JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(November 1-15,2020)

Prepared by :-

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JUDICIAL ACADEMY JHARKHAND

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1. *Shatrughna Baban Meshram v. State of Maharashtra, 2020 SCC OnLine SC 901*

Decided on: 02.11.2020
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2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Mr. Justice Krishna Murari

(The concept or theory of "residual doubt" does not have any place in a case based on circumstantial evidence.

In matters where the conviction is recorded with the aid of clause fourthly under Section 300 of IPC, it is very rare that the death sentence is awarded.)

Facts

The appeals in this case challenged the common judgment and order dated 12.10.2015 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 321 of 2015 and Criminal Confirmation Case No. 1 of 2015 affirming the judgment and order dated 14.08.2015 passed by the Trial Court in Special Case (POCSO Act) No. 11 of 2013 and confirming the Death Sentence awarded to the Appellant on two counts i.e. under Section 302 of the Penal Code, 1860 (IPC, for short) and under Section 376A of IPC. The victim in the present case was a girl of two and half years of age. The Trial Court by its order passed on the same day awarded Death Sentence to the Appellant on two counts, i.e. under Section 302 of IPC and under Section 376-A of IPC; Rigorous Imprisonment for life under two counts, i.e. Section 376(1)(2)(f), (i) and (m) of IPC and under Section 6 of POCSO Act. The Death Sentence was subject to confirmation by the High Court. The matter concerning confirmation of Death Sentence and the substantive appeal by the Appellant against his conviction were dealt with together and by its judgment and order presently under appeal, the conviction and sentence passed by the Trial Court were affirmed by the High Court.

Decision and Observations

> **131.** When it comes to cases based on circumstantial evidence in our jurisprudence, the standard that is adopted in terms of law laid down by this Court as noticed in *Sharad Birdhichand Sarda*[(1984) 4 SCC 116] and subsequent decisions is that the circumstances must not only be individually proved or established, but they must form a consistent chain, so conclusive as to rule out the possibility of any other hypothesis except the guilt of the accused. On the strength of these principles, the burden in such cases is already of a greater magnitude. Once that burden is discharged, it is implicit that any other hypothesis or the innocence of the accused, already stands ruled out when the matter is taken up at the stage of sentence after returning the finding of guilt. So, theoretically ***the concept or theory of "residual doubt" does not have any place in a case based on***

circumstantial evidence. As a matter of fact, the theory of residual doubt was never accepted by US Supreme Court as discussed earlier.

132. However, as summed up in *Kalu Khan*[(2015) 16 SCC 492] , while dealing with cases based on circumstantial evidence, for imposition of a death sentence, higher or stricter standard must be insisted upon. The approach to be adopted in matters concerning capital punishment, therefore ought to be in conformity with the principles culled out in paragraph 41 hereinabove and the instant matter must therefore be considered in the light of those principles.[1]

133. If the present case is so considered, the discussion must broadly be classified under following two heads:—

(A) Whether the circumstantial evidence in the present case is of unimpeachable character in establishing the guilt of the Appellant or leads to an exceptional case.

(B) Whether the evidence on record is so strong and convincing that the option of a sentence lesser than a death penalty is foreclosed.

Going by the circumstances proved on record and, more particularly the facets detailed in paragraph 19 hereinabove as well as the law laid down by this Court in series of decisions, the circumstances on record rule out any hypothesis of innocence of the Appellant. The circumstances are clear, consistent and conclusive in nature and are of unimpeachable character in establishing the guilt of the Appellant. The evidence on record also depicts an exceptional case where two and half years old girl was subjected to sexual assault. The assault was accompanied by bites on the body of the victim. The rape was of such intensity that there was merging of vaginal and anal orifices of the victim. The age of the victim, the fact that the Appellant was a maternal uncle of the victim and the intensity of the assault make the present case an exceptional one.

However, if the case is considered against the second head, we do not find that the option of a sentence lesser than death penalty is completely foreclosed. It is true that the sexual assault was very severe and the conduct of the Appellant could be termed as perverse and barbaric. However, a definite pointer in favour of the Appellant is the fact that he did not consciously cause any injury with the intent to extinguish the life of the victim. Though all the injuries are attributable to him and it

[1] It can therefore be summed up:—
a) it is not as if imposition of death penalty is impermissible to be awarded in circumstantial evidence cases; and
b) if the circumstantial evidence is of an unimpeachable character in establishing the guilt of the accused and leads to an exceptional case or the evidence sufficiently convinces the judicial mind that the option of a sentence lesser than death penalty is foreclosed, the death penalty can be imposed.

was injury No. 17 which was the cause of death, his conviction under Section 302 IPC is not under any of the first three clauses of Section 300 IPC***. In matters where the conviction is recorded with the aid of clause fourthly under Section 300 of IPC, it is very rare that the death sentence is awarded.*** In cases at Serial Nos. 10, 11, 16, 24, 40, 45 and 64 of the Chart tabulated in paragraph 30 hereinabove, where the victims were below 16 years of age and had died during the course of sexual assault on them, the maximum sentence awarded was life sentence. This aspect is of crucial importance while considering whether the option of a sentence lesser than death penalty is foreclosed or not.

134. ***We therefore, find that though the Appellant is guilty of the offence punishable under Section 302 IPC, since there was no requisite intent as would bring the case under any of the first three clauses of Section 300 IPC, the offence in the present case does not deserve death penalty***.

135. The second count on which death sentence has been imposed is under Section 376A of IPC. As noted earlier, the offence was committed on 11.02.2013 and just few days before such commission, Section 376A was inserted in IPC by the Ordinance. As concluded by us in paragraph 16 hereinabove, the *ex-post facto* effect given to Section 376A inserted by the Amendment Act would not in any way be inconsistent with sub-Article (1) of Article 20 of the Constitution. The Appellant is thus definitely guilty of the offence punishable under Section 376A IPC. But the question remains whether punishment lesser than death sentence gets ruled out or not. ***As against Section 302 IPC while dealing with cases under Section 376A IPC, a wider spectrum is available for consideration by the Courts as to the punishment to be awarded.*** On the basis of the same aspects that weighed with us while considering the appropriate punishment for the offence under Section 302 IPC, in view of the fact that Section 376A IPC was brought on the statute book just few days before the commission of the offence, the Appellant does not deserve death penalty for said offence.

136. At the same time, considering the nature and enormity of the offence, it must be observed that the appropriate punishment for the offence under Section 376A IPC must be rigorous imprisonment for a term of 25 years.

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138. Consequently, while affirming the view taken by the Courts below in recording conviction of the Appellant for the offences punishable under Sections 302 IPC and 376A IPC, we commute the sentence to life imprisonment for the offence punishable under Section 302 IPC and to that of rigorous imprisonment for

25 years for the offence punishable under Section 376A IPC. The conviction and sentence recorded by the Courts below for the offences punishable under Section 376(1), (2)(f), (i) and (m) of IPC, and under Section 6 of the POCSO Act are affirmed.

139. These appeals are allowed to the aforesaid extent.

2. *Imperia Structures Ltd. v. Anil Patni and Another, 2020 SCC OnLine SC 894*

Decided on: 02.11.2020
Bench: 1. Hon'ble Mr. Justice **U. U. Lalit**
2. Hon'ble Mr. Justice Vineet Saran

(Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint)

Issues

a) Whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the provisions of the CP Act;

b) Whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act.

Decision and Observations

Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. The Apex court then referred to *Malay Kumar Ganguli v. Dr. Sukumar Mukherjee* (2009) 9 SCC 221 wherein it was held :

> "The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court."

Therefore, the Apex court was of the opinion, "On the strength of the law so declared, ***Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint***."

> **39.** Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the concerned complainant but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.
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> **40.** Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the

RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a Civil Court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under said Section is "without prejudice to any other remedy available". Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.

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42. It is true that some special authorities are created under the RERA Act for the regulation and promotion of the real estate sector and the issues concerning a registered project are specifically entrusted to functionaries under the RERA Act. But for the present purposes, we must go by the purport of Section 18 of the RERA Act. Since it gives a right "without prejudice to any other remedy available', in effect, such other remedy is acknowledged and saved subject always to the applicability of Section 79.

43. At this stage, we may profitably refer to the decision in *Pioneer Urban Land and Infrastructure Limited* v. *Union of India* (2019) 8 SCC 416, where a bench of three Judges of this Court was called upon to consider the provisions of Insolvency and Bankruptcy Code, 2016, RERA Act and other legislations including the provisions of the CP Act. One of the conclusions arrived at by this Court was:—

"100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

44. We, therefore, reject the submissions advanced by the Appellant and answer the questions raised in paragraph 26 hereinabove against the Appellant.

3. *Rajesh and Another v. State of Haryana, 2020 SCC OnLine SC 900*

Decided on: 03.11.2020
Bench: 1. Hon'ble Mr. Justice **D. Y. Chandrachud**
2. Hon'ble Ms. Justice Indu Malhotra
3. Hon'ble Ms. Justice Indira Banerjee

(When direct evidence of an unimpeachable character is available and the nature of injuries is consistent with the direct evidence, the examination of a ballistics expert need not be insisted upon as a condition to the prosecution proving its case.

The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade.)

Facts

The appellants Rajesh alias Sarkari and Ajay Hooda have been convicted, together with a co-accused for an offence under Section 302 read with Section 34 of the Indian Penal Code and have been sentenced to imprisonment for life. The Sessions Court, by its judgment dated 12 June 2012, concluded that there was a ring of truth to the case of the prosecution and that the appellants were guilty of the offence of having committed the murder of Sandeep. The appellants and the co-accused Pehlad were, following their conviction under Section 302 read with Section 34 of the IPC, sentenced to imprisonment for life. Aggrieved by the judgment of the Sessions Court, all the three accused filed appeals in the High Court of Punjab and Haryana. By a judgment dated 17 January 2019, the High Court dismissed the appeals.

Decision and Observations

The Apex court referred to the following decisions regarding the FSL report,

Mohinder Singh v. State,[2] *Gurucharan Singh v. State of Punjab,*[3] *Sukhwant Singh v. State of Punjab,*[4] *State of Punjab v. Jugraj Singh,*[5] *Vineet Kumar Chauhan v. State of UP,*[6] *Govindaraju v. State*[7]

The Apex court was then of the following opinion:

> **44.** The precedent which we have reviewed above would thus indicate that there is no inflexible rule which requires the prosecution to examine a ballistics examiner in every case where a murder is alleged to have been caused with the use of a fire arm.

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[2] AIR 1953 SC 415
[3] (1963) 3 SCR 585
[4] (1995) 3 SCC 367
[5] (2002) 3 SCC 234
[6] (2007) 14 SCC 660
[7] (2012) 4 SCC 722

The decision in *Mohinder Singh* (1953) has since been explained in *Gurucharan Singh* (1963) by a co-ordinate Bench. Thereafter, the principle which has emerged from the line of authority which we have noticed earlier, is that the failure of the prosecution in a given case, to examine a ballistics expert has to be assessed bearing in mind the overall context of the nature of the evidence which is available. When direct evidence of an unimpeachable character is available and the nature of injuries is consistent with the direct evidence, the examination of a ballistics expert need not be insisted upon as a condition to the prosecution proving its case. On the other hand, where direct evidence is not available or there is doubt in regard to the nature of that evidence, the failure to examine the ballistic examiner would assume significance.

Regarding Test identification Parade, the Apex court summarized the principles in para 46 of the judgment that have emanated from the following decisions:

Matru v. State of U.P. (1971) 2 SCC 75, Santokh Singh v. Izhar Hussain (1973) 2 SCC 406 ,Malkhansingh v. State of M.P. (2003) 5 SCC 746, Visveswaran v. State (2003) 6 SCC 73, Munshi Singh Gautam v. State of M.P. (2005) 9 SCC 631, Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, Ashwani Kumar v. State of Punjab (2015) 6 SCC 308, Mukesh v. State for NCT of Delhi, (2017) 6 SCC 1

(i) The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime;

(ii) There is no specific provision either in the CrPC or the Indian Evidence Act, 1872 which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP;

(iii) Identification parades are governed in that context by the provision of Section 162 of the CrPC;

(iv) A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held;

(v) The identification of the accused in court constitutes substantive evidence; (vi) Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act;

(vii) A TIP may lend corroboration to the identification of the witness in court, if so required;

(viii) As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration;

(ix) Since a TIP does not constitute substantive evidence, the failure to hold it does not *ipso facto* make the evidence of identification inadmissible;

(x) The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case;

(xi) Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence; and

(xii) The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused.

Regarding refusal to undergo Test identification, the Apex court stated the following:

49. ..... However, the central point in this case is whether on the basis of significant aspects which have emerged during the course of cross-examination of PW4 and PW5, an adverse inference should be drawn against the appellants for having refused to undergo a TIP.....**. In any event, as we have noticed, the identification in the course of a TIP is intended to lend assurance to the identity of the accused. The finding of guilt cannot be based purely on the refusal of the accused to undergo an identification parade**. In the present case, we have already indicated the presence of the alleged eyewitnesses PW4 and PW5 at the scene of the occurrence is seriously in doubt. The ballistics evidence connecting the empty cartridges and the bullets recovered from the body of the deceased with an alleged weapon of offence is contradictory and suffers from serious infirmities. Hence, in this backdrop, a refusal to undergo a TIP assumes secondary importance, if at all, and cannot survive independently in the absence of it being a substantive piece of evidence.

50. For the above reasons, we have arrived at the conclusion that the prosecution has failed to establish its case beyond reasonable doubt. The appellants are, hence, entitled to the benefit of doubt and are acquitted of the offence with which they have been charged. The Court is apprised of the fact that the appellants have undergone over 12 years of imprisonment. Consequent on the present judgment acquitting the appellants, they shall be released and their bail bonds be cancelled unless they are wanted in connection with any other case. The appeal is allowed in the above terms.

4. ***Chief Manager, Punjab National Bank and Another v. Anit Kumar Das, 2020 SCC OnLine SC 897***

Decided on: 03.11.2020
Bench: 1. Hon'ble Mr. Justice Ashok Bhushan
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice **M.R. Shah**

(It is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess.)

Facts

Applications were invited by the appellant Bank for the post of Peon by publishing an advertisement in the local newspaper. The eligibility criteria mentioned in the said advertisement was that a candidate should have passed 12th class or its equivalent with basic reading/writing knowledge of English. It specifically provided that a candidate should not be a Graduate as on 01.01.2016. A candidate was also required to submit the bio-data as per the prescribed format. The respondent herein, though a Graduate, applied for the said post. However, neither in the application nor in the bio-data, he disclosed that he was a graduate.

At this stage, it required to be noted that the eligibility criteria and the educational qualification prescribed above was as per the Circular Letter No. 25 of 2008 dated 06.11.2008 issued by the Human Resources Development Division (for short "HRD Division") of the Bank specifying the guidelines for recruitment of staff in subordinate cadre in the bank and prescribing the eligibility criteria. That on the basis of the information provided by the applicants in their applications, a list of eligible candidates was prepared on the basis of the marks obtained in 10th Class and 12th Class. As per Circular dated 04.03.2016 issued by the HRD Division of the Bank, the selection of the peons was required to be made on the basis of the percentage of marks obtained by the candidates in 10th standard and 12th standard.

That so far as the respondent herein - original writ petitioner is concerned, based on the information provided by him in his application, his name appeared in the selected candidates of Balsar District. That an order of appointment was issued. It appears that while scrutiny of the documents was going on, the appellant Bank came to know about a graduate certificate showing that the respondent - original writ petitioner was a graduate since 2014. Thus, it was noticed and found that he was not eligible as per the advertisement and the Circulars and that the respondent deliberately, wilfully and intentionally suppressed the fact that he was a graduate. Therefore, his candidature was cancelled and he was not allowed to join the bank in subordinate cadre.

Thereafter, the respondent filed the writ petition before the High Court, being Writ Petition (C) No. 19261 of 2016, for an appropriate order to allow him to discharge his duties as Peon as per the appointment order dated 03.10.2016 and to further direct that his appointment may not be cancelled on the ground that he has possessed higher qualification. That the said petition was opposed by the bank by filing a detailed affidavit-in-reply. It was specifically

pointed out that the eligibility criteria and the educational qualification was fixed as per the Circular letter No. 25 of 2008 dated 06.11.2008 issued by the HRD Division of the Bank. It was also pointed out that on 04.03.2016 the HRD Division issued another Circular letter No. 6 of 2016 pursuant to the decision of the Bank's Board in their meeting dated 29.02.2016, by which it was decided that the selection of the Peons will be made on the basis of the percentage of marks obtained by the candidates in 10th standard and 12th standard. It was also submitted that the respondent deliberately, wilfully and intentionally suppressed the material fact that he was a graduate. It was pointed out that had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a peon in the bank.

Despite the above, the learned single Judge of the High Court allowed the said writ petition solely relying upon the decision of the Allahabad High Court in Civil Writ Petition No. 69034 of 2019 [*Pankaj Kumar Dubey* v. *Punjab National Bank*], in which the Allahabad High Court referring to the judgment and order passed by this Court in Civil Appeal No. 1010 of 2000 dated 11.02.2000 [*Mohd. Riazul Usman Gani* v. *District and Sessions Judge, Nagpur*) held that a candidate cannot be denied the appointment solely on the ground that he is possessing a higher qualification. The learned single Judge directed the bank to allow the respondent herein to discharge his duties as a Peon as per the appointment order dated 03.10.2016.

Feeling aggrieved and dissatisfied with the judgment and order passed by the learned single Judge allowing the aforesaid writ petition and directing the bank to allow the respondent-original writ petitioner to discharge his duties as a Peon as per the appointment order dated 03.10.2016, the appellant Bank preferred the writ appeal before the Division Bench of the High Court. By the impugned judgment and order, the Division Bench of the High Court has dismissed the appeal and has not interfered with the judgment and order passed by the learned single Judge. Hence, the present appeal.

Decision and Observations

The Apex court referred to ***Zahoor Ahmad Rather v. Imtiyaz Ahmad*** (2019) 2 SCC 404 and stated the following:.

> **21.** Thus, as held by this Court in the aforesaid decisions, ***it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess.*** A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications. However, at the same time, the employer cannot act arbitrarily or fancifully in prescribing qualifications for posts. ***In the present case, prescribing the eligibility criteria/educational qualification that a graduate candidate shall not be eligible and the candidate must have passed 12th standard is justified and as observed hereinabove, it is a conscious decision taken by the Bank which is in force since 2008. Therefore, the High Court has clearly erred in directing the appellant Bank to allow the respondent-***

original writ petitioner to discharge his duties as a Peon, though he as such was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement.

22. Even on the ground that respondent - original writ petitioner deliberately, wilfully and intentionally suppressed the fact that he was a graduate, the High Court has erred in directing the appellant Bank to allow the respondent - original writ petitioner to discharge his duties as a Peon. In the application/bio-data, the respondent-original writ petitioner did not mention that he was a graduate. Very cleverly he suppressed the material fact and declared his qualification as H.S.C., whereas as a matter of fact, he was holding a degree in the Bachelor in Arts. Had it been known to the bank that he was a graduate, he would not have at all been considered for selection as a Peon in the bank. That thereafter when scrutiny of the documents was going on and when the respondent - original writ petitioner produced a graduation certificate, at that time, the bank came to know that he was a graduate and therefore not eligible and therefore the bank rightly cancelled his candidature and he was not allowed to join the bank in the subordinate cadre. Therefore, on the aforesaid ground alone, the High Court ought not to have allowed the writ petition when it was a clear case of suppression of material fact by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. In fact, by such conduct on the part of the respondent-original writ petitioner, one another righteous candidate has suffered for his mischievous act. As held by this Court in the case of *Ram Ratan Yadav* (supra), suppression of material information and making a false statement has a clear bearing on the character and antecedents of the employee in relation to his continuance in service***. A candidate having suppressed the material information and/or giving false information cannot claim right to continuance in service***. Thus, on the ground of suppression of material information and the facts and as the respondent - original writ petitioner even otherwise was not eligible as per the eligibility criteria/educational qualification mentioned in the advertisement which was as per Circular letter No. 25 of 2008 dated 06.11.2008, the bank rightly cancelled his candidature and rightly did not permit him to resume his duty.

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24. In view of the above and for the reasons state above, the impugned order dated 22.11.2019 passed by the Division Bench of the High Court and the judgment and order passed by the learned single Judge of the High Court dated 13.03.2019 in W.P. (C) No. 19261 of 2016 directing the appellant Bank to allow the respondent - original writ petitioner to discharge his duties as a Peon as per appointment order dated 03.11.2016 is unsustainable and deserves to quashed and set aside and are accordingly quashed and set aside. The appeal is allowed. However, considering the fact that the post in question was a subordinate staff post/Peon, and despite the fact that because of the mischievous act on the part of the original writ petitioner, one candidate could not get the job, we refrain from imposing the cost and leave the matter there.

5. *Rajnesh v. Neha and Another, 2020 SCC OnLine SC 903*

Decided on: 04.11.2020

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

(Detailed directions issued pertaining to payment of maintenance in matrimonial matters)

Decision and Observations

81. In view of the foregoing discussion as contained in Part B - I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India:

(a) Issue of overlapping jurisdiction

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or setoff, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B - III of the judgment.[8]

[8] (vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

……

(b) Right to residence

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B - IV above.

(e) Enforcement/Execution of orders of maintenance

For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

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A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts/Family Courts/Courts of Judicial Magistrates for awareness and implementation.

……..
(c) Where wife is earning some income
……
(d) Maintenance of minor children
……
(e) Serious disability or ill health
……

6. *C. Bright v. District Collector and Others, 2020 SCC OnLine SC 909*

Decided on: 05.11.2020

Bench: 1. Hon'ble Mr. Justice L. Nageswara Rao
2. Hon'ble Mr. Justice **Hemant Gupta**
3. Hon'ble Mr. Justice Ajay Rastogi

(Keeping the objective of the SARFAESI Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio.)

Facts

The challenge in this case was to an order passed by the Division Bench of the Kerala High Court of 19.7.2019, whereby it was held that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days upon reasons recorded in writing, is a directory provision.

Decision and Observations

The question as to whether, a time limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by the Courts as well in the following decisions:

Remington Rand of India Ltd. **v.** *Workmen,* AIR 1968 SC 224

T.V. Usman **v.** *Food Inspector, Tellicherry Municipality, Tellicherry,* (1994) 1 SCC 754

P.T. Rajan **v.** *T.P.M. Sahir*, (2003) 8 SCC 498

New India Assurance Company Limited **v.** *Hilli Multipurpose Cold Storage Private Limited*, (2020) 5 SCC 757

Shiveshwar Prasad Sinha **v.** *District Magistrate of Monghyr* [AIR 1966 Pat 144]

Manish Makhija **v.** *Central Bank of India,* 2018 SCC OnLine MP 553

The Apex court then stated the following:

> **20.** The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in *Mardia Chemical, Transcore* and *Hindon Forge Private Limited* has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions. The true

intention of the Legislature is a determining factor herein. ***Keeping the objective of the Act in mind, the time limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time limit does not render the District Magistrate Functus Officio. The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act.*** The time limit is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.

21. Even though, this Court in *United Bank of India* v. *Satyawati Tondon* [(2010) 8 SCC 110] held that in cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which will ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. *Hindon Forge Private Limited* has held that the remedy of an aggrieved person by a secured creditor under the Act is by way of an application before the Debts Recovery Tribunal, however, borrowers and other aggrieved persons are invoking the jurisdiction of the High Court under Articles 226 or 227 of the Constitution of India without availing the alternative statutory remedy. The Hon'ble High Courts are well aware of the limitations in exercising their jurisdiction when affective alternative remedies are available, but a word of caution would be still necessary for the High Courts that interim orders should generally not be passed without hearing the secured creditor as interim orders defeat the very purpose of expeditious recovery of public money.

22. Thus, we do not find any error in the order passed by the High Court. Consequently, the appeal is dismissed.

7. *Vetindia Pharmaceuticals Limited v. State of Uttar Pradesh and Another, 2020 SCC OnLine SC 912*

Decided on: 06.11.2020
Bench: 1. Hon'ble Mr. Justice R. F. Nariman
2. Hon'ble Mr. Justice **Navin Sinha**
3. Hon'ble Mr. Justice Krishna Murari

(The Limitation Act *stricto sensu* does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion)

Facts

Counsel for the appellant submitted that it holds a valid licence under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Drugs Act') in Form 28 (Rule 76) issued by the Drugs Control Administration, Government of Andhra Pradesh. M/s. Palak Pharmaceuticals Private Limited had obtained supplies from the appellant in the year 2007, and in turn had supplied it to the respondent under a tender notice dated 04.10.2006. The label 'XYO701' on the injection was an inadvertent human error. The brand name of the medicine was correctly mentioned as "OXY-125". The composition of the medicine was also correctly mentioned as "Oxytetracycline IP Vet 125 mg". The generic word "Hcl" was only missing on the label, and it was written as "OXYTETRACYCLINE INJ. I.P. VET" in place of "OXYTETRACYCLINE HCL INJ. I.P. VET". It was therefore a case of bonafide inadvertent printing error which resulted in misbranding. The product was not substandard or spurious veterinary medicine.

The appellant was served with an order of blacklisting dated 08.09.2009 by the Office of Director, Animal Husbandry Department of the respondent referring to the State Analyst report dated 10.10.2008, declaring the batch supplied by the appellant to be of substandard quality (misbranded/not in accordance with Oxytetracycline injection), thus violating clauses 8.12 and 8.23 of the Tender of 2006-07. The appellant informed the respondents that it had never made any supplies to them under the Tender in question. The misbranding referred to was an inadvertent error. The respondents required certain further clarifications which were furnished on 04.05.2019 but to no outcome. The order of blacklisting is causing great prejudice to the appellant preventing it from participating in similar tenders, the most recent being the rejection by the Government of Rajasthan dated 05.07.2019 for the said reason. No proceedings were taken out by the respondents against the appellant under Sections 23, 25, 26 and 27 of the Drugs Act. The appellant is aggrieved by indefinite order of blacklisting dated 08.09.2009. The High Court dismissed the writ petition *in limine*, only on the ground of delay, as having been preferred ten years later.

Decision and Observations

Regarding the issue of blacklisting the Apex court was of the following opinion:

> **9.** There is no dispute that the injection was not supplied to the respondents by the appellant. Yet the show cause notice dated 21.10.2008 referred to further action in terms of the Tender for supplying misbranded medicine to the appellant. Furthermore, the show cause notice did not state that action by blacklisting was to be taken, or was under contemplation. It only mentioned appropriate action in accordance with the rules of the Tender. The fact that the terms of the tender may have provided for blacklisting is irrelevant in the facts of the case. In absence of any supply by the appellant, the order of blacklisting dated 08.09.2009 invoking clauses 8.12 and 8.23 of the Tender is a fundamental flaw, vitiating the impugned order on the face of it reflecting non application of mind to the issues involved. Even after the appellant brought this fact to the attention of the respondents, they refused to pay any heed to it. Further, it specifies no duration for the same.
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> **12.** If the respondents had expressed their mind in the show cause notice to blacklist, the appellant could have filed an appropriate response to the same. The insistence of the respondents to support the impugned order by reference to the terms of the tender cannot cure the illegality in absence of the appellant being a successful tenderer and supplier. We therefore hold that the order of blacklisting dated 08.09.2009 stands vitiated from the very inception on more than one ground and merits interference.
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> **13.** [...]. ***An order of blacklisting operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organisation/institution for all times to come described as a civil death.*** The repercussions on the appellant were clearly spelt out by it in the representations as also in the writ petition, including the consequences under the Rajasthan tender, where it stood debarred expressly because of the present impugned order. The possibility always remains that if a proper show cause notice had been given and the reply furnished would have been considered in accordance with law, even if the respondents decided to blacklist the appellant, entirely different considerations may have prevailed in their minds especially with regard to the duration. .....

Regarding the issue of delay, the Apex Court held that the Limitation Act *stricto sensu* does not apply to the writ jurisdiction.

> **15.** That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on ground of delay in approaching the court. But it is only a rule of discretion by exercise of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. ***The Limitation Act stricto sensu does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have***

intervened etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in *Basanti Prasad* v. *Bihar School Examination Board*, (2009) 6 SCC 791, after referring to *Moon Mills Ltd.* v. *Industrial Court*, AIR 1967 SC 1450, *Maharashtra SRTC* v. *Balwant Regular Motor Service*, AIR 1969 SC 329 and *State of M.P.* v. *Nandlal Jaiswal*, (1986) 4 SCC 566, held that if the delay is properly explained and no third party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay.....

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17. The aforesaid discussion, therefore, leads us to the conclusion that the writ petition was not barred by unexplained delay as the appellant had been pursuing the matter with the authorities and it is they who sat over it, triggering rejection of appellants tender by the Rajasthan Government on 05.07.2019 leading to the institution of the writ petition on 24.07.2019. The High Court therefore erred in dismissing the writ petition on grounds of delay. The illegality and the disproportionate nature of the order dated 08.09.2009, with no third party rights affected, never engaged the attention of the High Court in judicious exercise of the discretionary equitable jurisdiction. Consequently, the impugned order of the High Court as well as order dated 08.09.2009 of the respondents are set aside, and the appeal is allowed.

8. *Shruti Kaushal Bisht v. Kaushal R. Bisht , 2020 SCC OnLine SC 913*

Decided on: 06.11.2020
Bench: 1. Hon'ble Mr. Justice **V. Ramasubramanian**

(Sub-section (2) of Section 21-A of the Hindu Marriage Act,1955, has no independent existence de hors Sub-section (1). A combined reading of Sub-sections (1) and (2) would show that the procedure prescribed by Sub-section (2), applies only to situations covered by Sub-section (1).)

Facts

The husband filed a petition for divorce on 07.05.2019 before the Family Court, Pune, Maharashtra. After the receipt of notice in the said petition, the wife came up with the Transfer Petition No. 1264 of 2019. The transfer petition was filed in the first week of July-2019. Thereafter, the wife, perhaps as a counter-blast, filed a petition for restitution of conjugal rights before the Family Court, Saket, New Delhi on 15.07.2019. Upon receipt of notice in the said petition, the husband has come up with Transfer Petition No. 2168 of 2019.

The main ground on which the wife seeks transfer of the husband's divorce petition from Pune to New Delhi is that she has no independent source of income and that since the husband is not even paying any maintenance, she is entitled to have the divorce petition transferred to the Family Court in New Delhi, so that the petition for divorce filed by the husband could be tried together with the petition for restitution of conjugal rights filed by her.

The main ground on which the husband opposes the transfer petition filed by the wife, is that his own petition for divorce was prior in point of time and that therefore under Section 21-A(2)(b) of the Hindu Marriage Act, 1955,[9] the petition filed by the wife subsequently, is

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[9] ***"21A. Power to transfer petitions in certain cases.*** *- (1) Where -*

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13; and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies, -

(a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from

liable to be transferred to Pune. The husband has offered to bear the expenses for the travel of the wife from Delhi to Pune. The husband further states that his father is suffering from seizures and asthma and that his mother has undergone a cervical biopsy recently and that therefore it is not possible for him to leave his aged parents and travel to Delhi, for conducting the proceedings.

Decision and Observations

> **10.** Sub-Section (1) of Section 21-A, deals with a situation where one party to a marriage has filed a petition either for judicial separation under Section 10 or for a decree of divorce under Section 13, before a District Court having jurisdiction and thereafter the other party to the marriage, files a petition either under Section 10 or under Section 13, before the same District Court or in a different District Court in the same State or in a different State. Such types of ***cases, covered by Sub-section (1), are required to be dealt with, in the manner specified in Sub-section (2). Sub-section (2) of Section 21-A, has no independent existence de hors Sub-section (1). A combined reading of Sub-sections (1) and (2) would show that the procedure prescribed by Sub-section (2), applies only to situations covered by Sub-section (1).***
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> **11.** In the case on hand, what was filed by the husband, first in point of time, was a petition for divorce and hence his case may fit into clause (a) of Sub-section (1) of section 21-A. But unfortunately for him, what was filed by the wife later in point of time was only a petition under Section 9 and not a petition either under Section 10 or under Section 13 of the Hindu Marriage Act. Thus, the wife's petition, though subsequent in point of time, does not fall under Clause (b) of Sub-section (1) of Section 21-A. As a consequence, Sub-section (1) of Section 21-A has no application to the case on hand, as the pre-conditions stipulated therein are not satisfied.
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> **12.** In any case Section 21-A of the Hindu Marriage Act does not divest this Court of the power available under Section 25(1) of the Code of Civil Procedure Code, 1908. In *Guda Vijalakshmi* v. *Guda Ramchandra Sekhara Sastry* [(1981) 2 SCC 646], this Court rejected the contention that the substantive provision contained in Section 25 CPC is excluded by reason of Section 21 of the Hindu Marriage Act, 1955. The words "*subject to the other provisions contained in this Act*" appearing in Section 21 of the Hindu Marriage Act, 1955 were construed by this Court to indicate only those provisions which are inconsistent with any of the provisions of the Act. The only test prescribed in Section 25(1) of the Code of Civil Procedure for the exercise of the power of transfer by this Court is "*expediency for the ends of justice*". Therefore, the argument of the learned counsel for the husband centering around Section 21-A(2)(b) cannot be countenanced. The offer made by the husband to meet the travel expenses for the wife, does not appeal to me, as she may have to travel a distance of more than 1000 km. every time. When the contention

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the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

that the wife is unemployed and her claim that no maintenance is paid, are not seriously disputed, the offer now made by the husband does not convince me.

13. In view of the above, the Transfer Petition No. 1264 of 2019 filed by the wife is allowed and, accordingly, the divorce petition P.A. No. 645 of 2019 titled as "*Kaushal R. Bisht* v. *Shruti Kaushal Bisht*" is hereby transferred from the Family Court Pune, Maharashtra to the Court of Principal Judge, Family Court, Saket, New Delhi and it shall be tried together with the wife's petition under Section 9 of the Act. Let the records of the case be transferred to the concerned court without delay. The transfer petition No. 2168 of 2019 filed by the husband is dismissed.