candidates was between 11.04.2020 and 13.04.2020, up to 11.55 PM. The third and fourth steps comprised of verification of disability certificate of all persons with disabilities as well as verification of status of NRI applicants. Management quota seats were notified by MGMC on 13.04.2020; these were 22 (out of a total of 144 seats available in that college.) During the intervening period, the private colleges lodged their seat matrices; consciously, they omitted the NRI quota. After publishing the matrix on 13.04.2020 and after the board's notification of 10.04.2020 (setting out sequentially, in terms of date and time, the steps to be taken for registration counselling and admission), the final position vis-à-vis unavailability of NRI seats was notified on 14.04.2020.

The provisions of the Rajasthan University of Health Sciences Act, 2005 throws open admission to all courses, offered by medical colleges affiliated to the University, to be open to all, subject to such reservations as may be made in favour of Scheduled Caste, Scheduled tribe, Other backward classes, girl students "*and other categories in accordance with any law or orders of the State Government for the time being in force*." By virtue of insertion of Section 10-D in the Medical Council of India Act, 1956 and regulations framed thereafter, participation in a common National Examination, ("NEET") by institutions offering medical courses - including postgraduation courses, as well as its attempt by candidates wanting admission, became compulsory. The governing enactment, which set up the respondent MGMC, is the Mahatma Gandhi University of Medical Sciences and Technology, Jaipur Act, 2011. It provides for the procedure to be adopted for admissions, as well as for reservations. *Per* proviso to Section 32(2), admission in professional courses is to be only

through entrance test; By Section 32(3), reservations for "*scheduled castes, scheduled tribes, backward classes, special backward classes, women and handicapped persons shall be provided as per the policy of the State Government*." Regulations framed pursuant to the amendment effected in 2016, to the Medical Council of India Act, in respect of admission to postgraduate medical courses, made it obligatory for both institutions and students alike to give effect to the common eligibility test (NEET).

Arguments advanced

The rival contentions of the parties may be summarized as follows. The original writ petitioners, (all of whom are before this court) argue on the one hand that the admission process really began sometime in January 2020 when the NEET written test took place. The meeting convened by the board and attended by all parties concerned including private colleges who participated in admissions to postgraduate courses in private colleges, clearly intended as on 17.03.2020, to fill up the 15% quota firstly amongst eligible NRI candidates and thereafter fill the leftover seats as part of the management quota. This understanding resulted in two consequences for NRI candidates; the first was that they filed their applications and produced all relevant documents to support the claim that they were eligible for that quota; secondly with the publication of the board's notification of 10.04.2020, some of them (if not all of them) had applied as NRI candidates within the time indicated in the rescheduled timeline. Thus, goes the argument, having held out to all NRI candidates about the availability of seats for that quota as well as the sequence of filling up those seats, at the penultimate hour, the board could not have decided unilaterally or even permitted colleges unilaterally to withdraw the NRI quota seats altogether. In support of their arguments two lines of authorities are cited : the first are those judgements starting with *P.A. Inamdar* which hold that while private educational institutions have the right to admit students of their choice, that right can be regulated by law and that a quota for NRI candidates to the extent of 15% is permissible. The *second* is the line of reasoning which says, typically in the context of selection process for recruitment to public posts, that once the process begins, there cannot be a change in the "rules of the game", i.e. substantial change in the matrix of consideration which adversely or irreversibly affects the prospects of candidates who reposed their faith and expectations on the integrity of the procedure, and its continuance till its completion.

The arguments of the state, the colleges and candidates (who were admitted to the seats *after* the impugned judgment), on the other hand, is that *P.A. Inamdar* did not carve out the NRI quota in stone. In other words, private educational institutions including medical colleges, are not obliged to set apart such a quota, and that the observations of this court in the said decision only enable the colleges or universities to avail of that quota to the extent of 15%. In a given year, the management of the private college may choose not to have any quota for NRI candidates; in the next year, it may choose to have it but not to the extent of 15% and prefer to limit it to 5%; likewise, for the third year, depending on demand, the private college or institution may provide for 15% NRI quota. It is hence argued that the

decision of all private colleges in Rajasthan not to avail of the NRI quota reservation or set apart, and rather fill up the entire 15% from amongst those who had opted for management seats, was justified. The counsel appearing for the private colleges urged that the decision not to offer an NRI quota in medical colleges in the state of Rajasthan was voluntarily and consciously taken, given the extraordinary and unusual situation created by the pandemic. The explanation given by the colleges was that in their assessment, NRI quota seats might not have been filled up to the normal expected levels and in the circumstances, it was more appropriate to merge the seats earmarked for NRI candidates with the management seats. The accommodation of NRI quota candidates who had opted to be treated as such, in the admission process was transparent and uniform in that all of them were considered on merits for the management quota seats. Thus, there was no real prejudice suffered by such NRI candidates. It was underlined by the candidates admitted pursuant to the impugned judgement, that were the clock to be set back and the directions of the single judge affirmed, they would be irreparably prejudiced. It was lastly argued that the single judge could not have directed the admission of the petitioners who had approached the High Court, regardless of their merit, even within the NRI quota.

Observations and Decision

The Hon'ble Court relied on the decisions of the Supreme Court in ***P.A.Inamdar and Ors. v. State of Mahrashtra and Ors.,*** (2005) 6 SCC 537, ***T.M.A. Pai Foundation v. State of Karnataka,*** (2002) 8 SCC 481, ***Tirumala Tirupati Devasthanams* v. *K. Jotheeswara Pillai,*** (2007) 9 SCC 461; ***Bihar Eastern Gangetic Fishermen Coop. Society Ltd.* v. *Sipahi Singh*** (1977) 4 SCC 145; ***K.V. Rajalakshmiah Setty* v. *State of Mysore,*** AIR 1967 SC 993, ***Bihar Eastern Gangetic Fishermen Coop. Society Ltd.* v. *Sipahi Singh,*** (1977) 4 SCC 145, ***Christian Medical College Vellore Association* v. *Union of India,*** 2020 SCC OnLine SC 423 and ***Modern Dental College and Research Centre* v. *State of M.P.,*** 2012 (7) SC 433 and observed as follows :-

> **25.** A plain reading of the judgement of this court in *Inamdar* reveals that a provision for 15% NRI quota was a not compulsory; it was only *potential*. This is clearly evident from the following passage in that judgment, which all counsel from either side of the bar, insisted on reading:
>
> > *"Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission.*

During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to Islamic Academy's direction to regulate."

(emphasis supplied)

26. Clearly, this court had the benefit of past experience with the concept of NRI quota : witness its skepticism about filling of such seats (in the past) by undeserving and unmerited candidates, to the detriment of more meritorious students. Therefore, the court indicated a limited quota with some essential controls in the manner of filling up of such NRI quota seats. These were:

a) The NRIs, who wish to bring their children to this country not only for their education but also to get them reunited with the Indian cultural ethos by virtue of being here and to enable the NRIs to expend money, (which they would be spending elsewhere on education of their children) to reach their mother land.

b) Having pointed out the reality behind the incorrect or "misnamed" NRI quota and found substance in the purpose behind allowing such quota, this court favoured a limited reservation, not exceeding 15% of sanctioned seats, to be made available for the NRIs, however, *depending on the discretion of the management*.

c) This court, however, imposed two conditions for admission under the NRI quota, firstly, that such seats should be utilized *bona fide* by NRIs only and for their children or wards and secondly, that within this quota, merit should not be given a complete go by.

27. The four crucial elements in the NRI quota, per *Inamdar*[15] are : one, the discretion of the management (whether to have the quota or not); two, the limit (15%); three, that seats should be available for *genuine* and *bona fide* NRI students, and lastly that the quota was to be filled based on *merit*.

30. Given that the decision in *TMA Pai Foundation*[16] was by a larger bench of 11 judges, and *PA Inamdar*[17] was a judgment delivered by seven judges, this court is clear that precedentially, those and other previous judgements of this court, only declared that as a part of the *private colleges' autonomous decision making,* they could set apart some percentage of

seats for admission to *students of their choice*. The *Inamdar*[18] decision is important, inasmuch as it declared that the set apart (or quota, so to say) for NRIs should be about 15% of the overall intake. Other decisions of this court[19] have underlined the paramountcy of the NEET requirement as a common standard regulating medical courses' admissions in India, irrespective whether the courses are offered in publicly owned, state owned or privately owned or managed institutions. A combined effect of the provisions of the Medical Council of India Act and regulations with respect to admissions (which have been progressively amended in respect of eligibility for admission to courses, procedure for admission, etc.) and the decisions of this court, is that private colleges and institutions which offer such professional and technical courses, have some elbow room : they can decide whether, and to what extent, they wish to offer NRI or management quotas (the limits of which are again defined by either judicial precedents, enacted law or subordinate legislation). In these circumstances, it is held that the respondent management (of MGMC) possessed the discretion to indicate whether, and to what extent, NRI reservations could be provided. As is evident, there is nothing in *PA Inamdar*[20] to say that a 15% NRI quota is an unqualified and unalterable part of the admission process in post graduate medical courses. It was, and remains within the *discretionary* authority of the management of private medical colleges, within their internal policy making domain.

Regarding the present case, the Honb'le Court held as follows :-

31. The impugned judgment, in this court's opinion, is correct, in that it held that the single judge could not have directed admission of the candidates before him. There is a body of case law[21] which clarifies that *sans* a statutory duty, a positive direction to do something in a specific manner, cannot be given ("*it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.*"[22]). The NRI candidates could not assert a right to be admitted; furthermore, while granting relief, the single judge could at best have directed consideration of the cases of the writ petitioners before him. However, the broad nature of the relief granted resulted in creation of rights which, implicated parties had not in the first instance, approached the High Court (unlike Dr. Nilay Gupta or Dr. Surmil Sharma), at the cost of third parties who had by then been given admission based on their merit as management quota students, another set of individuals who had not professed any grievance, were given admission, *post* judgement of the single judge.

35. As a result of the above discussion, it is evident that the NRI quota is neither sacrosanct, not inviolable in terms of existence in any given year, or its extent. However, if a medical college or institution or, for that matter, the state regulating authority, such as the board in the present case, decide to do away with it, reasonable notice of such a decision should be given to enable those aspiring to such seats to choose elsewhere, having regard to the prevailing conditions.

36. In the circumstances of this case and to do justice to all the parties, this court is of the opinion that a special counselling session should be carried out by the board, confined or restricted to the seats in respect of which admissions were made pursuant to the single judge's directions. In this counselling session, the board should ensure participation of the concerned colleges; the counselling shall be a limited one, confined only to the number of seats offered and filled as a result of the single judge's judgment. Such seats shall be offered to the NRI applicants solely on the basis of merit; the seats vacated by such merited students (in the other disciplines) shall then be offered to the beneficiaries of the single judge's orders. If

for any reason, such students (i.e. lower down in NRI merit, who are offered seats in other disciplines) do not wish to take up the offer, the college concerned shall refund the fee collected from such student. It is also made clear that this special round of counselling should not disturb those admissions, where students had accepted the deletion of the NRI quota, and were accommodated in the management quota, unless they had approached the court at the earliest opportunity, in April 2020, before the judgment of the learned single judge. The entire process shall be completed with a week from the date of this judgment.

37. This court clarifies that the validity of deletion of the NRI quota altogether, by colleges, and their "merger" as part of the larger management quota, was not questioned as a general proposition; the premise on which the parties argued their cases was that the NRI quota is inflexible and cannot be altered. The time within which an institution decides to do away with the quota during an ongoing admission process has not been prescribed, inasmuch as the observations as to unfairness in the nature of the deletion is in the specific circumstances of this case. Likewise, the directions in the previous paragraph are with regard to the circumstances of this case, and to do complete justice to all parties.

38. The appeals and pending applications are disposed of in the above terms.

10. Karulal and Ors. v. State of Madhya Pradesh, (2020 SCC OnLine SC 818)

Decided on : - 09.10.2020

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

(The testimony of the related witness, if found to be truthful, can be the basis of conviction. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony.)

Facts

The conviction under Section 148, 302 read with Section 149 of the IPC and the resultant sentence were under challenge before the Hon'ble Court primarily on the grounds that two of the prosecution witnesses were the children of the deceased and hence, the evidences of the related witnesses must be discarded and that due to past enmity, the appellants had been falsely implicated in the case.

Observations and Decision

Regarding the evidentiary value of related witnesses, the Hon'ble Court observed as follows:-

18. Let us now consider the law on evidentiary value of a related witness. Commenting on the aspect, Justice Vivian Bose in *Dalip Singh* v. *State of Punjab*[1] rightly opined that;

> *"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in* Rameshwar *v.* The State of Rajasthan. *We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."*
>
> *26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person....."*

19. It may further be noted that Babu Lal(PW11) is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate

innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in *State of Uttar Pradesh* v. *Samman Dass*[2]

> "23.....It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant....."

20. Again in a later decision of this Court in *Khurshid Ahmed* v. *State of Jammu and Kashmir*[3] one of us, Justice N.V. Ramana on the issue of evidence of a related witness was justified in declaring that:

> "31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused (See *Harbans Kaur* v. *State of Haryana*)"

21. The above precedents make it amply clear that the testimony of the related witness, if found to be truthful, can be the basis of conviction and we have every reason to believe that PW3 and PW12 were immediately present at the spot and identified the accused with various deadly weapons in their hands.

With respect to the relevance of past enmity between the parties, the Hon'ble Court observed as follows:-

22. The learned counsel for the appellant next refers to the defence version of the injuries being caused through a fall on the Nullah and the old enmity being the cause for implicating the accused. On this issue, we may benefit by adverting to the observation of Justice *Faizan Uddin* in *Sushil* v. *State of U.P.*[4] where the learned Judge so correctly observed:

> "8.....It goes without saying that enmity is a double-edged weapon which cuts both ways. It may constitute a motive for the commission of the crime and at the same time it may also provide a motive for false implication. In the present case there is evidence to establish motive and when the prosecution adduced positive evidence showing the direct involvement of the accused in the crime, motive assumes importance. The evidence of interested witnesses and those who are related to the deceased cannot be thrown out simply for that reason. But if after applying the rule of caution their evidence is found to be reliable and corroborated by independent evidence there is no reason to discard their evidence but it has to be accepted as reliable....."

23. If the witnesses are otherwise trustworthy, past enmity by itself will not discredit any testimony. In fact the history of bad blood gives a clear motive for the crime. Therefore this aspect does not in our assessment, aid the defence in the present matter.

Relying on the aforesaid principles of law, the Hon'ble Court dismissed the appeal.

11. *Branch Manager, Bajaj Allianz Life Insurance Company Ltd. and Ors. v. Dalbir Kaur, (2020 SCC OnLine SC 848)*

Decided on : - 09.10.2020

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

(A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form.)

Facts

On 5 August 2014, a proposal for obtaining a policy of insurance was submitted to the appellants by Kulwant Singh. The proposal form indicated the name of the mother of the proposer, who is the respondent to these proceedings as the nominee. The proposal form contained questions pertaining to the health and medical history of the proposer and required a specific disclosure on whether any ailment, hospitalization or treatment had been undergone by the proposer. Column 22 required a declaration of good health. The proposer answered the queries in the negative, indicating thereby that he had not undergone any medical treatment or hospitalization and was not suffering from any ailment or disease. The declaration under Item 22(c) of the proposal form was in regard to whether any diseases or disorders of the respiratory system such as but not limited to blood in sputum, tuberculosis, asthma, infected respiratory disease or any respiratory system disease including frequent nose bleeding, fever and dyspnoea were involved. This query was also responded to in the negative. Acting on the basis of the proposal submitted by the proposer, a policy of insurance was issued by the appellants on 12 August 2014. Under the policy, the life of the proposer was insured for a sum of Rs. 8.50 lakhs payable on maturity with the death benefit of Rs. 17 lakhs.

On 12 September 2014, Kulwant Singh died, following which a claim was lodged on the insurer. The death occurred within a period of one month and seven days from the issuance of the policy. The claim was the subject matter of an independent investigation, during the course of which, the hospital treatment records and medical certificate issued by Baba Budha Ji Charitable Hospital, Bir Sahib, Village Thatha (Tarntaran) were obtained. The records revealed, according to the insurer, that the deceased has been suffering from Hepatitis C. Copies of the investigation report dated 20 December 2014 and 9 January 2015 have been

placed on the record. The investigation reports indicate that proximate to the death, the deceased had been suffering from a stomach ailment and from vomiting of blood, as a result of which he had been availing of the treatment at the above hospital. The claim was repudiated on 12 May 2015 on account of the non-disclosure of material facts.

The respondent instituted a consumer complaint before the District Consumer Disputes Redressal Forum. The District Forum allowed the complaint and directed the appellants to pay the full death claim together with interest. The first appeal was rejected by the State Consumer Disputes Redressal Commission (hereinafter referred to as "**SCDRC**") and the revision before the National Consumer Disputes Redressal Commission (hereinafter referred to as "**NCDRC**") has also been dismissed. The NCDRC has relied on the decision of this Court in *Sulbha Prakash Motegaonkar* v. *Life Insurance Corporation of lndia*[1]. According to the NCDRC, a disease has to be distinguished from a mere illness. It held that the death had occurred due to natural causes and there was no reasonable nexus between the cause of death and non-disclosure of disease. Consequently, while affirming the judgment of the SCDRC, the NCDRC imposed costs of Rs. 2 lakhs on the appellants, of which, an amount of Rs. 1 lakh was to be paid to the complainant and Rs. 1 lakh was to be deposited with the Consumer Legal Aid Account of the District Forum.

Observations and Decision

The Hon'ble Court set-aside the order of the NCDRC and held as follows:-

> **9.** A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk. In the present case, as we have indicated, the proposer failed to disclose the vomiting of blood which had taken place barely a month prior to the issuance of the policy of insurance and of the hospitalization which had been occasioned as a consequence. The investigation by the insurer indicated that the assured was suffering from a pre-existing ailment, consequent upon alcohol abuse and that the facts which were in the knowledge of the proposer had not been disclosed. This brings the ground for repudiation squarely within the principles which have been formulated by this Court in the decisions to which a reference has been made earlier. In *Life Insurance Corporation of India* v. *Asha Goel*, this Court held:
>
> > "12...The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (*sic* material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of risk which may take place between the proposal and its acceptance. If there is any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact

> which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person."

10. This has been reiterated in the judgments in *P C Chacko* v. *Chairman, Life Insurance Corporation of India* and *Satwant Kaur Sandhu* v. *New India Assurance Company Limited*. In *Satwant Kaur Sandhu* v. *New India Assurance Company Ltd.*, at the time of obtaining the Mediclaim policy, the insured suffered from chronic diabetes and renal failure, but failed to disclose the details of these illnesses in the policy proposal form. Upholding the repudiation of liability by the insurance company, this Court held:

> "25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."

11. Recently, this Court in *Reliance Life Insurance Co. Ltd.* v. *Rekhaben Nareshbhai Rathod*[5], has set aside the judgement of the NCDRC, whereby the NCDRC had held that the failure of the insured to disclose a previous insurance policy as required under the policy proposal form would not influence the decision of a prudent insurer to issue the policy in question and therefore the insurer was disentitled from repudiating its liability. This Court, while allowing the repudiation of the insurance claim, held:

> "30. It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.
>
> 31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in *Satwant Kaur* (supra) "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance". Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms."

12. The decision of this Court in *Sulbha Prakash Motegaonkar* v. *Life Insurance Corporation of lndia*, which has been relied upon by the NCDRC, is clearly distinguishable. In that case, the assured suffered a myocardial infarction and succumbed to it. The claim was repudiated by the insurance company on the ground that there was a suppression of a pre-existing lumbar spondilitis. It was in this background that this Court held that the alleged concealment was of such a nature that would not dis-entitle the deceased from getting his life insured. In other words, the pre-existing ailment was clearly unrelated to the cause of death. This Court had also observed in its decision that the ailment concealed by the deceased was not a life-threatening disease. This decision must, therefore, be distinguished from the factual position as it has emerged before this Court.

13. The medical records which have been obtained during the course of the investigation clearly indicate that the deceased was suffering from a serious preexisting medical condition which was not disclosed to the insurer. In fact, the deceased was hospitalized to undergo treatment for such condition in proximity to the date of his death, which was also not disclosed in spite of the specific queries relating to any ailment, hospitalization or treatment undergone by the proposer in Column 22 of the policy proposal form. We are, therefore, of the view that the judgment of the NCDRC in the present case does not lay down the correct principle of law and would have to be set aside. We order accordingly.

14. However, Mr. Amol Chitale, learned counsel appearing on behalf of the appellants has informed the Court that during the pendency of the proceedings, the entire claim was paid over to the respondent, save and except for the amount of costs. Having regard to the age of the respondent, who is seventy years old and the death of the assured on whom she was likely to be dependent, we are of the view that it would be appropriate for this Court to utilize its jurisdiction under Article 142 of the Constitution, by directing that no recoveries of the amount which has been paid shall be made from the respondent. However, while doing so, we expressly hold that the impugned judgment of the NCDRC does not lay down the correct position in law and shall accordingly stand set aside.

12. Bikramjit Singh v. State of Punjab, (2020 SCC OnLine SC 824)

Decided on : - 12.10.2020

Bench :- 1. Hon'ble Mr. Justice **R.F.Nariman**
2. Hon'ble Mr. Justice Navin Sinha
3. Hon'ble Mr. Justice K.M.Joseph

(So long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.)

Facts

An FIR involving Sections 302, 307, 452, 427, 341, 34 of the Penal Code, 1860 read with Section 25 of the Arms Act, 1959, Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 and Section 13 of the Unlawful Activities (Prevention) Act, 1967 was registered on 18.11.2018. Pursuant to this F.I.R, the Punjab State Police apprehended the Appellant on 22.11.2018, on which date he was remanded to custody by the learned Sub-Divisional Magistrate. After 90 days in custody, which expired on 21.02.2019, an application for default bail was made to the Sub-Divisional Judicial Magistrate, Ajnala. This application was dismissed on 25.02.2019 on the ground that the learned Sub-Divisional Judicial Magistrate had, by an order dated 13.02.2019, already extended time from 90 days to 180 days under Section 167 of the Code of Criminal Procedure, 1973 as amended by the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA"). However, this Order was challenged by way of a revision petition by the Appellant and his co-accused, which revision succeeded by an order dated 25.03.2019, by which the learned Additional Sessions Judge being the Special Court set up under the National Investigation Agency Act, 2008 (hereinafter referred to as the "NIA Act") held as follows:

> "6. After hearing the Ld Counsel for revision petitioner and Ld PP for State, I am of the view that since Ld PP has not controverted the proposition of law, wherein it is provided that Ilaqa Magistrate has no jurisdiction to entertain any application for extension the period of investigation or granting bail u/s 167(2) Cr.P.C in default of presentation of Challan u/s 45 D (2) Unlawful Activities (Prevention Act 1967) and in view of the Notification supra passed by Government of Punjab, to deal with the cases of unlawful activities act, court of session or court of Additional Session Judge, in every district has been designated to try the said cases, so the application for

seeking extension of time for filing challan was not maintainable before Ilaqa magistrate.

7. Therefore, in view of the said notification as well as the case laws referred by the Ld Counsel for revision petitioner, only this court being special designated court was competent to pass an order on any application moved u/s 45(D) (2) Unlawful Activities (Prevention) Act 1967. It means, Ilaqa Magistrate was not competent to pass any order on any such application. In case the same has been filed and passed i.e. without its jurisdiction. So because of the said reason order passed by Ilaqa magistrate is not sustainable in the eyes of law and the same is liable to be set aside by way of acceptance of this revision petition. Accordingly this revision is allowed and order of Ilaqa magistrate dated 13.02.2019 is set aside. Trial court record along with copy of this order be sent back to the Trial Court and file of this court be consigned to record room."

One day later, on 26.03.2019, a charge sheet was filed before the learned Special Judge after police investigation, in which Sections 302, 307, 452, 427, 341, 34 of the Penal Code, 1860 read with Section 25 of the Arms Act, 1959, Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 and Sections 13, 16, 18, 18-B and 20 of the Unlawful Activities (Prevention) Act, 1967 were invoked for offences that were committed pursuant to investigation of the FIR lodged on 18.11.2018. Meanwhile, a revision petition that was filed against the order dated 25.02.2019, was dismissed by the Special Judge on 11.04.2019 who, after noticing the order dated 25.03.2019 allowing the revision petition against the order dated 13.02.2019 of the Judicial Magistrate, yet refused to grant default bail.

On the same day i.e. 11.04.2019, an application for default bail dated 08.04.2019 was also dismissed. By the impugned judgment dated 30.10.2019, the High Court, after setting out Section 167 of the Code of Criminal Procedure, 1973 and some of the provisions of the UAPA and NIA Act, then arrived at the following conclusion:

"A joint interpretation of Section 167(2) Cr.P.C. read with Section 43(d) UAP Act, Section 6, 13 & 22 of NIA Act would show that in case the investigation is being carried out by the State police, the Magistrate will have power under Section 167(2) Cr.P.C. read with Section 43(a) of UAP Act to extend the period of investigation upto 180 days and then, commit the case to the Court of Sessions as per provisions of Section 209 Cr.P.C., whereas in case the investigation is conducted by the agency under the NIA Act, the power shall be exercised by the Special Court and challan will be presented by the agency before the Special Court.

xxx xxx xxx

It is not case of the petitioner that the investigation was conducted by the agency under Section 6 of the NIA Act and till committal of the case to the Court of Sessions, as per Section 22(3) of NIA Act, it cannot be said that the Magistrate has no power and therefore, the order dated 25.03.2019 suffers from illegal infirmity.

The arguments raised by learned senior counsel for the petitioner that the petitioner is entitled to default bail under Section 167(2) Cr.P.C., in view of judgment of the Hon'ble

Supreme Court in *Sanjay Dutt's case* (supra), is not available, once the challan was presented by the prosecution on 25.03.2019, as the application was filed by the petitioner on the next day i.e. 26.03.2019

The Judge, Exclusive Court has recorded a well reasoned finding that mere fact that sanction has not been granted so far, is no ground to grant concession of bail, as it is rightly held that besides the offence committed under the UAP Act, the accused is also facing the trial for committing the offence under Sections 302, 307, 452, 341, 427, 34 IPC read with Section 25/54/59 of Arms Act and Sections 3, 4, 5, & 6 of Explosive Act, for which no sanction is required to prosecute the petitioner.

For the reasons recorded above and in view of judgment of the Hon'ble Supreme Court in *Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 3 RCR (Cri) 156, finding no merit in the present petition, the same is dismissed."

Observations and Decision

The Hon'ble Court referred to the provisions of the CrPC, the NIA Act, the UAPA and the Notification of the Punjab Government which read as follows :-'

In exercise of the powers conferred under sub-section(1) of section 22 of the National Investigation Agency Act, 2008 (Central Act No. 34 of 2008), and all other powers enabling him in this behalf, the Governor of Punjab, with the concurrence of Hon'ble Chief Justice of the High Court of Punjab and Haryana, Chandigarh, is pleased to constitute the courts of Sessions Judge and the first Additional Sessions Judge (for the area falling within their respective jurisdiction), at each district headquarter in the State, to be the Special Courts, for the trial of offences as specified in the Schedule appended to the aforesaid Act, which are investigated by the State police.

Regarding this notification and the provisions mentioned hereinabove, the Hon'ble Court held :-

26. It will be seen that the aforesaid notification has been issued under Section 22(1) of the NIA Act. What is important to note is that under Section 22(2)(ii), reference to the Central Agency in Section 13(1) is to be construed as a reference to the investigation agency of the State Government - namely, the State police in this case. Thereafter, what is important to note is that notwithstanding anything contained in the Code, the jurisdiction conferred on a Special Court shall, until a Special Court is designated by the State Government, be exercised only by the Court of Sessions of the Division in which such offence has been committed *vide* sub-section (3) of Section 22; and by sub-section (4) of Section 22, on and from the date on which the Special Court is designated by the State Government, the trial of any offence investigated by the State Government under the provisions of the NIA Act shall stand transferred to that Court on and from the date on which it is designated.

27. Section 13(1) of the NIA Act, which again begins with a non-obstante clause which is notwithstanding anything contained in the Code, read with Section 22(2)(ii), states that every scheduled offence that is investigated by the investigation agency of the State Government is to be tried exclusively by the Special Court within whose local jurisdiction it was committed.

28. When these provisions are read along with Section 2(1)(d) and the provisos in 43-D(2) of the UAPA, the Scheme of the two Acts, which are to be read together, becomes crystal clear. Under the first proviso in Section 43-D(2)(b), the 90 day period indicated by the first proviso to Section 167(2) of the Code can be extended up to a maximum period of 180 days if "the Court" is satisfied with the report of the public prosecutor indicating progress of investigation and specific reasons for detention of the accused beyond the period of 90 days. "The Court", when read with the extended definition contained in Section 2(1)(d) of the UAPA, now speaks of the Special Court constituted under Section 22 of the NIA Act. What becomes clear, therefore, from a reading of these provisions is that for all offences under the UAPA, the Special Court alone has exclusive jurisdiction to try such offences. This becomes even clearer on a reading of Section 16 of the NIA Act which makes it clear that the Special Court may take cognizance of an offence without the accused being committed to it for trial upon receipt of a complaint of facts or upon a police report of such facts. What is equally clear from a reading of Section 16(2) of the NIA Act is that even though offences may be punishable with imprisonment for a term not exceeding 3 years, the Special Court alone is to try such offence - albeit in a summary way if it thinks it fit to do so. On a conspectus of the abovementioned provisions, Section 13 read with Section 22(2)(ii) of the NIA Act, in particular, the argument of the learned counsel appearing on behalf of the State of Punjab based on Section 10 of the said Act has no legs to stand on since the Special Court has exclusive jurisdiction over every Scheduled Offence investigated by the investigating agency of the State.

29. Before the NIA Act was enacted, offences under the UAPA were of two kinds - those with a maximum imprisonment of over 7 years, and those with a maximum imprisonment of 7 years and under. Under the Code as applicable to offences against other laws, offences having a maximum sentence of 7 years and under are triable by the Magistrate's Courts, whereas offences having a maximum sentence of above 7 years are triable by Courts of Sessions. This Scheme has been completely done away with by the 2008 Act as all scheduled offences i.e. all offences under the UAPA, whether investigated by the National Investigation Agency or by the investigating agencies of the State Government, are to be tried exclusively by Special Courts set up under that Act. In the absence of any designated Court by notification issued by either the Central Government or the State Government, the fall back is upon the Court of Sessions alone. Thus, under the aforesaid Scheme what becomes clear is that so far as all offences under the UAPA are concerned, the Magistrate's jurisdiction to extend time under the first proviso in Section 43-D(2)(b) is non-existent, "the Court" being either a Sessions Court, in the absence of a notification specifying a Special Court, or the Special Court itself. The impugned judgment in arriving at the contrary conclusion is incorrect as it has missed Section 22(2) read with Section 13 of the NIA Act. Also, the impugned judgment has missed Section 16(1) of the NIA Act which states that a Special Court may take cognizance of any offence without the accused being committed to it for trial *inter alia* upon a police report of such facts.

Regarding the question of default bail, the Hon'ble Court held as follows :-

30. The second vexed question which arises on the facts of this case is the question of grant of default bail. It has already been seen that once the maximum period for investigation of an offence is over, under the first proviso (a) to Section 167(2), the accused shall be released on bail, this being an indefeasible right granted by the Code. The extent of this indefeasible right has been the subject matter of a number of judgments. A beginning may be made with the judgment in *Hitendra Vishnu Thakur* v. *State of Maharashtra*, (1994) 4 SCC 602, which spoke of "default bail" under the provisions of the Terrorist and Disruptive Activities

(Prevention) Act, 1987 (hereinafter referred to as "TADA") read with Section 167 of the Code as follows:

.....

31. In the Constitution Bench judgment in *Sanjay Dutt* v. *State through CBI*, (1994) 5 SCC 410, one of the questions to be decided by the Constitution Bench was the correct interpretation of Section 20(4)(bb) of TADA indicating the nature of right of an accused to be released on default bail. The enigmatic expression "if already not availed of" is contained in paragraphs 48 of the aforesaid judgment as follows:

.....

32. The question as to whether default bail can be granted once a charge sheet is filed was authoritatively dealt with in a decision of a Three-Judge Bench of this Court in *Uday Mohanlal Acharya* v. *State of Maharashtra*, (2001) 5 SCC 453. The majority judgment of G.B. Pattanaik, J. reviewed the decisions of this Court and in particular the enigmatic expression "if already not availed of" in *Sanjay Dutt* (supra).....

34. The law laid down by the majority judgment in this case was however not followed in *Pragya Singh Thakur* v. *State of Maharashtra*, (2011) 10 SCC 445. This hiccup in the law was then cleared by the judgment in *Union of India* v. *Nirala Yadav*, (2014) 9 SCC 457, which exhaustively discussed the entire case law on the subject. In this judgment, a Two-Judge Bench of this Court referred to all the relevant authorities on the subject including the majority judgment of *Uday Mohanlal Acharya* (supra) and then concluded:

.....

35. Also, in *Syed Mohd. Ahmad Kazmi* v. *State (Govt. of NCT of Delhi)*, (2012) 12 SCC 1, Section 43-D of the UAPA came up for consideration before the Court, in particular the proviso which extends the period for investigation beyond 90 days up to a period of 180 days. An application for default bail had been made on 17.07.2012, as no charge sheet was filed within a period of 90 days of the appellant's custody. The charge sheet in the aforesaid case was filed thereafter on 31.07.2012. Despite the fact that this application was not taken up for hearing before the filing of the charge sheet, this Court held that this since an application for default bail had been filed prior to the filing of the charge sheet the "indefeasible right" spoken of earlier had sprung into action, as a result of which default bail had to be granted.....

36. In a fairly recent judgment reported as *Rakesh Kumar Paul* v. *State of Assam*, (2017) 15 SCC 67, a Three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted. This was stated in Lokur, J.'s judgment as follows:

.....

39. A conspectus of the aforesaid decisions would show that so long as an application for grant of default bail is made on expiry of the period of 90 days (which application need not even be in writing) before a charge sheet is filed, the right to default bail becomes complete. It is of no moment that the Criminal Court in question either does not dispose of such application before the charge sheet is filed or disposes of such application wrongly before such charge sheet is filed. So long as an application has been made for default bail on expiry of the

stated period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted.

(emphasis supplied)

The Hon'ble allowed the appeal and setting-aside the judgment of the High Court, held as follows :-

40. On the facts of the present case, the High Court was wholly incorrect in stating that once the challan was presented by the prosecution on 25.03.2019 as an application was filed by the Appellant on 26.03.2019, the Appellant is not entitled to default bail. First and foremost, the High Court has got the dates all wrong. The application that was made for default bail was made on or before 25.02.2019 and not 26.03.2019. The charge sheet was filed on 26.03.2019 and not 25.03.2019. The fact that this application was wrongly dismissed on 25.02.2019 would make no difference and ought to have been corrected in revision. The sole ground for dismissing the application was that the time of 90 days had already been extended by the learned Sub-Divisional Judicial Magistrate, Ajnala by his order dated 13.02.2019. This Order was correctly set aside by the Special Court by its judgment dated 25.03.2019, holding that under the UAPA read with the NIA Act, the Special Court alone had jurisdiction to extend time to 180 days under the first proviso in Section 43-D(2)(b). The fact that the Appellant filed yet another application for default bail on 08.04.2019, would not mean that this application would wipe out the effect of the earlier application that had been wrongly decided. We must not forget that we are dealing with the personal liberty of an accused under a statute which imposes drastic punishments. The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to Section 167(2) of the Code, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled. This being the case, we set aside the judgment of the High Court. The Appellant will now be entitled to be released on "default bail" under Section 167(2) of the Code, as amended by Section 43-D of the UAPA. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds, and upon arrest or re-arrest, the petitioner is entitled to petition for the grant of regular bail which application should be considered on its own merit. We also make it clear that this judgment will have no impact on the arrest of the petitioner in any other case.

13. *Anil Bhardwaj v. Hon'ble High Court of Madhya Pradesh and Others, (2020 SCC OnLine SC 832)*

Decided on : - 13.10.2020

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

(The mere inclusion in the select list does not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Section 498A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant unsuitable. Subsequent acquittal after about a year cannot be a ground to turn the clock backward and to entitle him for reconsideration.)

Facts

The High Court of Madhya Pradesh issued an advertisement dated 09.03.2017 inviting applications for recruitment in the post of District Judge(Entry Level) in the cadre of Higher Judicial Service by Direct Recruitment from amongst the eligible Advocates. In pursuance to the advertisement, the appellant submitted online application form. The appellant after being declared successful in the Main Examination was called for interview. The provisional select and waiting list was published in which the name of the appellant was included at Serial No. 13 in the category of unreserved. The appellant received a communication on 06.04.2018 from the Law and Legislative Department informing that he has been selected for the post of District Judge (Entry Level). He was asked to appear before the Medical Board for the health tests. On 02.07.2018 the appellant was informed that in his attestation form FIR No. 852/2014 under Section 498/406/34 IPC is shown and the copy of the same was asked for. On 14.09.2018 order was issued by the Principal Secretary, Madhya Pradesh, Law and Legislative Department declaring the appellant ineligible and directing for deletion the name of the appellant from the select list. The Government also issued a Gazette notification deleting the name of the appellant from the Merit No. 13 of the main select list.

The appellant filed a Writ Petition No. 27434 of 2018 before the High Court challenging the order dated 14.09.2018 and the Gazette notification dated 21.09.2018. On application submitted under the Right to Information Act, the appellant was provided extract of the Minutes of the Joint Meeting of Administrative Committee (Higher Judicial Service) and Examination-cum-Selection and Appointment Committee dated 18.07.2018 by which proceedings the appellant was not considered suitable for being appointed to the post of District Judge (Entry Level). On the basis of a complaint by the wife of the appellant, a

criminal case was registered and vide judgment dated 18.09.2019 the appellant was acquitted of the charge framed against him.

The appellant filed an application for amendment of the writ petition to bring on record the order of the acquittal and other events occurred during the pendency of the writ petition. The appellant was permitted to withdraw his earlier writ petition with liberty to file a fresh writ petition. Writ Petition No. 27779 of 2019 was filed by the appellant incorporating subsequent events, facts and acquittal order which writ petition has been dismissed by the impugned judgment dated 06.01.2020 by the High Court. Aggrieved by the impugned judgment, the appellant came up in this appeal.

Issue

Whether in view of the subsequent acquittal of the appellant, his case was required to be reconsidered and he was entitled to be appointed as a District Judge?

Observations and Decision

The Hon'ble Court discussed and analysed the principles of law related to the aforesaid issue as follows :-

> **13.** The recruitment to the Judicial Service is governed by the provisions of Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994. This Court issued direction to all States to fill up the vacancies in subordinate Courts in a time schedule. The direction was issued by this Court in *Malik Mazhar Sultan (3)* v. *Uttar Pradesh Public Service Commission*, (2008) 17 SCC 703. The selection process for filling up the post of District Judge has to be completed by all the High Courts as per the time schedule fixed by this Court. After declaration of the merit list the candidates have to be given appointments in time bound manner so that they may join the respective posts. There is no dispute that on the date when the Committee declared the appellant unsuitable, criminal case against him under Section 498A and 406 IPC was pending which was registered on a complaint filed by the appellant's wife, Smt. Pooja. **The mere inclusion in the select list does not give an indefeasible right to a candidate. The employer has right to refuse appointment to the candidate included in the select list on any valid ground. The persons who occupy Judicial Service of the State are persons who are expected to have impeccable character and conduct. It is not disputed that the criminal case under Section 498A and 406 IPC was pending at the time when the appellant applied for the recruitment, when he appeared for the interview and when the result was declared. The character verification report was received from the State where pendency of the criminal case was mentioned which was the reason for the Committee to declare the appellant unsuitable.** The submission which needs to be considered is that whether in view of the subsequent acquittal of the appellant, his case was required to be reconsidered and he was entitled to be appointed.
>
> (emphasis supplied)
>
> **14.** This Court in *Commissioner of Police, New Delhi* v. *Mehar Singh*, **(2013) 7 SCC 685**, while considering a case of antecedents verification for appointment into Delhi Police Service made the following observation in paragraph 35:

> **"35.** The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force....."

15. The observation was made by this Court in the above case that a candidate wishing to join the police force must be a person having impeccable character and integrity. The above observations apply with greater force to the Judicial Service. This Court further observed that even in the case of acquittal, it has to be examined as to whether the person was completely exonerated in the case or not. In the present case the acquittal having taken place after the close of recruitment process, there was no question of examining the acquittal order by the High Court at the time of finalizing the selection process.

(emphasis supplied)

16. Learned counsel for the appellant has referred to the judgment of this Court in *Joginder Singh* v. *Union Territory of Chandigarh*, **(2015) 2 SCC 377**, which was a case whether the appellant was acquitted by the trial court for a case under Section 148/149/323/325/307 IPC. In the above case acquittal took place even before the appellant was called for the interview/medical examination. This fact was recorded in paragraph 24 of the judgment in the following words:

> **"24.** However, in the present case, we have observed that the appellant was involved in a family feud and the FIR came to be lodged against him on 14-4-1998, after he had applied for the post of Constable. Further, he had been acquitted on 4-10-1999 i.e. much before he was called for the interview/medical examination/written test....."

17. The above case is clearly distinguishable and does not help the appellant.

18. A three-Judge Bench of this Court in *Avtar Singh* v. *Union of India*, **(2016) 8 SCC 471**, had occasion to examine different aspects of verification form after selection including the question of having criminal antecedents and pending of criminal case. This Court laid down that in the event criminal case is pending and incumbent has not been acquitted employer may well be justified in not appointing such an incumbent. .....

19. Even in a case where candidates have been acquitted in criminal case, it was held that the decision of the Screening Committee being not actuated by mala fide regarding suitability of the candidate is to be respected. This Court in *Union Territory, Chandigarh Administration* v. *Pradeep Kumar*, **(2018) 1 SCC 797**, laid down following in paragraphs 13 and 17:

> **"13.** It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh*, (2013) 7 SCC 685 and *Parvez Khan*, (2015) 2 SCC 591 cases, it is clear that a candidate to be recruited to the police

> service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.
>
> 17. In a catena of judgments, the importance of integrity and high standard of conduct in police force has been emphasised. As held in *Mehar Singh case*[5], the decision of the Screening Committee must be taken as final unless it is mala fide. In the case in hand, there is nothing to suggest that the decision of the Screening Committee is mala fide. The decision of the Screening Committee that the respondents are not suitable for being appointed to the post of Constable does not call for interference. The Tribunal and the High Court, in our view, erred in setting aside the decision of the Screening Committee and the impugned judgment is liable to be set aside."

20. Now, we may notice the judgment of *Mohammed Imran* (supra) which has been heavily relied by the learned counsel for the appellant. In the above case the appellant was selected for Judicial Service whose selection was cancelled on 04.06.2010 due to the character verification report of the Police. Writ petition was dismissed by the High Court. It was contended before this court that the appellant was acquitted of the charge under Sections 363, 366, 34 IPC on 28.10.2004 that is much before he cleared the examination for appointment in the year 2009. The appellant disclosed his prosecution and acquittal by the Sessions Court. .....

21. This Court held that report received reveals that except for the criminal case, in which he had already been acquitted, the appellant has a clean record and there is no adverse material against him to deny him the fruits of his academic labour. This Court found decision rejecting the candidature of the appellant as untenable by making following observation in paragraph 11:

> "11. In the entirety of the facts and circumstances of the case, we are of the considered opinion that the consideration of the candidature of the appellant and its rejection are afflicted by a myopic vision, blurred by the spectacle of what has been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand."

22. There can be no dispute that in event it is found that decision by which the candidature of a candidate is rejected is arbitrary or actuated by malafide such decision can be interfered by the Constitutional Courts. We have already noticed the judgment of this Court in *Union Territory, Chandigarh Administration* v. *Pradeep Kumar* (supra) that the decision of the Screening Committee must be final unless it is mala fide.

23. There can be no dispute to the above preposition. But there can be other valid reasons for not sustaining the decision of Screening Committee/Selection Committee apart from the ground of mala fide. Any arbitrary decision taken by the Selection Committee can very well be interfered by the Constitutional Courts in exercise of Judicial Review Jurisdiction.

Relying on the principles of law discussed hereinabove, the Hon'ble Court dismissed the appeal and held :-

24. Reverting to the facts of the present case, the decision of Examination-cum-Section and Appointment Committee for holding the appellant unsuitable was based on the relevant consideration, i.e., a criminal case against the appellant under Section 498A/406/34 IPC was pending consideration which was registered on a complaint filed by the wife of the appellant. Such decision of the Committee was well within the jurisdiction and power of the Committee and cannot be said to be unsustainable. The mere fact that subsequently after more than a year when the person whose candidature has been cancelled has been acquitted cannot be a ground to turn the clock backward.

30. We, thus, are of the view that the High Court did not commit any error in dismissing the writ petition. The appellant was not entitled for any relief in the writ petition. In the result, while dismissing this appeal we observe that stigma, if any, of the criminal case lodged against appellant under Section 498A/406/34 IPC is washed out due to the acquittal of the appellant vide judgment dated 18.09.2019.

14. Ganesan v. State, (2020 SCC OnLine SC 839)

Decided on : - 14.10.2020

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

(To hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.)

Issue

Whether, in cases involving sexual harassment, molestation etc., can there be conviction on the sole evidence of the prosecutrix?

In this case, the victim was aged 15 years at the time of deposition and 13 years at the time of the offence.

Observations and Decision

With respect to the issue, the Hon'ble Court referred to the following judgments of the Supreme Court :-

- *Vijay alias Chinee* v. *State of Madhya Pradesh*, (2010) 8 SCC 191
- *Krishan Kumar Malik* v. *State of Haryana*, (2011) 7 SCC 130, – To hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.
- *Rai Sandeep alias Deepu* v. *State (NCT of Delhi)*, (2012) 8 SCC 21 – **Who can be said to be a sterling witness**

Relying on the aforesaid principles, the Hon'ble Court dismissed the appeal and held :-

> **16.** In the present case, the appellant-accused has been convicted by the learned trial Court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial Court as well as the relevant evidence on record, more particularly the deposition of PW1-father of the victim, PW2-mother of the victim and PW3-victim herself. It is true that PW2-mother of the victim has turned hostile. However, PW3-victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW3 - victim. PW3 aged 15 years at the time of deposition is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.

20. On evaluating the deposition of PW3 - victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW3 - victim is absolutely trustworthy and unblemished and her evidence is of sterling quality.

21. Therefore, in the facts and circumstances of the case, the learned trial Court has not committed any error in convicting the accused, relying upon the deposition of PW3 - victim. The learned trial Court has imposed the minimum sentence provided under Section 8 of the POCSO Act. Therefore, the learned trial Court has already shown the leniency. At this stage, it is required to be noted that allegations against the accused which are proved from the deposition of PW3 are very serious, which cannot be permitted in the civilized society. Therefore, considering the object and purpose of POCSO Act and considering the evidence on record, the High Court has rightly convicted the accused for the offence under Section 7 of the POCSO Act and has rightly sentenced the accused to undergo three years R.I. which is the minimum sentence provided under Section 8 of the POCSO Act.

15. State of Madhya Pradesh and Ors. v. Bherulal, (2020 SCC OnLine SC 849)

Decided on : - 15.10.2020

Bench :- 1. Hon'ble Mr. Justice **Sanjay Kishan Kaul**
2. Hon'ble Mr. Justice Dinesh Maheshwari

(Delay in filing appeals/petitions by the Government – where there are inordinate delays, the Government or State authorities coming before the Court must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.)

Issue

Delay in filing appeals/petition by the Government or Government authorities

Observations and Decision

In this case, the Hon'ble Court did not condone the delay in filing the SLP by the State Government. The Hon'ble Court not only dismissed the SLP but also imposed cost on the petitioner-State and ordered for initiation of contempt proceeding against the Chief Secretary of the State. The Hon'ble Court also held :-

> **7.** We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

Taking a stern view and referring to the judgments of the Supreme Court in, the Hon'ble Court observed :-

> **2.** We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.
>
> **3.** No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (*Collector, Land Acquisition, Anantnag* v. *Mst. Katiji* (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General* v. *Living Media India Ltd.* (2012) 3 SCC 563 where the Court observed as under

.....

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "*certificate cases*". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

17. Saravanan v. State, (2020 SCC OnLine SC 840)

Decided on : - 15.10.2020

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

(Where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C.

The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail.)

Issue

Whether while releasing the appellant-accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

Observations and Decision

12. Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs. 8,00,000/- while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs. 7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of *Rakesh Kumar Paul* (supra), **where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or**

90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of *Rakesh Kumar Paul* (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

13. As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs. 8,00,000/- taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs. 7,00,000/-. That cannot be a ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail.

14. The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail. Under the circumstances, the condition imposed by the High Court to deposit Rs. 8,00,000/-, while releasing the appellant on default bail/statutory bail is unsustainable and deserves to be quashed and set aside.

15. Now so far as condition no. (d) imposed by the High Court, namely, directing the appellant to report before the concerned police station daily at 10 : 00 a.m., until further orders, for interrogation is concerned, the same is also unsustainable, as it is too harsh. Instead, condition which can be imposed is directing the appellant to cooperate with the investigating officer in completing the investigation and to remain present before the concerned police station for investigation/interrogation as and when called for, and on breach the investigating officer can approach the concerned court for cancellation of the bail on breach of such condition.

16. In view of the above and for the reasons stated above, the present appeals succeed. Condition No. (b) of order dated 24.06.2020 passed by the High Court in Criminal OP(MD) No. 6214 of 2020, i.e., directing the appellant to deposit Rs. 8,00,000/- to the credit of crime No. 31 of 2019 before the learned Judicial Magistrate, Court No. 1, Nagercoil, Kanyakumari District, while releasing the appellant on default bail, is hereby quashed and set aside. Condition no. (d), namely, directing the appellant to report before the concerned police station at 10 : 00 a.m. daily, until further orders for interrogation is hereby modified to the extent and it is directed that the appellant shall co-operate with the investigating agency and shall report the concerned police station as and when called for investigation/interrogation and on non-cooperation, the consequences including cancellation of the bail shall follow. Rest of the conditions imposed by the High Court in order dated 24.06.2020 are maintained.

(emphasis supplied)