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4, 21 of U.P. Mines and Minerals (Development and Regulation) Act, 1957, Police Station Naini, District Prayagraj, pending in the court of Additional Chief Judicial Magistrate-15, Prayagraj.

Appearances for Parties

Counsel for Applicant(s) : Abdul Ahad, Omar Zamin

Counsel for Opposite Party(s) : G.A

(Delivered by Hon'ble Vivek Kumar Singh, J.)

1. Heard Sri Omar Zamin, learned counsel for the applicant and Sri O.N. Mishra, learned A.G.A. for the State.

2. Present application under Section 528 B.N.S.S. has been preferred for quashing the charge-sheet No.872 of 2020 dated 15.09.2020, cognizance/ summoning order dated 1.4.2024 as well as entire proceeding of Case No.904 of 2024, arising out of Case Crime No.805 of 2020, under Sections 379, 411 I.P.C., Rules 3, 57, 7 of U.P. Minor Minerals (Concession) Rules, 1963 and Sections 4, 21 of U.P. Mines and Minerals (Development and Regulation) Act, 1957, Police Station Naini, District Prayagraj, pending in the court of Additional Chief Judicial Magistrate-15, Prayagraj.

3. The brief facts of the case are that an FIR was lodged by the first informant, Yogesh Shukla, against the applicant and two others on 18.08.2020, registered as Case Crime No.805 of 2020, under Section 379 IPC, Sections 4/ 21 of U.P. Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'Act, 1957'), and Rules 3/7/57 of U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963'). As per version of the FIR, the first informant,

along with Brij Bali Singh, went to the place of incident found 155 cubic meters sand and 50 cubic meters gitti lying on Khata No.391, Arazi no.136, area 0.103 hectare. Further, the FIR narrates that the said property belongs to the Allahabad Development Authority, and the Lekhpal submitted a report stating that Arshad, Firoz, and Mojeeb Khan were using the place for selling the sand.

4. After registration of the FIR, the Investigating Officer investigated the matter and recorded the statement of first informant, Lekhpal, Brij Bali Singh, and other witnesses. During the course of investigation, Section 411 IPC was added, and thereafter the Investigating Officer submitted a charge sheet on 15.09.2020 under Sections 379 and 411 IPC, Sections 4/21 of the Act, 1957, and Rules 3/7/57 of the Rules, 1963. The learned Magistrate, in his wisdom, did not take cognizance of the offences, under Sections 4/ 21 of the Act, 1957 and Rules 3/7/57 of the Rules, 1963 in view of judgment passed by the Hon'ble Supreme Court and he took cognizance under Sections 379 and 411 IPC only vide his order dated 01.04.2024, which is under challenge by the applicant.

5. It is submitted by learned counsel for the applicant that an FIR was lodged against the applicant under Section 379 IPC, Sections 4/21 of the Act, 1957 and Rules 3/7/ 57 of Rules, 1963. After due investigation, the Investigating Officer submitted the charge-sheet in Sections 379 & 411 IPC, Sections 4/ 21 of Act, 1957 and Rules 3/7/57 of Rules, 1963. However, the learned Magistrate took cognizance only under Sections 379 & 411 IPC and did not take cognizance under Sections 4/ 21 of Act, 1957 or Rules 3/7/ 57 of Rules, 1963.

6. It is submitted that the learned Magistrate committed gross illegality in not accepting the charge-sheet in toto. It is also submitted that no offence under Sections 379 and 411 of the IPC is made out against the applicant, as it has not been identified whose property was allegedly stolen. Therefore, the essential ingredients constituting the offence of theft are not made out. It is further submitted that the applicant is an old person having no previous criminal antecedent. Therefore, it is prayed that the charge-sheet dated 15.09.2020, the cognizance order dated 01.04.2024, and the entire proceedings arising therefrom be quashed.

7. Per contra, learned A.G.A. vehemently opposed the prayer and submitted that there is no illegality in the cognizance order so far as it relates to taking cognizance under Section 379 and 411 IPC.

8. I have heard the rival submissions of both the sides and perused the record.

9. For reference Section 22 of the Act, 1957 and Rule 74 of Rules, 1963 as well as Rule 76 of U.P. Minor Minerals (Concession) Rules, 2021 (hereinafter referred to as 'Rules, 2021') are being quoted as below:-

"22. Cognizance of offences. No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

74. Cognizance of offences.

(1) No court shall take cognizance of any offence punishable under

these rules except on a complaint in writing of the fact constituting such offence by the District Officer or by any officer authorised by him in this behalf.

(2) No court inferior to that of a magistrate of the first class, shall try any offence under these rules.

76. Cognizance of offences.- (1) No Court shall take cognizance of any offence punishable under these rules except on a complaint in writing of the fact constituting such offence by the District Officer or by any officer authorised by him in this behalf.

(2) No Court inferior to that of a Magistrate of the First Class, shall try any offence under these rules."

10. The aforesaid Section 22 of the Act, 1957 is very clear which provides that no court shall take cognizance for any offence under the Act, 1957 and Rule 76 of Rules, 2021 also provides that no court shall take cognizance of any offence under the Rules, 2021 unless a complaint is filed in writing by an officer authorised by Central Government or State Government. Similarly in view of Rule 74 of Rules, 1963, no cognizance can be taken under the Rules, 1963 unless a complaint is filed by the District Magistrate or any other officer authorised by him.

11. In the case of **Kanwar Pal Singh Vs. State of Uttar Pradesh and another reported in (2020) 14 SCC 331**, Hon'ble Apex Court observed that the Magistrate can take cognizance on the basis of charge sheet only for the offence under the Indian Penal Code, but the cognizance for the offence under the Act, 1957 can be taken only on the basis of complaint filed by

authorised officer as per the provisions of Act, 1957. Paragraph 16 of this judgment is being quoted as under:-

"16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under Section 379 C and Sections 3 and 4 of the Prevention of Damage to Public Property Act. We would, however, clarify that prosecution and cognizance under Section 21 read with Section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation. Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Damage to Public Property Act. There would be no order as to costs."

12. The Apex Court again in the judgment of **Jayant and others Vs. State of Madhya Pradesh**, reported in (2021) 2 SCC 670, observed that even if the charge sheet is filed by the police after the investigation then for the offence under the Indian Penal Code, the learned Magistrate can take cognizance but for the offence under the Act, 1957, the learned Magistrate cannot take cognizance on the basis of that charge sheet and it is further observed that the Magistrate can take cognizance only when the complaint is filed by the authorised officer along with that charge

sheet for the offence under the Act, 1957. Paragraphs 21.3, 21.4 and 21.5 of the above judgment are being quoted as under:-

"21.3. For commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder."

21.4. That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned In-charge/SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate."

21.5. In a case where the violator is permitted to compound the offences on

payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

13. In view of the above legal position, it is clear that Magistrate cannot take cognizance of offence under Act, 1957 or under Rules, 2021 on the basis of the charge sheet and he may take cognizance only when complaint is filed by the authorized officer along with the charge-sheet. Therefore, the learned Magistrate rightly and correctly did not take cognizance under Section 4/21 of the Act, 1957 and Rules 3/7/57 of Rules, 1963. So far as argument of the learned counsel for the applicant relating to taking cognizance under Sections 379 and 411 IPC is concerned, it is clear that charge-sheet was submitted after collecting the evidence. During course of investigation, the investigating officer recorded statement of informant Yogesh Shukla and Brij Bali Singh Lekhpal, who supported the prosecution case.

14. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if taken at their face value and accepted in their entirety do

not prima facie constitute any offence or make out a case against the accused, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal**, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety to do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 156(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In the case of **R. Kalyani v. Janak C. Mehta and Others reported in 2009 (1) SCC 516**, the Hon'ble Apex Court has held as under:-

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

16. The said decision has also been followed by the Apex Court in the case of **Kamlesh Kumari and Ors. v. State of U.P. and Ors. reported in 2015 AIR SCW 3700**.

17. Keeping in view the above stated settled position of law in the instant case, perusal of record shows that there are allegations against the applicant that applicant was indulging in illicit mining and theft of sand. In view of the allegations made in the FIR and material collected during investigation, it cannot be said that no cognizable offence is made out against the applicant. In the case of **State of NCT of Delhi vs. Sanjay 2014 AIR SCW 5487**, it was held that in a case where there is theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173 of the Code of Criminal Procedure before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(b) of the Code of Criminal Procedure. Further in the case of **Rishipal vs. State of U.P., Crl. Misc. W.P. No. 12052 of 2010**, a Division Bench of this Court has held as under:-

"In the facts and circumstances stated above, since the applicant has been charged with offence under Section 379 IPC besides the offences under Section 3/21 of the Mines and Minerals (Regulation and Development) Act, 1957, under Rules 3/57/70 of the U.P. Mines Mineral (Concession) Rules, 1953 and Section 2/3 of the U.P. Gangsters Act, which are cognizable offences, we have no reason to take a view different from the view taken by the Apex Court in State of Orissa (supra) and other decisions."

18. The above stated case laws are applicable in the present case and in view of that legal position, impugned charge-sheet and proceedings arising from it, are not liable to be quashed on the grounds raised by the learned counsel for the applicant. It is apparent from the FIR and material on record that a prima facie cognizable offence is made out against the applicant. The case of the applicant does not fall in any of the category enumerated by the Apex Court through various judicial pronouncement for quashing of FIR/charge-sheet. It is well settled that at this stage, this Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ingredients constituting the offence is required in order to see whether the proceedings deserves quashing.

19. As noted in the case of **State of Haryana vs. Bhajan Lal (supra)**, power of quashing of FIR or proceedings should be exercised sparingly and with circumspection and that too in the rarest of rare cases. In case of **Rupan Deol Bajaj v.**

K.P.S. Gill; reported in (1995) SCC (Cri) 1059, **Rajesh Bajaj v. State of NCT of Delhi**; reported in (1999) 3 SCC 259 and **M/S. Medchl Chemicals & Pharma (P) Ltd. v. M/S. Biological E Ltd. & Ors**; reported in 2000 SCC (Cri) 615, the Apex Court clearly held that if a prima facie case is made out disclosing the ingredients of the offence, Court should not quash the complaint/ FIR/charge-sheet. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful. Thus, there is no controversy about the legal proposition that in case, a prima facie case is made out, the proceedings cannot be quashed. Here it would also be pertinent to mention that questions of fact cannot be examined by this Court in proceedings under Section 482 Cr.P.C.

20. In **State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540**, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCCp. 550, para 11)

"11.....It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

21. From the above stated case law it is apparent that adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 Cr.P.C. In view of the material on record it can not be held that the impugned criminal proceeding are manifestly attended with mala fide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

22. The investigating Officer conducted the investigation in this case, and after due investigation, submitted the charge-sheet. Since there are specific allegations against the applicant in the FIR as well as in the statements of witnesses, a prima facie offence is made out against the applicant. At this stage, this Court cannot see whether a conviction would be sustainable on the basis of evidence adduced by the prosecution during the course of trial. It would be erroneous to assess the material, collected by the Investigating Officer during the course of investigation. The quality of evidence cannot be appreciated by this Court in this jurisdiction. It is the duty of the trial court who will evaluate the evidence and pronounce the judgement on the basis of material before him.

23. The submissions raised by learned counsel for the applicant call for determination on questions of fact which may be adequately adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court. In view of the aforesaid, no case for quashing the impugned proceedings or

impugned order is made out. The petition lacks merit and thus, liable to be dismissed.

24. The instant application is hereby dismissed.

(2025) 12 ILRA 12
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.12.2025

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 43373 of 2025

Kamran **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

Issue for Consideration

Whether Section 13 of the Gambling Act is a cognizable offence and the police can register the FIR, investigate the matter and can submit charge-sheet and the learned Magistrate may proceed as a State case.

Head Notes

The Bharatiya Nagarik Suraksha Sanhita, 2023- Section 528; The Gambling Act, 1867- Sections 3, 4 & 13; The Code of Criminal Procedure, 1973- Section 155(2)- The language of Section 13 of the Gambling Act starts with "a police officer may apprehend without warrant-" meaning thereby the police officer may arrest any person without obtaining warrant from any court- Section 13 of the Gambling Act authorise a police officer to arrest any person without warrant- Application dismissed.(E-15)

Held-Therefore, it cannot be said that Section 13 of the Gambling Act is a non-cognizable offence and police cannot investigate the matter without prior permission of the learned Magistrate under section 155(2) of the Cr.P.C.

(Para 9 & 10)

Case Law Cited

Judgment and order dated 12.05.2025 in Application U/S 482 No.26740/2024 (Imran Khan And Another vs. State of U.P. and Another) :Judgment and order dated 04.07.2025 passed in Application U/S 482 No.29797 of 2024 (Imran Vs. State of U.P. and Another)

List of Acts

The Bharatiya Nagarik Suraksha Sanhita, 2023; The Gambling Act, 1867; The Code of Criminal Procedure, 1973

List of Keywords

Gambling Act, 1867; Section 13; Cognizable Offence; Arrest any person without warrant.

Case Arising From

Entire proceedings of Case No.1468 of 2020 (State vs. Imran and Others), arising out of Case Crime No.1025 of 2019, under Section 13 of the Public Gambling Act, 1867 (in short 'Gambling Act'), Police Station Sikandara, District Agra, pending in the court of Special Chief Judicial Magistrate, Agra as well as chargesheet dated 21.12.2019 and Summoning order dated 24.02.2020 issued in the aforesaid proceedings.

Appearances for Parties

Counsel for Applicant(s) : Diwan Saifullah Khan
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Vivek Kumar Singh, J.)

1. Heard Shri Diwan Saifullah Khan, learned counsel for the applicant and Shri Mohd. Afzal, learned counsel for the State.

2. Present application under Section 528 BNSS has been preferred to quash the entire proceedings of Case No.1468 of 2020 (State vs. Imran and Others), arising out of Case Crime No.1025 of 2019, under Section 13 of the Public Gambling Act, 1867 (in short 'Gambling Act'), Police Station Sikandara, District Agra, pending in the court of Special Chief Judicial Magistrate, Agra as well as chargesheet

dated 21.12.2019 and Summoning order dated 24.02.2020 issued in the aforesaid proceedings.

3. The prosecution case in brief is to the effect that a First Information Report (in short 'FIR') was lodged on 08.12.2019 at 11:09 AM in respect of alleged incident dated 08.12.2019 at 9:30 AM, at Police Station Sikandara, District Agra, as Case Crime No.1025 of 2019, under Section 13 of the Gambling Act. It is alleged by the informant that the applicant and co-accused were arrested by the police while playing cards in the park and Rs.750/- were recovered from their possession. The Investigating Officer started investigation and recorded statements of informant and other witnesses and submitted chargesheet in this case on 21.12.2019, under section 13 of the Gambling Act. Thereafter, the learned Magistrate took cognizance of offence vide order dated 24.02.2020.

4. It is submitted by the learned counsel for the applicant that the chargesheet has been filed under section 13 of the Gambling Act where the maximum sentence in State of Uttar Pradesh is upto rigorous imprisonment for a term not exceeding one month and fine not exceeding two hundred fifty rupees nor less than fifty rupees, in the case of first offence and in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than hundred rupees and rigorous imprisonment for a term not exceeding six months nor less than one month. The amendment was incorporated in State of Uttar Pradesh on 07.09.1961, therefore, the counsel for the applicant opened up his argument by making a reference to Schedule 1st part II of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') wherein classification of offences

against other laws in Cr.P.C. are mentioned, as per which the offences punishable with imprisonment for less than three years are non cognizable, Bailable and triable by Magistrate. The learned counsel further submitted that Section 155(2) of Cr.P.C. mandates that no Police Officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial and as in the present case police did not take permission from the learned Magistrate to commence with the investigation, thus, the entire proceedings commence soon after registration of the FIR become void ab initio. Learned counsel for the applicant placed reliance upon two judgments of Co-ordinate Bench of this Court passed on 12.05.2025 in Application U/S 482 No.26740/2024 (Imran Khan And Another vs. State of U.P. and Another) and judgement and order dated 04.07.2025 passed in Application U/S 482 No.29797 of 2024 (Imran Vs. State of U.P. and Another), wherein it was held that offences under Section 3/4 of the Gambling Act is a non-cognizable offence and the learned Magistrate cannot take cognizance of offence on a chargesheet rather he has to follow the procedure, laid down for complaint cases.

5. Per contra, Mr. Mohd. Afzal, learned counsel for the State has opposed the application and submitted that there are serious allegations of gambling against the applicant. He further submitted that the case law, relied upon by the learned counsel for the applicant, is not applicable in the present case since the case law are related to Section 3/4 of the Gambling Act, whereas the applicant was chargesheeted under Section 13 of the Gambling Act, which is a cognizable offence and the FIR can be registered and the learned

Magistrate can take cognizance on a police report. He lastly submitted that the present application is devoid of merit and deserves to be dismissed.

6. After hearing the learned counsel for the parties and on perusal of FIR, chargesheet, and impugned cognizance order, it is admitted position that the chargesheet has been filed under section 13 of the Gambling Act and the maximum punishment in case of first offence is one month imprisonment and a fine not exceeding two hundred fifty rupees, in State of Uttar Pradesh. Learned counsel for the applicant has relied upon two judgments, passed by Co-ordinate Bench of this Court wherein, proceedings under Section 3/4 of the Gambling Act were quashed by this Court on the ground that the offences under Section 3/4 of the Gambling Act is a non-cognizable offence and the investigation was barred by Section 155(2) Cr.P.C. In the present case the proceeding under Section 13 of the Gambling Act has been challenged and as per argument advanced by learned counsel for the State, Section 13 of the Gambling Act is a cognizable offence and the police can register the FIR, investigate the matter and can submit chargesheet and the learned Magistrate may proceed as a State case.

7. For clarity Section 3, 4 and 13 of the Gambling Act, 1867 are reproduced herein:-

"3. Penalty for owning or keeping, or having charge of a gaming-house.- *Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place situated within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and whoever, being the*

owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaining with persons frequenting such house, walled enclosure, room or place; shall be liable to a fine not exceeding two-hundred rupees, or to imprisonment of either description,¹ as defined in the Indian Penal Code (45 of 1860), for any term not exceeding three months.

4. Penalty for being found in gaming-house.- "Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description,¹ as defined in the Indian Penal Code (45 of 1860), for any term not exceeding one month,² and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

13. Gaming and setting birds and animals to fight in public streets.-A police officer may apprehend without warrant-

any person found playing for money or other valuable thing, with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill, in any public street, place or thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public street, place, or thoroughfare situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

Destruction of instruments of gaming found in public streets.-And such police officer may seize all instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Uttar Pradesh:

In Section 13,-

(a) for the words "playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill", substitute the word "gaming".

[Uttar Pradesh Act 1 of 1917, Section 5]

(b) between paras. 1 and 2, add the following new paragraph as follows:

"any person found in any public street, place or thoroughfare within the limits aforesaid with any instruments of gaming, or;

(c) for the words, in para. 2, "or any person there present aiding and abetting such public fighting of birds and animals", substitute the word "or any person there present making preparation for or aiding or abetting such gaming or public fighting of birds or animals"; and

(d) in the last para the semi-colon after the words "shall be liable" shall be deleted and a dash substituted therefor and clauses (a) and (b) after the said words "shall be liable" shall be deleted and the following substituted therefor:

"in the case of a first offence to a fine not exceeding two hundred and fifty rupees nor less than fifty rupees; or to rigorous imprisonment for a term not exceeding one month; and

in the case of any subsequent offence to a fine not exceeding five hundred rupees nor less than one hundred rupees, and rigorous imprisonment for a term not exceeding six months nor less than one month."

[Uttar Pradesh Act 21 of 1961, Section 9 (w.e.f. 7-9-1961)]"

8. The State of U.P. had enhanced the sentence in Section 13 of the Gambling Act in the year 1961 by bringing State Amendment through U.P. Act no.21 of 1961 in the Gambling Act whereby the punishment was enhanced accordingly, for

a first offence, the offender may have to pay a fine between Rs.fifty and two hundred fifty and may be awarded rigorous imprisonment for upto one month. For any later offences, the maximum fine shall be five hundred rupees and the offender may be awarded rigorous imprisonment for a term not exceeding six months nor less than one month.

9. The language of Section 13 of the Gambling Act starts with **"a police officer may apprehend without warrant-"** meaning thereby the police officer may arrest any person without obtaining warrant from any court. Here one has to understand the difference between the cognizable offence and non-cognizable offence which have been defined in Section 2(c) and 2(l) of Cr.P.C. respectively. Section 2(c) and 2(l) of Cr.P.C. are reproduced herein:-

"2.(c) "cognizable offence" means an offence for which, and 'cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

(l) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;"

10. It is very clear from the above definition of cognizable offence and non-cognizable offences that in a case of cognizable offences, a police officer may arrest any person without warrant whereas in non-cognizable offence a police officer has no right to arrest without warrant. Section 13 of the Gambling Act authorise a police officer to arrest any person without warrant, therefore, it cannot be said that

Section 13 of the Gambling Act is a non-cognizable offence and police cannot investigate the matter without prior permission of the learned Magistrate under section 155(2) of the Cr.P.C.

11. The judgments and orders dated 12.05.2025 as well as 04.07.2025 relied on by the learned counsel for the applicant are entirely different on the facts wherein, it has been held that Section 3/4 of the Gambling Act are non-cognizable offences. The facts of the aforesaid judgments are not similar to the facts of the present case. The FIR may be registered under Section 13 of the Gambling Act and the police has authority to register the FIR and investigate the matter and the learned Magistrate did not commit any illegality or irregularity in taking cognizance of offence on police report. Therefore, the present application lacks merit and deserves to be dismissed.

12. Accordingly, the present application is hereby **dismissed**.

13. No other argument was advanced by the learned counsel for the applicant.

14. However, keeping in mind the punishment of the offence in question, the trial court is directed to conclude the trial of the aforesaid case, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.

(2025) 12 ILRA 17

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 05.12.2025

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Criminal Misc. Anticipatory Bail Application U/S
482 BNSS No. 687 of 2025

Neha Singh Rathore @ Neha Kumari

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether an application for anticipatory bail u/s 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, is maintainable directly before the High Court without first approaching the Court of Session, and if so, whether the facts of the instant case disclose the existence of "special circumstances" justifying such direct invocation of the High Court's jurisdiction.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 - Information Technology Act, 2008 - s. 69(a) - Constitution of India, 1950 - Articles 19(1)(a), 141 - The applicant, a folk singer and social media user, is named as an accused in an FIR dated 27.04.2025 alleging commission of offences under various provisions of Bharatiya Nyaya Sanhita, 2023 and s. 69(a) of Information Technology Act, 2008, on the basis of certain posts and video clips uploaded by her on her Twitter handle in the aftermath of terrorist attack at Pahalgam, Jammu and Kashmir, in which several tourists lost their lives - It was alleged that through these posts, the applicant made objectionable and provocative statements adversely affecting national integrity, disturbing communal harmony, and inciting hatred, which were allegedly circulated widely - Apprehending arrest in the said case, the applicant approached the High Court directly seeking anticipatory bail, asserting false implication, invoking her right to freedom of speech, and contending that she was not residing within the jurisdiction of the concerned Sessions Court - The State opposed the application on grounds of maintainability, gravity of allegations,

prior dismissal of applicant's writ petition challenging the FIR, non-cooperation with investigation, and the liberty granted by Supreme Court to raise all contentions at the stage of framing of charge or discharge.

Held: Although Article 19 of Constitution of India gives right of freedom to all citizens, but the same is subject to reasonable restriction for public order, decency or morality - The applicant had made certain tweets at the crucial time when the unfortunate Pahalgam incident took place on 22.04.2025 and the case diary as well as FIR goes to show that tweets posted by the applicant are against the Prime Minister of India - Name of Prime Minister of India has been used in disrespectful manner - After going through the record and the written instructions dated 27.11.2025, it was found that the applicant is not cooperating in the investigation - Apart from it, Criminal Misc. Writ Petition No.3852 of 2025 filed by the applicant challenging the FIR has been dismissed by a Division Bench of this Court on 19.09.2025 with a direction that applicant will cooperate in the inquiry and will appear before the Investigating Officer - Applicant preferred SLP challenging the order passed by High Court, which was also not interfered with by Supreme Court and a direction was issued that applicant may file an application for discharge at the appropriate stage - It is thus, clear that Supreme Court has taken note of fact that instant FIR challenged by the applicant before the Division Bench of High Court does not have merit in the case - The observation of the Supreme Court is binding upon High Court under Article 141 of Constitution of India and High Court cannot give any opinion that the charges of mutiny and charges u/s 152 of Bharatiya Nyaya Sanhita, 2023 coupled with the other offences mentioned in the FIR are made out or not - Hence, no case for anticipatory bail is made out, thus rejected. [Paras 18 to 21] (E-13)

Case Law Cited

Ankit Bharti v. State of U.P., **AIR OnLine 2020 ALL 694: (2020) 111 ALL CrI. C 134**; S.G. Vombatkere v. Union of India, **Writ Petition (C) No.682 of 2021 (SC), order dated 11.05.2022**; Tejender Pal Singh @ Timma v.

State of Rajasthan and another, **S.B. Criminal Misc (Pet.) No.5005 of 2024, decided on 16.12.2024**; Anand Chintamani Dighe and another v. State of Maharashtra, **(2001) SCC OnLine Bom. 891**; Imaran Pratapgadhi v. State of Gujarat and another, **(2025) SCC OnLine SC 678**; Pandurangan v. T. Jayarama Chettiar & another, **(2025) SCC Online SC 1425 - referred to.**

List of Acts

Bharatiya Nyaya Sanhita, 2023; Information Technology Act, 2008; Constitution of India, 1950

List of Keywords

Anticipatory bail; Maintainability; Folk singer; Social Media; Preliminary objection; Jurisdiction; Special circumstances; Court of Session; Non-cooperation with investigation; Prima facie; Merits of the case; False implication; Article 141 of Constitution of India; Special Leave Petition; Freedom of speech and expression; Reasonable restriction; Public order; National integrity; Mutual harmony; Mens Rea; Arrest; Liberty; Discharge; Framing of the charge; Apprehension of arrest; Discretion of the Judge; Rejection of application; Legal remedy available under law.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Anticipatory Bail Application u/s 482 BNSS No. - 687 of 2025

From the FIR dated 27.04.2025 being Case Crime No. 0111 of 2025 Police Station Hazratganj, District Lucknow.

Appearances for Parties

Advs. for the Applicant:

Kaustubh Singh, Arpit Verma, Shivanshu Goswami

Adv. for the Opposite Party:

G.A

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The present application has been filed seeking anticipatory bail apprehending arrest in Case Crime

No.0111 of 2025, under Sections 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 of Bharatiya Nyaya Sanhita, 2023 and Section 69(a) of the Information Technology Act, 2008, Police Station Hazratganj, District Lucknow.

2. Dr. V.K. Singh, learned Government Advocate assisted by Sri Rajdeep Singh, learned AGA-I for the State has raised a preliminary objection regarding the maintainability of the anticipatory bail application by stating that applicant has filed the present anticipatory bail application directly before the High Court without filing the same first before the Court of Sessions. He further submits that in view of Section 482(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant has to apply for anticipatory bail first before the Court of Session and thereafter she may approach the High Court. In support of his contention, he has relied upon the judgment of the Full Bench of this Court rendered in the case of **Ankit Bharti Vs. State of U.P.**, AIR OnLine 2020 ALL 694:(2020) 111 ALL CrL C 134 (Paragraph-26). He has further submitted that case of the applicant is not coming within the special circumstances, therefore, the applicant should be relegated to the Court of Session, where she may move an application for anticipatory bail.

3. Replying the aforesaid submissions, Sri Purnendu Chakravarty, learned Senior Advocate assisted by Sri Shivanshu Gowami, for the applicant has submitted that applicant is the resident of Jandaha, Mashraki, Kaimur (Bhabua), Jandaha, State of Bihar and the present FIR has been registered against her in District Lucknow. In support of his contention he has relied upon Paragraph-26-B of the Full Bench

judgement rendered in the case of *Ankit Bharti* (supra) and has submitted that applicant is not residing in District Lucknow, therefore, the circumstances enunciated in the aforesaid case will be applicable in the present case and the applicant may maintain the present anticipatory bail application here before this Court and she should not be relegated to the Court of Session. Relevant portion of Paragraph-26 of the aforesaid judgement is quoted below:

"The legal position which consequently emerges is that notwithstanding the concurrent jurisdiction being conferred on the High Court and the Court of Session for grant of anticipatory bail under Section 438 Cr.P.C., strong, cogent, compelling reasons and special circumstances must necessarily be found to exist in justification of the High Court being approached first and without the avenue as available before the Court of Sessions being exhausted."

Whether those factors are established or found to exist in the facts of a particular case must necessarily be left for the Court to consider in each case."

What would constitute "special circumstances" in light of the nature of the power conferred, must also be left to be gathered by the Judge on a due evaluation of the facts and circumstances of a particular case. It would perhaps be imprudent to exhaustively chronicle what would be special circumstances. As noticed above, it would be impossible to either identify or compendiously propound what would constitute special circumstances. Sibia spoke of the "imperfect awareness of the needs of new situations".

It is this constraint which necessitates the Court leaving it to the wisdom of the Judge and the discretion vested in him by statute. Without committing the folly of attempting to exhaustively enunciate what would constitute special circumstances or being understood to have done so, the High Court would be justified in entertaining a petition directly in the following, amongst other, circumstances:-

(A) Where bail, regular or anticipatory, of a co-accused has already been rejected by the Court of Sessions;

(B) Where an accused not residing within the jurisdiction of the concerned Sessions Court faces a threat of arrest;

(C) Where circumstances warrant immediate protection and where relegation to the Sessions Court would not subserve justice;

(D) Where time or situational constraints warrant immediate intervention.

These and other relevant factors would clearly constitute special circumstances entitling a party to directly approach the High Court for grant of anticipatory bail."

As is manifest and evident from the above extract, the learned Judge chose, and in our opinion correctly, to observe that it would be imprudent to exhaustively chronicle what would constitute special circumstances. A further caveat was placed with the learned Judge observing that the aforesaid exposition on the question should not be viewed as an attempt to exhaustively

enunciate what would constitute special circumstances. The learned Judge thus left it entirely at the discretion of the Judge considering a petition for anticipatory bail to ascertain whether such special circumstances did in fact exist entitling the applicant to approach the High Court directly. In our considered view the answer as framed to Question 'D' in Vinod Kumar clearly needs no further explanation or elaboration."

4. After going through the judgment of the Full bench of this Court in the case of *Ankit Bharti* (supra), one fact is to be considered by this Court that the FIR was lodged at Lucknow, whereas the applicant is the resident of Jandaha, Mashraki, Kaimur (Bhabua), Jandaha, State of Bihar. The FIR indicates the present address of the applicant as Heedi Pakadia, District Ambedkar Nagar, Uttar Pradesh. It is thus clear that after looking into the FIR as well as the affidavit of the applicant, it is clear that she is not the resident of the Lucknow and in view of Point No.26(B) of the Full Bench judgement of this Court in the case of *Ankit Bharti* (supra), this Court holds that the anticipatory bail application filed by the applicant is maintainable before this Court.

5. Now, this Court proceeds further on the merit of the case. It is the case of the applicant that she has been falsely implicated in the FIR dated 27.04.2025 lodged by opposite party no.2 under Sections 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2), 302, 152 of Bharatiya Nyaya Sanhita, 2023 and Section 69(a) of the Information Technology Act, 2008.

6. The prosecution story as narrated in the FIR is that one Abhay Pratap Singh @

Nirbheek has alleged that it is known that on 22nd April 2025, in Pahalgam, Jammu and Kashmir, especially Hindu tourists were shot by a Pakistan-backed terrorist organisation after asking their religion, in which 26 tourists died a painful death. This cowardly act of the terrorists has generated a feeling of anger against Pakistan in the whole of India. Hurt by this attack on the soul of the country in Pahalgam, all the countrymen and leaders of all opposition parties are unanimously demanding the Indian Government to take the strictest revenge for this cowardly attack. The Government of the country is preparing to take revenge from Pakistan, in the sequence of which the Indian Government has imposed many strict restrictions on Pakistan along with stopping the Indus Water Treaty. In such a situation, folk singer and so-called poetess Neha Singh Rathore, wife of Himanshu Singh, resident of village- Heedi Pakadia, District Ambedkar Nagar, through her Twitter handle **Neha Singh Rathore@nehafolksinger**, is continuously making several objectionable posts to adversely affect the national integrity, to incite people to commit crimes against each other on the basis of religion and caste sharing videos on social media. Neha Singh Rathore has been continuously speaking anti-national things about the Pahalgam attack, to disturb the mutual harmony of two communities, to disrupt peace and order, and objectionable posts are being made continuously from her Twitter handle. All these anti-India statements of Neha Singh Rathore are continuously going viral in Pakistan and Neha Singh Rathore is being praised in Pakistan. All the anti-national statements of Neha Singh Rathore are being used against India in the Pakistani media and India is being questioned by our enemy country. In such a situation of crisis,

due to Neha Singh Rathore's continuous statements against India, the honor and respect of the country's poet community as well as the entire country of India is being violated. Objectionable post made by Neha Singh Rathore on her Twitter handle Neha Singh Rathore @nehafolksinger. Details of URL IDs of the posts of the applicant have also been mentioned in the FIR.

7. Sri Purnendu Chakravarty, leaned Senior Advocate, for the applicant has submitted that the FIR has been lodged mainly on the basis of one video clip containing the utterances made by the applicant on her Twitter Account. He has further submitted that none of the offences with the applicant is sought to be prosecuted, can be said to have been established even prima facie. Counsel for the applicant has submitted that offence under Section 152 of Bharatiya Nyaya Sanhita, 2023 is not made out against the applicant and in this regard he has submitted that the Hon'ble Supreme Court in ***Writ Petition (C) No.682 of 2021, S.G. Vombatkere Vs. Union of India***, vide order dated 11.05.2022 has observed that all pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. At the same time, counsel for the applicant has relied upon the judgment of the Rajasthan High Court rendered in ***S.B. Criminal Misc(Pet.) No.5005 of 2024, Tejender Pal Singh @ Timma Vs. State of Rajasthan and another***, decided on 16.12.2024 (Paragraph-13) and has submitted that the offence of sedition under Section 124-A IPC has though been done away in the Bharatiya Nyaya Sanhita, but a new provision in Section 152, somewhat similarly worded, has been brought in by the law makers in Parliament. It criminalises acts or attempts that incite secession, armed

rebellion, or subversive activities, or encourage separatist sentiments that threaten the country's stability. In the aforesaid case, it has been observed that provision of Section 152 of Bharatiya Nyaya Sanhita has to be read and meant and interpreted in a way that it mandatorily requires that the act must be committed purposely or knowingly i.e. Mens Rea (Intent).

8. Learned Senior Counsel for the applicant has further invited the attention of the Court towards the provision of Section 159 of Bharatiya Nyaya Sanhita and has submitted that Section 159 of Bharatiya Nyaya Sanhita will be invoked against a person who is abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty, but it cannot be invoked against the applicant. He has further submitted that Section 159 of Bharatiya Nyaya Sanhita has been invoked during investigation though there is no offence made out under the said provision against the applicant.

9. In support of his contention, learned Senior Counsel for the applicant has relied upon the Full Bench judgement of the Bombay High Court rendered in the case of **Anand Chintamani Dighe and another Vs. State of Maharashtra**, (2001) SCC OnLine Bom. 891 (Paragraph-19) and has submitted that the guarantee of the freedom of speech and expression under Article 19(1)(a) of the Constitution of India should be read in the present perspective and voicing against the act of the Government does not mean that the applicant has committed the offence against the nation.

10. Counsel for the applicant by relying upon the judgement of the Hon'ble Supreme Court rendered in the case of **Imaran**

Pratapgadhi Vs. State of Gujarat and another, (2025) SCC OnLine SC 678 (Paragraphs-38 and 39) has submitted that without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed under Article 21 of the Constitution of India. He has further submitted that twitter handle used by the applicant guarantees the freedom of expression and whatever she said, it is her dissenting voice against the Government and the same must not be treated for charge of sedition.

11. On the other hand, Sri V.K. Singh, learned Government Advocate assisted by Sri Rajdeep Singh, learned AGA-I for the State has vehemently argued that applicant had challenged the FIR before this Court by way of filing Criminal Misc. Writ Petition No.3852 of 2025, Neha Singh Rathore @ Neha Kumari Vs. State of U.P. and 2 others, and after considering the arguments of counsel for the applicant as well as by the State, this Court passed a detailed judgement and order dated 19.09.2025 dismissed the said writ petition with the observation that the investigation is going on and the applicant will cooperate in the proceedings. Further direction was also issued that applicant will appear before the Investigating Officer on 26.09.2025. However, the applicant filed Special Leave to Appeal (Crl.) No(s).16250 of 2025, Neha Singh Rathore @ Neha Kumari Vs. State of Uttar Pradesh and others, against the judgement and order passed by a Division Bench of this Court in Criminal Misc. Writ Petition No.3852 of 2025 (supra) dated 19.09.2025, which was disposed of by the Hon'ble Supreme Court on 13.10.2025. For the sake of convenience, the order passed by the Hon'ble Supreme Court on 13.10.2025 is quoted below:-

"1. After hearing learned counsel appearing for the petitioner, at this stage, we are not interfering on the argument that

charge of mutiny and of other provisions under Section 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c) 197(1)(d), 353(1)(c), 353(2), 302, of the Bhartiya Nyaya Sanhita and Section 69(a) of the IT Act, however, we are not inclined to entertain the special leave petition. Accordingly, the special leave petition is dismissed.

2. In the facts, we grant liberty to the petitioner to raise all these issues at the stage of framing of the charge or by applying before the Court seeking discharge at appropriate stage in case the charge sheet has been filed. We make it clear that this Court has not expressed any opinion on the merits of the case, we have only declined to entertain the special leave petition.

3. Pending applications, if any, shall stand disposed of.”

12. Learned Government Advocate has further submitted that the Special Leave Petition preferred by the applicant was disposed of with liberty to the applicant to raise all these issues regarding the offences as mentioned in the FIR at the stage of framing of the charge or by applying before the court seeking discharge at appropriate stage in case the charge sheet has been filed. He has vehemently submitted that this Court may not appreciate the facts and legal aspects of the present case in view of the judgement of the Hon'ble Supreme Court, wherein it is provided that applicant has to raise all these issues at the time of framing of the charge. The direction issued by the Hon'ble Supreme Court is binding upon the High Court under Article 141 of the Constitution of India and this Court cannot entertain the anticipatory bail application. The applicant

has to cooperate in the inquiry, but she is not cooperating in the inquiry.

13. Learned Government Advocate has further submitted that after rejection of the Special Leave Petition by the Hon'ble Supreme Court, the applicant has to appear before the Investigating Officer, but she is avoiding the police investigation; thus, she is not entitled for any relief. It has been submitted that Division Bench of this Court has already observed in Criminal Misc. Writ Petition No.3852 of 2025 that applicant has to cooperate in the investigation before the Investigating Officer. However, the written instructions dated 27.11.2025 indicate that in spite of notice given to the applicant, she is not cooperating in the proceedings. The relevant portion of the written instructions dated 27.11.2025 sent by the Station House Officer, Police Station Kotwali, Hazratganj, District Lucknow is quoted below:-

"अभियोग उपरोक्त में अभियुक्ता नेहा सिंह राठौर को गिरफ्तार किये जाने हेतु एक पुलिस टीम का गठन किया गया, अभियुक्ता नेहा सिंह राठौर के गिरफ्तारी के प्रयास जारी है। अभियुक्त नेहा सिंह राठौर द्वारा मा० उच्च न्यायालय खण्डपीठ लखनऊ में योचित की गयी याचिका क्रि० मि० रिट पिटीशन नं०-3852/2025 में सुनवायी के उपरान्त मा० उच्च न्यायालय द्वारा दिनांक 19/09/2025 को निरस्त करते हुए याचिकाकर्ता/अभियुक्ता नेहा सिंह राठौर उपरोक्त को अभियोग उपरोक्त की विवेचना में सहयोग प्रदान करने एवं मुझ विवेचक के समक्ष दिनांक 26/09/2025 को समय 11.00 बजे उपस्थित होने के निर्देशि दिये गये थे परन्तु याचिकाकर्ता मुझ विवेचक के समक्ष बीमारी का बहाना बनाते हुए उपस्थित नहीं हुई, मा० उच्च न्यायालय द्वारा निर्गत आदेश की अवहेलना करते हुए मा० उच्च न्यायालय खण्डपीठ लखनऊ द्वारा निरस्त की गयी याचिका 3852/2025 के विरोध में मा० उच्चतम न्यायालय नई दिल्ली में दिनांक 25/09/2025 में याचिका SLP (Cri) नं०-16250/2025 योजित की गयी। अभियोग उपरोक्त में वांछित अभियुक्ता नेहा सिंह राठौर के गिरफ्तारी के प्रयास जारी है। अभियुक्ता नेहा सिंह राठौर उपरोक्त के मा० न्यायालय से अभी तक गिरफ्तारी

वारंट निर्गत नहीं कराया गया है। अभियुक्त नेहा सिंह राठौर को गिरफ्तार किये जाने हेतु जनपद लखनऊ में निवास स्थान सेलीब्रिटी ग्रीन टावर फ्लैट सं. 904 नियर लूलूमॉल सुशान्त गोल्फ सिटी जनपद लखनऊ की गिरफ्तारी हेतु उनके हाल पता सेलीब्रिटी ग्रीन टावर फ्लैट सं. 904 नियर लूलूमॉल सुशान्त गोल्फ सिटी जनपद लखनऊ के पते पर दबिश दी गयी एवं मिलने वाले सम्भावित स्थानों पर तलाश किया गया परन्तु अभियुक्त नेहा सिंह राठौर के बारे में कोई जानकारी प्राप्त नहीं हो सकी। अभियुक्त नेहा सिंह राठौर निरन्त अपना निवास स्थान बदल रही है। अभियोग उपरोक्त की विवेचना में किसी भी प्रकार का सहयोग प्रदान नहीं कर रही है। मा० उच्च न्यायालय द्वारा दिनांक 19/09/2025 में निर्गत आदेश की भी अवहेलना की जा रही है। अभियोग उपरोक्त में साक्ष्य संकलन के दौरान विभिन्न तिथियों में सी०डी० संख्या-/ से सी०डी० संख्या-28 दिनांक 26/11/2025 तक किता की जा चुकी है

14. Learned Government Advocate has further submitted that after going through the version of the FIR as well as the contents of the tweets posted by the applicant, offence is made out against the applicant. For the sake of repetition, Tweet Nos. 15, 16 and 34 are quoted below:-

"Tweet No.15

कश्मीर में आतंकी हमला हुआ और उसके फौरन बाद मोदीजी ने आज बिहार में रैली कर दी... बिहार के मंच से ही पाकिस्तान को धमका दिया और जनता ने भी ताबड़तोड़ तालियों पीट दीं...

जो लोग भी मोदीजी की पॉलिटिकाप और बिहार की हालत को जानते हैं, उन्हें खूब समझ में आ रहा है कि पाकिस्तान को धमकी देने के लिए मोदीजी को बिहार क्यों आना पड़ा।

उन्हें बिहार इसलिए आना पड़ा... ताकि बिहार की जनता से राष्ट्रवाद के नाम पर वोट बटोरा जा सके... और बिहार की जनता के मुद्दों को फिर से साइडलाइन किया जा सके... अब मोदीजी और उनके साथ वालों को काम के नाम पर तो वोट मिलना है नहीं... क्योंकि काम तो हुआ ही नहीं है... और भ्रष्टाचार इतना हुआ है कि ईमानदारी से चुनाव हो तो बहुतां की जमानत जब्त हो जाये,

बिहार चुनाव में उन्हें या तो हिंदू-मुसलमान के नाम पर वोट मिल सकता है या भारत-पाकिस्तान के नाम पर.... तीसरा

कोई रास्ता नहीं है... और ये लोग बाकी दोनों रास्ते अख्तियार करेंगे, "

Tweet No.16

"आतंकवादियों को ढूँढ़ने और अपनी गलती मानने की बजाय भाजपा देश को युद्ध में झोंकना चाहती है.... भाजपा देश के हज़ारों सैनिकों की जान जोखिम में डालना चाहती है."

Tweet No.34

"जब कलमा पढ़ने से इनकार करने पर गोली मार ही दी गई तो ये किस्सा मीडिया को किसने बताया? मृतकों में एक नाम सईद हुसेन शाह का भी है. क्या सईद ने भी कलमा पढ़ने से इनकार किया था? अपने दिमाग लगाइये... वो मत सोचिये जो भाजपा चाहती है."

15. Learned Government Advocate has further submitted that twitter account of the applicant is widely circulated in the world especially in Pakistan and so many posts have been received during investigation from Pakistan supporting the tweets posted by the applicant. He has submitted that timing of the tweets is very relevant when the unfortunate incident of Pahalgam took place on 22.04.2025 and 26 tourists were brutally killed by the terrorists after identifying them as Hindus. The security and integrity of the country was at the threat at that time and the Government was taking all possible steps to control the situation, but the applicant started making the aforesaid tweets without looking into the fact that situation was so sensitive and it was not warranted to tweet such words, which could have incites the very sentiments of the people of the country. It appears that applicant has got malice intention against the Bharatiya Janta Party and its leader like Prime Minister. The applicant also tried to create hatred between the two communities i.e. Hindu

and Muslim, so that basic fabric of the country could have been disturbed. He has submitted that tweets of the applicant are not liable to be protected in the light of Article 19(1)(a) of the Constitution of India and all the judgements relied upon by the counsel for the applicant will not be applicable in the present case particularly after passing of the order by the Hon'ble Supreme Court disposing of the Special Leave Petition filed by the applicant, wherein the Hon'ble Supreme Court has observed that applicant may raise her grievances regarding the issue at the time of framing of the charge. Therefore, the applicant has no option, but to cooperate in the inquiry.

16. Heard learned counsel for the parties and perused the record.

17. It is the case of the complainant that applicant through her twitter handle Neha Singh [Rahore@nehafolksinger](https://twitter.com/Rahore@nehafolksinger) has continuously made several objectionable posts to adversely affect the national integrity to incite people to commit crimes against each other on the basis of religion and caste sharing videos on social media. The applicant further commented on her twitter handle that Bharatiya Janta Party is not searching the terrorists, rather it is creating atmosphere so that country will go in war. The twitter of the applicant further mentions that immediately after Pahalgam attack in Kashmir, Modiji did political rally in Bihar.

18. In the present case, the FIR has been lodged on 27.04.2025 and more than seven months have passed, but the applicant is not cooperating in the investigation. So far the anticipatory bail is concerned, although Article 19 of the Constitution of India gives right of freedom

to all citizens, but the same is subject to reasonable restriction for public order, decency or morality. The applicant had made certain tweets at the crucial time when the unfortunate Pahalgam incident took place on 22.04.2025 and the case diary as well as FIR goes to show that tweets posted by the applicant are against the Prime Minister of India. Name of the Prime Minister of India has been used in disrespectful manner.

19. After going through the record and the written instructions dated 27.11.2025, I find that the applicant is not cooperating in the investigation. Apart from it, Criminal Misc. Writ Petition No.3852 of 2025 filed by the applicant challenging the FIR has been dismissed by a Division Bench of this Court on 19.09.2025 with a direction that applicant will cooperate in the inquiry and will appear before the Investigating Officer. The other important fact to be noted that applicant preferred Special Leave Petition challenging the judgement and order passed by this Court, which was also not interfered with by the Hon'ble Supreme Court and a direction was issued that applicant may file an application for discharge at the appropriate stage.

20. The Hon'ble Supreme Court has observed in the Special Leave Petition filed by the applicant that after hearing counsel appearing for the petitioner at that stage, no case for interference was made for quashing the charge of mutiny and other provisions under Sections 196(1)(a), 196(1)(b), 197(1)(a), 197(1)(b), 197(1)(c), 197(1)(d), 353(1)(c), 353(2) and 302 of Bharatiya Nyaya Sanhita, 2023 and Section 69(a) of the Information Technology Act, however, the Hon'ble Supreme Court did not incline to entertain the Special Leave Petition and granted liberty to the petitioner

to raise all these issues at the stage of framing of the charge. It is thus, clear that the Hon'ble Supreme Court has taken note of the fact that the present FIR challenged by the applicant before the Division Bench of this Court does not have merit in the case. The observation of the Hon'ble Supreme Court "We grant liberty the petitioner to raise all these issues at the stage of framing of the charge" is binding upon this Court under Article 141 of the Constitution of India and this Court cannot give any opinion that the charges of mutiny and charges under Section 152 of Bharatiya Nyaya Sanhita, 2023 coupled with the other offences mentioned in the FIR are made out or not.

21. In view of the aforesaid discussion, no case for anticipatory bail is made out. It is accordingly *rejected*. However, it is open for the applicant to seek legal remedy as may be available under law.

(2025) 12 ILRA 26
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Criminal Misc. Bail Application No. 34143 of
 2025

Vikas Kumar **...Applicant**
Versus
State of U.P. **...Opposite Party**

Issue for Consideration

Whether an examination conducted by the Railway Board or on behalf of the Railway Board would come within the purview of the U.P. Act No.8 of 2024, if there is allegation of using unfair means by any candidate

Head Notes

The U.P. Public Examinations (Prevention of Unfair Means) Act, 2024-Section 7 & 13(3); The Public Examination (Prevention of Unfair Means) Act, 2024-Sections- 2(g), 2(c), 2(k), 2(l) & 3; The Bharatiya Nagarik Suraksha Sanhita, 2023-Section 483- On the conjoint reading of Section 3 of the U.P. Act No. 8 of 2024 and Section 2(k) along with the Schedule of the Act No.1 of 2024, this Court holds that unfair means used in any examination conducted by the Central Government authorities as mentioned in the Schedule of the Act No. 1 of 2024 would come within the purview of the Act No.1 of 2024 and the criminal proceeding shall be conducted under the Act No.1 of 2024, not under the U.P. Act No.8 of 2024- The U.P. Act No. 8 of 2024 is applicable for public examinations conducted by the examining authorities mentioned in Section 2(c) of the U.P. Act No. 8 of 2024, but no penalty or sanction can be imposed against the candidate using unfair means in the examinations for acquiring academic, technical, professional or other qualifications- Bail application allowed.(E-15)

Held- The prosecution against the applicant under the U.P. Act No.8 of 2024 itself appears to be erroneous as the public examination was not conducted by the State Government authorities, but by the Central Government authority and taking into account the nature of allegation, this Court is inclined to release the applicant on bail during pendency of the investigation/trial.

(Para 12 & 14)

Case Law Cited

Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021 decided on 31.01.2023; reported in (2024) 10 SCC 685; Bail Application No. 33546 of 2025;

List of Acts

The U.P. Public Examinations (Prevention of Unfair Means) Act, 2024; The Public Examination (Prevention of Unfair Means) Act, 2024; The Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Unfair means; Section 3 of the U.P. Act No. 8 of 2024; Section 2(k); Schedule of the Act No.1 of 2024; Criminal proceeding shall be conducted under the Act No.1 of 2024; Not under the U.P. Act No.8 of 2024

Case Arising From

Bail application has been filed with a prayer to release the applicant on bail in Case Crime No. 275 of 2025, 7, 13(3) U.P. Public Examinations (Prevention of Unfair Means) Act, P.S. Etmadpur, District Agra

Appearances for Parties

Counsel for Applicant(s) : Rajesh Pratap Singh,
Swati Agrawal
Counsel for Opposite Party(s) : G.A

(Delivered by Hon'ble Arun Kumar Singh
Deshwal, J.)

1. Heard Ms. Swati Agrawal, learned counsel for the applicant, Sri Roshan Kumar, learned A.G.A. and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No. 275 of 2025, 7, 13(3) U.P. Public Examinations (Prevention of Unfair Means) Act, P.S. Etmadpur, District Agra.

3. As per the prosecution story, an F.I.R. was lodged by Tata Consultancy Services Ltd. which was assigned to conduct the examination of Constable in R.P.F. on behalf of the Railway Board wherein allegation was made that in place of the applicant and three other persons, one unknown person appeared in the examination. The said F.I.R. was registered under Section 7 of 13(3) of the U.P. Public Examinations (Prevention of Unfair Means) Act. The Tata Consultancy Services Ltd. has also filed a chart, showing that in place of the applicant one

unknown persons was found appearing in the examination.

4. Contention of learned counsel for the applicant is that as per the chart annexed by learned A.G.A. in the counter affidavit, one unknown person is shown to be appeared as an imposter in place of different candidates, however, till date that unknown person has not been arrested and there is no material to show that the applicant is also part of that criminal activity. It is further submitted that unfair means used in any examination conducted on behalf of the Railway Board will not come within the purview of U.P. Public Examinations (Prevention of Unfair Means) Act, 2024 as there is exclusion clause in the U.P. Act No. 8 of 2024, showing that the examination conducted by the Railway Board will not be covered under U.P. Public Examination Act, but under the Public Examination (Prevention of Unfair Means) Act, 2024 (enacted by the Parliament as Act No.1 of 2024). Therefore, the entire proceeding is absolutely erroneous against the provision of the law. It is further submitted that applicant has no criminal history and he is languishing in jail since 1.9.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the investigation/trial proceedings.

5. Per contra, learned A.G.A. for the State opposed the prayer for bail, but he could not dispute the aforesaid legal position.

6. Considering the aforesaid submissions of learned counsel for the parties, it is not in dispute that the applicant is the candidate who appeared in the examination for Constable in R.P.F. which was conducted on behalf of the Railway

Board, a question arises whether an examination conducted by the Railway Board or on behalf of the Railway Board would come within the purview of the U.P. Act No.8 of 2024, if there is allegation of using unfair means by any candidate. Though the object of the U.P. Act No. 8 of 2024 is to prevent all unfair means, leakage of paper in public examination, proscribe solver gang and to prove for matters connected therewith and incidental thereto. The word "public examination" has been defined under Section 2(g) of the U.P. Act No.8 of 2024 which is being quoted as under:-

"Section 2(g) "public examination" includes,

(i) any examination either qualifying or competitive for recruitment or regularization or promotion to any post in public service conducted by examination authority;

(ii) any examination conducted by board, university or body under any law for the time being in force either qualifying or competitive for awarding or granting any degree, diploma, certificate or any other academic distinction or for qualifying for admission into any course of study ; and

(iii) any other examination declared by the State Government by notification to be a public examination."

7. Examination authority with regard to public examination has been defined in Section 2(c) of the U.P. Act No.8 of 2024 which is being quoted under:-

"2(c) "examination authority" in relation to public examination includes,

(i) Uttar Pradesh Public Service Commission;

(ii) Uttar Pradesh Subordinate Services Selection Commission;

(iii) Board, University, Authority or Body under any law for the time being in force;

(iv) any agency or recruitment committee engaged or constituted by the aforesaid Commission, Board, University, Authority or Body; and

(v) any other authority, agency or recruitment committee constituted, declared or engaged by the State Government from time to time for conducting public examination."

8. Section 3(1) of the U.P. Act No. 8 of 2024 provides that provision relating to sanction or penalty under this Act will not be applicable in any public examination conducted for acquiring academic, technical, professional or other qualifications. Therefore, if unfair means is used by any examinee in such examination then his answer-sheet shall not be evaluated and result of examinee shall be declared as per the procedure prescribed by such examination authority. Section 3(2) of the U.P. Act No. 8 of 2024 further provides that "public examination" conducted by "public examination authorities" defined in Clause (k) and (l) of Sub Section (1) of Section 2 of the Public Examination (Prevention of Unfair Means) Act, 2024 (Act No.1 of 2024) are excluded from the purview of the U.P. Act No. 8 of 2024. Section 3 of the U.P. Act No. 8 of 2024 is being quoted as under:-

"Section 3.(1) Notwithstanding anything contained in this Act provisions

relating to sanction or penalty under this Act shall not apply to those examinee who are appearing in any public examination for acquiring academic, technical, professional or other qualification:

Provided that if such examinee is found to use or in indulgence of unfair means in answering any paper in public examination, answer sheet of concerned paper of such examination shall not be evaluated and result of examination of such examinee shall be declared in the manner prescribed by examination authority.

(2) The provisions of this Act shall not apply to the "public examination" conducted by "public examination authority" as they are respectively defined in clauses (k) and (l) of sub-section (1) of section 2 of the Public Examinations (Prevention of Unfair Means) Act, 2024 (Act no . 1 of 2024)."

9. From a perusal of Section 2(k) of the Act No. 1 of 2024, it is clear that Central Act covers the examinations conducted by central authorities which are mentioned in the Schedule as well as examinations conducted by any authority notified by the Central Government. Similarly, Section 2(l) provides that "public examination authority" means the authority specified by the Central Government by a notification for conducting public examinations. Section 2(k) and (l) of the Act No.1 of 2024 are being quoted as under:-

"Section 2(k) *"public examination" means any examination conducted by the public examination authority, as specified in the Schedule, or conducted by such other authority as may be notified by the Central Government;*

2(l) *"public examination authority" means an authority as specified by the Central Government by a notification, from time to time for conducting the public examinations;"*

10. From the perusal of the Schedule of the Act No. 1 of 2024, it is clear that examination conducted by the Railway Recruitment Boards would come within the purview of Act No.1 of 2024 and the same has been specifically excluded by Section 3(2) of the UP Act No.8 of 2024. Schedule of the Central Government regarding Section 2(k) is being quoted as under:-

"THE SCHEDULE

[See section 2(k)]

***ANY EXAMINATION
CONDUCTED BY—***

1. Union Public Service Commission.

2. Staff Selection Commission.

3. Railway Recruitment Boards.

4. Institute of Banking Personnel Selection.

5. Ministries or Departments of the Central Government and their attached and subordinate offices for recruitment of staff.

6. National Testing Agency.

7. Such other authority as may be notified by the Central Government."

11. From the perusal of the above analysis, it is clear that examination

conducted by any examination authority mentioned in the Schedule of the Central Act No. 1 of 2024 (including the examination conducted by the Railway Recruitment Board or on its behalf by a nominated agency) would not come within the purview of the U.P. Act No. 8 of 2024. Therefore, if unfair means is adopted by any candidate in any examination conducted by the nominated agency of the Central Government or by any authority as mentioned in the Schedule of the Central Act No.1 of 2024, that would not be punishable under the U.P. Act No. 8 of 2024, but under Act No.1 of 2024 as the procedure for prosecution against the person involved in using the unfair means in the public examination conducted by such central authority has been prescribed under the Act No.1 of 2024. Therefore, the proceeding under the U.P. Act No. 8 of 2024 for unfair means in the examination conducted by the Central Body would be erroneous.

12. Therefore, on the conjoint reading of Section 3 of the U.P. Act No. 8 of 2024 and Section 2(k) along with the Schedule of the Act No.1 of 2024, this Court holds that unfair means used in any examination conducted by the Central Government authorities as mentioned in the Schedule of the Act No. 1 of 2024 would come within the purview of the Act No.1 of 2024 and the criminal proceeding shall be conducted under the Act No.1 of 2024, not under the U.P. Act No.8 of 2024. It is further held that the U.P. Act No. 8 of 2024 is applicable for public examinations conducted by the examining authorities mentioned in Section 2(c) of the U.P. Act No. 8 of 2024, but no penalty or sanction can be imposed against the candidate using unfair means in the examinations for

acquiring academic, technical, professional or other qualifications.

13. The coordinate Bench of this Court in Bail Application No. 33546 of 2025 also considered this issue and observed that once the Central Government framed law regarding some criminal action, then prosecution of the same can be conducted under the Central Act even if there is Act of the State Government on that issue.

14. Considering the aforesaid facts, this Court is of the view that the prosecution against the applicant under the U.P. Act No.8 of 2024 itself appears to be erroneous as the public examination was not conducted by the State Government authorities, but by the Central Government authority and taking into account the nature of allegation, this Court is inclined to release the applicant on bail during pendency of the investigation/trial.

15. Let the applicant- **Vikas Kumar**, involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or

commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

16. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

17. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

18. The applicant shall be released on the basis of downloaded copy of this order from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

19. It is further directed that the trial court shall send the release order to the concerned jail through Bail Order Management System (BOMS) to ensure early release of the applicant.

20. Office is directed to send a copy of this order to the applicant through concerned Jail Superintendent via e-mail or e-prison portal in compliance of the order of the Apex Court in the case of **Policy Strategy for Grant of Bail, In Re: Suo Motu Writ Petition (Crl.) No.4 of 2021** decided on 31.01.2023; reported in **(2024) 10 SCC 685**.

(2025) 12 ILRA 31

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 16.12.2025

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Criminal Misc. Bail Application No. 41370 of
2025

Teekam

...Applicant

Versus

State of U.P.

...Opposite Party

Issue for Consideration

Whether after rejection of bail by Sessions Court on the basis of material available in the case diary, the High Court can entertain the bail application on the basis of material collected during trial though the same was not available before the Sessions Court at the time of rejection of bail application as well as the question whether the second bail application is maintainable on the basis of evidence collected during trial though at the time of rejection of first bail application by the Sessions Court as well as High Court that material was not available

Head Notes

The Bharatiya Nagarik Suraksha Sanhita, 2023-Section 483- Successive bail applications can be filed on the basis of new material even though that material is collected during trial and the same was not available before Sessions Court or the High Court at the time of rejection of earlier bail application(s)- Bail application allowed.(E-15)

Held- That second bail application or successive bail applications may be entertained by the High Court on the basis of material collected during trial even though such material was not available before the Sessions Court or High Court while considering the earlier bail application but in appropriate case High Court may direct the applicant to file successive bail application before the Sessions Court on the basis of new material.

(Para 7 & 11)

Case Law Cited

Kamal @ Kamal Choudhary vs The State of Madhya Pradesh in Criminal Appeal No.992 of 2025 (arising out of S.L.P. (Criminal) No.808 of

2025); Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav and another reported in 2004 (7) SCC 528; Kapil Wadhawan vs Central Bureau of Investigation in SLP No.16953 of 2025 decided on 11.12.2025

List of Acts

The Bharatiya Nagarik Suraksha Sanhita, 2023-Section 483-

List of Keywords

Successive bail applications; May be entertained by the High Court; On the basis of material collected during trial; Even though such material was not available before the Sessions Court or High Court while considering the earlier bail application

Case Arising From

Bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 62 of 2025, under Sections 115(2), 118(1), 109, 110, 352, 351(2) BNS, Police Station- Mandawar, District Bijnor.

Appearances for Parties

Counsel for Applicant(s) : Amit Kumar
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Arun Kumar Singh
Deshwal, J.)

1. Heard Sri Amit Kumar and Sri N.I. Jafri, learned Amicus Curiae for the applicant, Sri Himanshu Kumar, learned A.G.A. for the State and perused the record.

2. This matter was heard on 08.12.2025 and 15.12.2025. Matter was argued on the point, "whether after rejection of bail by Sessions Court on the basis of material available in the case diary, the High Court can entertain the bail application on the basis of material collected during trial though the same was not available before the Sessions Court at the time of rejection of bail application as well as the question whether the second

bail application is maintainable on the basis of evidence collected during trial though at the time of rejection of first bail application by the Sessions Court as well as High Court that material was not available".

3. Learned counsel for the applicant as well as amicus curiae, learned Senior Counsel, Sri N.I. Jafari submitted that the power of High Court under Section 439 Cr.P.C./483 BNSS and Sessions Court is concurrent. The High Court can entertain the bail application on any ground even though same was not available before the Sessions Court at the time of rejecting the bail application of the accused.

4. In support of his contention, counsel for the applicant has relied upon the judgement of the Apex Court in the case of **Kamal @ Kamal Choudhary vs The State of Madhya Pradesh in Criminal Appeal No.992 of 2025 (arising out of S.L.P. (Criminal) No.808 of 2025)**, wherein the Apex Court observed that even after rejection of the first bail application by the High Court, if subsequent material is collected during trial then accused need not to file second bail application before the Sessions Court. It can consider second bail application on the basis of new material collected during trial. To decide the issue, it would be appropriate to quote Section 439 Cr.P.C./483 BNSS, which is as follows;

439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct:—

(a) that any person accused of an offence and in custody, be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers

necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

[Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.] [Inserted by Criminal Law (Amendment) Act, 2018 (22 of 2018), dated 11.8.2018.]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

5. From perusal of Section 439 Cr.P.C., it is clear that the High Court as well as Sessions Court have special power to release a person. In this Section, it is not mentioned that before approaching the High Court, a person must approach the Sessions Court. This issue was also considered by the Apex Court in the case of **Kamal @ Kamal Choudhary (supra)** and **Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav and another** reported in **2004 (7) SCC 528**, wherein the Apex Court observed that successive bail application on the new material is maintainable before the High Court but subsequent new material must be substantially different. For ready reference, para 6 of the **Kamal @ Kamal Choudhary (supra)** is quoted as follows;

"6. We fail to understand the reasoning adopted by the High Court. Even if an earlier bail application is rejected, an accused can make a fresh application at a subsequent stage on the ground of material change in circumstances. Therefore, it was the duty of the High Court to consider the bail application on merits. However, that has not been done. After the first bail application was rejected, now all the eye witnesses have been examined. This was a major change in circumstance brought about after the dismissal of the first application for bail by the Sessions Court. Considering this fact and considering the long duration of incarceration, the appellant is entitled to be enlarged on bail pending the trial."

6. From above analysis, it is clear that the High Court can entertain the first bail application directly or successive bail application on the basis of new material though same was not available before the Sessions Court but Chapter XVIII, Rule 18

of the Allahabad High Court Rules provides that while filing the bail application in the High Court, it must be annexed the copy of bail rejection order passed by the Sessions Court, but this restriction applies for the first bail application filed after rejection of bail application by the sessions court. For ready reference, Chapter XVIII, Rule 18 of the **Allahabad High Court Rules** is quoted as under:

"18. Application for bail other than anticipatory bail :- (1) No application for bail shall be entertained unless accompanied by a copy of judgment or order appealed against or sought to be revised and a copy of order passed by the Sessions Judge on the bail application for the applicant and unless the accused has surrendered except where he has been release on bail after conviction under Section 389 (3) of the Code of Criminal Procedure, 1973.

Explanation :- the copy of the order refusing bail passed by the Sessions Judge shall either be a certified copy or the copy furnished by the Sessions Judge free of charge to the accused.

(2) Every application for bail in a case which is under investigation or which is pending in a lower Court shall state whether application for bail had or had not been previously made before the Magistrate and the Sessions Judge concerned and the results of such applications, if any.

(3) Save in exceptional circumstances-

(a) No bail application shall be placed before the Court unless notice

thereof has been given to the Government Advocate and a period of two days has elapsed from the date of such notice.

(b) If the application for bail has not been moved within seven days after the expiry of the aforesaid period of two days the applicant or his Counsel shall give two days previous notice to the Government Advocate as to the exact date on which such application is intended to be moved.

(c) Where the prayer for bail is contained in a petition of appeal or application for revision, notice thereof may be given to the Government Advocate the same day prior to the hearing of such petition or application and the fact of such previous notice having been given, shall be endorsed on such petition or application. Alongwith such notice a certified copy or one attested to be true by the counsel, of the Judgment appealed from or sought to be revised shall also be given to the Government Advocate.

(4) Every application for bail shall show prominently in the first page thereof the crime number, the police station by which and the section or sections and the Act or Rules under which the applicant is being prosecuted or has been convicted and whether such application is the first, second or any such subsequent application moved by him before this Court, and shall be accompanied by a copy of the first information report. It shall also state the following particulars, namely:-

(a) The date of the alleged occurrence;

(b) The date of the applicant's arrest.

The Bench Secretary shall while entertaining a bail application for presentation to the court check every page there of and shall affix a rubber stamp containing his initials on every page of bail application and all the annexures thereto before putting it up before the court in token of his having checked, every page of the applications and he shall, thereafter, make the following endorsement on the bail application :

*'Moved before Hon'ble
..... J.*

on..... (date)'

Similarly the official whose duty it is to receive the bail application from the court after orders, shall affix a rubber stamp containing his initials on the first page of the bail application in token of his having checked that all the pages of the bail application bear the rubber stamp of the Bench Secretary.

The rubber stamps containing the initials of the Bench Secretary and the official or officials authorised to receive the fresh bail application from the Court shall be supplied to the Bench Secretaries and the officials by the Registrar of the Court.

The application shall not be returned to the applicant or his counsel after the above endorsement has been made.

(5) Every page of the application for bail and every page of the annexures thereto shall bear the full signature of the applicant or his counsel.

(6) In every such application shall be stated the full particulars of the

previous application or applications, if any, moved in this Court by same applicant in respect of the same crime and the date or dates on which such previous application or applications had been rejected.

7. It is also clear from the above noted judgements that successive bail applications can be filed on the basis of new material even though that material is collected during trial and the same was not available before Sessions Court or the High Court at the time of rejection of earlier bail application(s). **In view of above established position, this Court is also of the view that second bail application or successive bail applications may be entertained by the High Court on the basis of material collected during trial even though such material was not available before the Sessions Court or High Court while considering the earlier bail application but in appropriate case High Court may direct the applicant to file successive bail application before the Sessions Court on the basis of new material.**

8. Coming back to the present case, the instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 62 of 2025, under Sections 115(2), 118(1), 109, 110, 352, 351(2) BNS, Police Station-Mandawar, District Bijnor.

9. Contentions of learned counsel for the applicant has submitted that though during investigation the injured has made allegation against the applicant and on considering that material, Sessions Court has rejected the bail application of the applicant but during trial, injured Jeeshan did not support the prosecution so far as the allegation of causing injury on the part of

the applicant is concerned and injured was also declared hostile. Therefore, there is no material against the applicant and on the basis of material collected during trial he is entitled to be released on bail. It is lastly submitted that charge sheet has been filed by the police, therefore, there is no requirement for custodial interrogation. The applicant has no criminal history and he is languishing in jail since 11.04.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

10. On the other hand, learned A.G.A. for the State vehemently opposed the prayer for bail but could not dispute the legal position even though the material collected during trial was not available before the Sessions Court at the time of rejection of bail application and the same can be considered at this stage.

11. Thus, considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and taking into account the statement of injured before the trial court, wherein he did not make any allegation against the applicant for causing injury to him and keeping in view the nature of offence, evidence, complicity of accused as well as considering the mandate of the judgement of the Apex Court in the case of **Kapil Wadhawan vs Central Bureau of Investigation in SLP No.16953 of 2025** decided on **11.12.2025** and without expressing any opinion on the merits of the case, I am of the opinion that the applicant is entitled to be enlarged on bail.

12. Let the applicant- **Teekam** involved in the aforementioned crime be released on bail, on his furnishing a personal bond and two sureties each in the

like amount, to the satisfaction of the court concerned, with the following conditions:-

i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

ii. The applicant shall cooperate in the trial/investigation sincerely without seeking any adjournment.

iii. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

iv. The applicant shall attend in accordance with the conditions of the bond executed by him.

13. In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity, status and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

15. It is made clear that the applicant shall be released on the basis of downloaded copy of this order from the official website of High Court Allahabad and verified by the concerned counsel with the undertaking that the certified copy will be filed within 15 days.

16. It is directed that the trial court shall send the release order to the concerned jail through Bail Order

Management System (BOMS) to ensure early release of the applicant.

17. Office is directed to send a copy of this order to the applicant through concerned Jail Superintendent via e-mail or e-prison portal in compliance of the order of the Apex Court in the case of Policy Strategy for Grant of Bail, In Re: **Suo Motu Writ Petition (Crl.) No. 4 of 2021** decided on 31.01.2023 reported in (2024) 10 SCC 685.

(2025) 12 ILRA 37
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.12.2025

BEFORE

THE HON'BLE MANISH KUMAR, J.

Civil Revision No. 57 of 2025

**District Deputy Election Officer/A.D.M,
Finance And Revenue & Anr. ...Revisionists
Versus
Punjab Tent House & Anr.
...Opposite Parties**

Issue for Consideration

Whether not arraying the State Election Commission as defendant who is the person who makes payment for the expenditure incurred during the elections and due to which the decree cannot be executed against the revisionists i.e. the District Deputy Election Officer/Additional District Magistrate (Finance and Revenue), Lakhimpur Kheri and District Magistrate/District Election Officer, Lakhimpur Kheri.

Head Notes

The Code of Civil Procedure,1908- Section 47 & 115- Suit for recovery of amount for the articles supplied during the Panchayat Elections filed by the respondent decreed against which against which First appeal was filed which was dismissed by the High Court against which the present

revisionists preferred an SLP before the Hon'ble Supreme Court which was also dismissed- The reason has also been assigned for non inclusion of State Election Commission as defendant or a necessary party and those reasons are that the tender was invited by the respondent no. 2 and after the finalization, the agreement was executed between the respondent no. 1 and revisionist no. 2 and there was no agreement with the State Election Commission- Executing court cannot go behind the decree nor can it question its legality or correctness and the only exception is if the decree sought to be executed is a nullity for lack of inherent jurisdiction, which is not in the present case- Revision dismissed.(E-15)

Held- The decree has already attained finality up to the Hon'ble Supreme Court and now the Executing court has no other option except to pass an order for the execution of the decree and the application under Section 47 of the C.P.C. has rightly been rejected by the Civil Judge (Senior Division), Lakhimpur Kheri.
(Para 13, 14, 15 & 16)

Case Law Cited

Sundar Dass vs. Ram Parkas reported in [AIR 1977 SUPREME COURT 1201]; Periyammal (dead) By Lrs and Others vs. V. Rajamani and Another Etc. reported in [AIR 2025 SC (Civil); 1244];

List of Acts

The Code of Civil Procedure,1908

List of Keywords

Executing Court cannot go beyond decree; Nor it questions its legality or correctness; Decree attained finality; only exception ; lack of inherent jurisdiction

Case Arising From

Order dated 24.11.2025 passed by the Civil Judge (Senior Division), Lakhimpur Kheri on the application of the revisionist under Section 47 of the C.P.C. filed in the execution proceedings.

Appearances for Parties

Counsel for Revisionist(s) : Rohit Tripathi
Counsel for Opposite Party(s)

(Delivered by Hon'ble Manish Kumar, J.)

1. Heard Sri Rohit Tripathi, learned counsel for the revisionists, learned Standing Counsel for the respondent no. 2 and Sri Mohd. Arif Khan, learned Senior Advocate, assisted by Sri Mohd. Aslam Khan, learned counsel who has filed his vakalatnama on behalf of the respondent no. 1, which is to be filed through E-mode today itself.

2. With the consent of the parties, the matter is being decided at the admission stage itself.

3. The present revision has been preferred under Section 115 of the Code of Civil Procedure (hereinafter referred to as the C.P.C.) against the order dated 24.11.2025 passed by the Civil Judge (Senior Division), Lakhimpur Kheri on the application of the revisionist under Section 47 of the C.P.C. filed in the execution proceedings.

4. Brief facts of the case are that a suit for recovery of amount for the articles supplied during the Panchayat Elections filed by the respondent no. 1 in which the written statement has been filed by the revisionists and thereafter, issues were framed and a final decree has been passed on 19.02.2016. Against the decree dated 19.02.2016, the present revisionists preferred a First Appeal No. 60 of 2016 before the High Court which was dismissed by judgment and order dated 07.04.2025. Against which the present revisionists preferred an SLP before the Hon'ble Supreme Court which was also dismissed by judgment and order dated 01.08.2025.

5. After the dismissal of the SLP before the Hon'ble Supreme Court, the revisionists preferred a Review Petition No. 156 of 2025 before this Court and by taking a ground that the decree passed by the trial court is without jurisdiction for the reason that the State Election Commission was not arrayed as defendant. The said review application was also dismissed on 23.09.2025.

6. The execution proceedings is pending since the year 2017. In the said execution proceedings, an application under Section 47 of the C.P.C. has been filed by the revisionists on 10.10.2025, after the dismissal of the First Appeal, the dismissal of the SLP and the dismissal of the review application taking a ground that the decree cannot be executed for the reason that the State Election Commission has not been arrayed as defendant in the suit before the learned trial court. The said application of the revisionists has been rejected by order dated 24.11.2025 and feeling aggrieved by the same, the present revision under Section 115 of the C.P.C. has been filed.

7. Learned counsel for the revisionists has submitted that the suit was filed without making the State Election Commission as defendant who is the person who makes payment for the expenditure incurred during the elections and due to which the decree cannot be executed against the revisionists i.e. the District Deputy Election Officer/Additional District Magistrate (Finance and Revenue), Lakhimpur Kheri and District Magistrate/District Election Officer, Lakhimpur Kheri.

8. It is further submitted that for the impleadment of the State Election

Commission, an application for impleadment was filed by the revisionists which was rejected on 16.05.2014 against which a revision was preferred by the revisionists which was dismissed for want of prosecution on 07.03.2024 in which the recall application has been filed which is still pending.

9. On the other hand, Sri Mohd. Arif Khan, learned Senior Advocate has submitted that there is no illegality in the order dated 24.11.2025 passed by the Civil Judge (Senior Division), Lakhimpur Kheri while rejecting the application preferred by the revisionists under Section 47 of the C.P.C.

10. It is further submitted that the executing court cannot go beyond the decree nor it questions its legality or correctness and in support of his submission, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Sundar Dass vs. Ram Parkas** reported in [AIR 1977 SUPREME COURT 1201].

11. It is further submitted that the execution proceedings is to be decided within a period of six months from the date of filing and in the present case, the execution case has been filed in the year 2017 and in place of six months, more than eight years have passed. In support of his submission, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Periyammal (dead) By Lrs and Others vs. V. Rajamani and Another Etc.** reported in [AIR 2025 SC (Civil) 1244].

12. It is further submitted that the issues which have been raised by the revisionists in the present civil revision has

already attained finality after the judgment in the review petition filed by the revisionists as the revisionists had taken this point in the review petition as well.

13. After hearing the learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the order dated 24.11.2025 has been passed by giving reasons in detail. In the impugned order, the reason has also been assigned for non inclusion of State Election Commission as defendant or a necessary party and those reasons are that the tender was invited by the respondent no. 2 and after the finalization, the agreement was executed between the respondent no. 1 and revisionist no. 2 and there was no agreement with the State Election Commission. It has also been recorded that at the time of filing of the written statement, the said plea was not taken by the revisionists, hence no issue was framed on the said point and the issues were framed accordingly. The executing court has also given the details of the proceedings initiated by the revisionists against the final decree i.e. filing of First Appeal after its dismissal, filing an SLP, after the dismissal of SLP, filing a review application before the High Court and after the dismissal of the review, the revisionists had moved the present application under Section 47 of the C.P.C. before the Execution court.

14. The objection of revisionists is that the State Election Commission should have been made a party and the application moved for the purpose by the revisionists has already been rejected. In no way it can be argued that it relates to the jurisdiction of the trial court much less inherent jurisdiction of the Court to try the suit. This

submission made by the revisionists is devoid of any merit.

15. The Hon'ble Supreme Court in the case of **Sundar Dass (supra)** has already held and it is followed till date wherein it has been held that the Executing court cannot go behind the decree nor can it question its legality or correctness and the only exception is if the decree sought to be executed is a nullity for lack of inherent jurisdiction, which is not in the present case for the reason it is not the case of the revisionists that the decree is a nullity for lack of inherent jurisdiction of the court who has passed the same. The relevant paragraph no. 3 of the judgment is quoted hereinbelow:-

"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 = (AIR 1954 SC 340) and Hiralal Patni v. Kali Nath, (1962) 2 SCR 747 = (AIR 1962 SC 199). It is,

therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent."

16. The decree has already attained finality up to the Hon'ble Supreme Court and now the Executing court has no other option except to pass an order for the execution of the decree and the application under Section 47 of the C.P.C. has rightly been rejected by the Civil Judge (Senior Division), Lakhimpur Kheri.

17. In view of the facts, circumstances and discussion made hereinabove, the present revision is devoid of merit and is accordingly dismissed.

18. It is expected that the execution court shall make endeavour to decide the execution proceedings as per the direction of Hon'ble Supreme Court in the case of **Periyammal (dead) By Lrs and Others (supra)**, wherein it has been held that the execution proceedings must be decided within a period of six months.

(2025) 12 ILRA 40
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.12.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Jail Appeal No. 60 of 2020

Raj Kumar		...Appellant
	Versus	
State Of U.P.		...Respondent

Issue for Consideration

Matter pertains to conviction of the appellant under Ss. 302 and 495 I.P.C. based on circumstantial evidence, and whether the prosecution succeeded in establishing a complete chain of circumstances proving guilt beyond reasonable doubt, particularly with respect to motive, recovery under S. 27 Evidence Act, presence of the accused at the place of occurrence, and reliability of arrest and recovery. (Paras 21, 23, 45 - 46)

Headnotes

Criminal Law - Penal Code, 1860 - Ss. 302 and 495 - Murder - Criminal Trial - Circumstantial Evidence - No eye-witness - Prosecution must establish a complete and unbroken chain of circumstances - Each link must be proved beyond reasonable doubt - Mere suspicion cannot take the place of proof. (Paras 23 - 29, 40 - 43)

Indian Evidence Act, 1872 - Recovery under S. 27 - Recovery must relate distinctly to the fact discovered - Recovery from an open and visible place not within special knowledge of accused - Such recovery loses evidentiary value. (Paras 30 - 36, 45)

Arrest and Presence at Scene - Contradictions between prosecution witnesses regarding arrest from place of occurrence - Investigating Officer admits arrest from Gate No.2, Tronica City - Presence of accused at place of occurrence not established. (Para 45)

Benefit of Doubt - Incomplete chain of circumstances - Prosecution failed to prove guilt beyond reasonable doubt - Accused entitled to acquittal. (Paras 46 - 47)

Held: The present case being one of circumstantial evidence, the prosecution has failed to establish a complete chain of circumstances pointing only towards the guilt of the accused -The presence of the accused at the place of occurrence at the relevant time is not proved; the recovery of the gas cylinder is not reliable, as it was already visible at the time of preparation of the site plan and not discovered pursuant to information exclusively within the knowledge of the accused; and

contradictions exist regarding the place and time of arrest –

Accordingly, the links in the chain of circumstances are thoroughly incomplete, and the prosecution has failed to prove its case beyond reasonable doubt –

The appellant is acquitted of the charges under Ss. 302 and 495 I.P.C., and the appeal is allowed. (Paras 45-47) (E-7)

Case Law Cited

Queen-Empress Vs. Hosh Nak **1941 All LJ 416**; *Hanumant, son of Govind Nargundkar Vs. State of Madhya Pradesh*: **AIR 1952 SC 343**; *Khasbaba Maruti Sholke Vs. The State of Maharashtra*: **(1973) 2 SCC 449**; *Sharad Birdhichand Sarda Vs. State of Maharashtra*: **(1984) 4 SCC 116**; *Ram Kishan Mithan Lal Sharma Vs. State of Bombay*: **AIR 1955 SC 104**; *Pulukari Kottaiah Vs. King Emperor*: **AIR 1947 PC 67**; *Delhi Administration Vs. Balkrishnan*: **AIR 1972 SC 3**; *Geejaganda Somaiah v. State of Karnataka*: **(2007) 9 SCC 315**; *Shailendra Rajdev Pasvan Vs. State of Gujarat*: **AIR 2020 SC 180**.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Jail Appeal; Circumstantial evidence; Chain of circumstances; Recovery; S.27 Evidence Act; Motive; Arrest; Benefit of doubt; Acquittal; Beyond reasonable doubt; Small gas cylinder; blood stained lower; matrimonial discord; second marriage.

Case Arising From

APPELLATE JURISDICTION: Judgment and order dated 28.11.2019 passed by the Sessions Judge, Ghaziabad in Session Trial No. 273 of 2017, arising out of Case Crime No. 90 of 2017, Police Station Tronica City, District Ghaziabad.

Appearances for Parties

Advs. for the Appellant:

Shri Dharmendra Kumar Chaubey

Advs. for the Respondents:

Shri Manish Jaiswal, Panel Lawyer, High Court Legal Services Committee

Shri A.N. Mulla, A.G.A.

Shri Arun Kumar Pandey, A.G.A.

(Delivered by Hon'ble Samit Gopal, J.)

1. The present jail appeal has been preferred from jail by the appellant Raj Kumar against the judgment and order dated 28.11.2019 passed by the Sessions Judge, Ghaziabad in Session Trial No. 273 of 2017 (State Vs. Raj Kumar) Computer Registration No. 276/2017 (CNR No. UPGZO-10074922017) arising out of Case Crime No. 90 of 2017, under Sections 302, 495 IPC, Police Station Tronica City, District Ghaziabad by which the appellant has been convicted and sentenced under Section 302 I.P.C. for life imprisonment along with fine of Rs. 10,000/- and in default of payment of fine to further undergo one year additional imprisonment. Set-off, of the period already undergone, has been ordered to be extended to the accused.

2. An undated tehrir of which Bharti is the scribe was given by Smt. Kanta to the Station House Officer, District Ghaziabad alleging therein that she is the wife of Sanjay Kumar living in Gali No. 2, near Neelam Factory, Rajiv Garden, Police Station Loni, District Ghaziabad. Her daughter Puja was married on 25.04.2016 to Raj Kumar son of Brijpal a resident of Bulandshahr. Raj Kumar was married earlier also and had two children due to which he used to often assault her daughter and on 17.01.2017 when she went to meet her daughter at the rented place, Raj Kumar was having a fight with her and in a state of anger told Puja that he would murder her on which she stopped him and consoled her daughter and came back to her house. Today on 17.01.2017 in the afternoon when she came to the house of her daughter, Raj Kumar was beating her mercilessly and extending threats for murdering her. In the evening she was in Tronica City Factory

where she received a phone call from Sadabad Dugyawali stating that her daughter has been assaulted by a small gas cylinder on her head on which she ran to her house and found her daughter lying on the floor in an injured condition. She raised her but there was no movement and she had died. The accused had cheated them and had solemnized second marriage with her daughter Puja. The murder is of about 07:00 pm. Report be lodged and action be taken. The said application is Exb: Ka-1 to the records.

3. On the basis of the said application a First Information Report was lodged as Case Crime No. 90 of 2017, under Sections 302, 495 I.P.C., Police Station Tronica City, District Ghaziabad against Raj Kumar on 18.01.2017 at 20.30 hours. The Chik FIR is Exb: Ka-18 to the records.

4. The police took in its possession a blood stained lower of the accused Raj Kumar and prepared a recovery memo on 19.01.2017. The same is Exb: Ka-13 to the records. Further a small gas cylinder was taken into possession by the police on 18.01.2017 and the recovery memo was prepared which is Exb: Ka-14 to the records. Plain mud and blood stained mud was also taken into possession on 18.01.2017, the recovery memo of the same is Exb: Ka-11 to the records.

5. The postmortem of the deceased Puja was conducted on 19.01.2017 at 04:00 pm by Dr. M.K. Tomar in which the doctor found the following injuries:

(i) L.W. 1.0cm x 1.0cm x bone deep over outer end of right eye brow.

(ii) Contusion 15cm x 11cm over right side face and upto right side skull.

Further the doctor found under the skull, the right temporal, parietal, right frontal bone and base fractured and clotted blood was present in the brain.

The cause of death was opined as Coma due to antemortem head injuries. The postmortem examination report is Exb: Ka-4 to the records.

6. Certain articles were sent to the Forensic Science Lab, Uttar Pradesh, Agra for examination. A report dated 30.07.2018 was sent by the Lab opining that the articles from No.1 to 12 contains blood. The items from No. 3 to 7 were found to contain human blood. In the articles 1, 2, 8, and 9 blood was found to be disintegrated and thus its origin could not be deciphered. The report is Exb: Ka-19 to the records.

7. The investigation concluded and a charge sheet dated 01.04.2017 was filed against the accused appellant under Sections 302, 495 IPC, the same is Exb: Ka-17 to the records. The court concerned took cognizance upon the same vide order dated 15.04.2017.

8. Vide order dated 11.07.2017 passed by the Sessions Judge, Ghaziabad charge under Sections 495 and 302 IPC was framed against the accused appellant. He was read over and explained the charge to which he denied and claimed to be tried.

9. The trial in the matter started in which Smt. Kanta the first informant and mother of the deceased was examined as PW-1, Bijendra the landlord of the deceased was examined as PW-2, Smt. Asha the first wife of the accused appellant was examined as PW-3, Head Constable Smt. Reena who stated that the Chik FIR was transcribed by Kamal Kumar along

with GD was examined as PW-4, Dr. Mahesh Kumar Tomar who conducted the postmortem examination on the deceased was examined as PW-5, Neeraj Kumar Dwivedi the Nayab Tehsildar who conducted the inquest was examined as PW-6, Gajendra Singh Sub-Inspector, the Investigating Officer was examined as PW-7 and Head Constable Kamal Kumar who transcribed the Chik FIR was examined as PW-8. Dharmendra Tyagi was examined by the court as a court witness and examined as CW-1.

10. The accused in his defence did not produce any defence witness. In his statement under Section 313 Cr.P.C. he stated that the police did not arrest him from the place of occurrence. He further denied the entire prosecution case and lastly he stated that the father of the deceased is an accused in the case of murder and he had demanded money from him but since he did not fulfill his demand he has been falsely implicated in the matter. He further states that at the time of incident he was at Bhajanpura, Delhi and driving a Bolero Pick-up No. DL 1LM 1397 where he received information about the incident and then he came back after which the police arrested him.

11. P.W.-1 Smt. Kanta is the first informant of the matter and the mother of the deceased. She states that the marriage of her daughter Pooja was solemnized on 25.04.2016 with Raj Kumar (the accused present in Court). Raj Kumar was previously married and has two children from the said marriage but still he by concealing his earlier marriage, married her daughter for the second time. After marriage Raj Kumar used to assault her daughter. Her daughter came to know of the previous marriage when he brought his

daughters home. Her daughter was informed about the previous marriage of Raj Kumar by his family members. Raj Kumar used to visit his first wife which used to be opposed by her daughter Pooja and due to the same he used to assault her often and threaten her of murdering her. The incident is of 18.01.2017. A day prior to the incident she went to meet her daughter at her rented room in Tronica City where in front of her Raj Kumar had a fight with her and threatened her of dire consequences. She then consoled Raj Kumar and told him not to fight. Raj Kumar had threatened Pooja many a times for murder. She had even earlier many a times consoled Raj Kumar and told him not to fight and then she went back to her house. On the day of the incident on 18.01.2017 in the afternoon when she again went to the house of her daughter to meet her, Raj Kumar was assaulting her daughter mercilessly and was threatening her of murdering her. At that time also she consoled him and told him not to beat Pooja and went back to her house. On the same day at about 7.30 pm she received an information on phone that she may come and see her daughter and the said person told her that her daughter has been assaulted by her son-in-law with a small cylinder who has received injuries on her head and has been murdered. On the said information, she along with her daughter Bharti immediately went to the house of Raj Kumar where she found her daughter lying in a pool of blood on the floor of the house. She touched Pooja but there was no response from her body and she had died. When she reached the house, police was present there. Accused Raj Kumar was arrested by the police at the said place itself. She get a report of the incident written by her daughter Bharti on her dictation and after hearing it put her thumb

impression and gave it at the police station. She identifies her thumb impression. The said report is marked as Exb: Ka-1 to the records. She had told the police about the incident on their asking.

In her cross-examination she states that she is an illiterate lady. She states that it takes around 10 minutes to reach the house of her daughter from her house by a tempo. She states that her daughter had no child. Prior to the incident she has not lodged any report against Raj Kumar. She states that it is correct that she had not given any report to any officer or police regarding the assault by Raj Kumar on her daughter. No medical examination of her daughter was earlier done. She came to know about second marriage of Raj Kumar but she did not meet his first wife. The name of her husband is Sanjay. He is an accused under Section 302 I.P.C. He is in jail since last three years in the case of murder. The incident of the present matter is of 18th in the month of January. On the information of the incident she reached the house of her daughter on 18.01.2017 at about 7.30 pm. She on the day of incident did not go to the house of her daughter in the morning but went only in the afternoon. She used to go to meet her daughter every 2-3 days because apart from her work she used to do work for her daughter's house. Raj Kumar lives in a rented room. Her daughter also lives with him. She has seen the house very well. There are three tenants in the said house, one on the upper floor and two on the ground floor. Her daughter used to live on the upper floor. She did not write her phone number on the report. When she reached the place of occurrence then police was present there. She did not give information to the police. When she reached the place of occurrence her daughter was lying on the floor and it was

night. She stayed there for some time and then returned to her house. Tehrir of the matter was written by her daughter Bharti and not by her. It was written outside the police station. It was written between the police station and the road. The paper for it was brought by her daughter but she does not know from where she brought it. One or two days before she had gone to meet her daughter at about 6 pm. At that time her daughter was fine. She states that Raj Kumar was fighting with her daughter. She came back to her house. On the day of incident when she went at the place of occurrence the tenants were present there. Stairs are used to reach the house.

It is incorrect to state that on the day of incident her daughter Pooja fell down from the stairs due to which she received injury on her head and died. Accused Raj Kumar is a driver and drives a vehicle. The vehicle is a four wheeler. He drives the vehicle of someone else and does job at his place. It is incorrect to state that on the day of incident Raj Kumar had gone on his job. She states that at the time of incident Raj Kumar had left his job. Her daughter had told her about Raj Kumar leaving the job. She did not go to the owner of the vehicle. She states that it is incorrect that on her phone Raj Kumar informed her that her daughter has received injuries. She states that it is incorrect that Raj Kumar was informed about the incident by the tenants on phone after which he called her on phone from where he was working. She further states that it is incorrect that she had asked Raj Kumar for Rs. One lakh for the case of her husband and he had refused giving it due to which he has been falsely implicated in the present matter. She states that she is deposing the truth.

12. P.W.-2 Bijendra is the landlord of the house where the deceased was living

and is the place of occurrence. He states that he has a house in Tronica City. He has given rooms in the said house on rent. Raj Kumar the accused present in Court lives on rent in one of the rooms along with his wife Pooja. Pooja wife of Raj Kumar died in the said house in the room. He received information about the death of Pooja from his neighbour. When he received the information he reached the place of occurrence and found the body of the wife of Raj Kumar lying in the room. The police was present there. The Investigating Officer recorded his statement and he told him about it.

In his cross-examination he states that at the time of incident he was not present at the place of occurrence. He received information about it through the neighbours on phone. He told the police about the said fact. He states that it is incorrect that he did not reach the place of occurrence on getting information about the incident. He further states that it is incorrect that due to the same he did not give his phone number and tell the time.

13. P.W.-3 Smt. Asha is the first wife of the accused-appellant. She states that she was married to the accused-appellant Raj Kumar on 22.11.2008 and as such it is around 09 years since then. She has two sons from Raj Kumar. Raj Kumar is a driver. Raj Kumar by concealing his marriage for the second time married Pooja and started living with her. Raj Kumar had abandoned her after which she started living in her maternal house. Whenever Raj Kumar used to come to her he was in an intoxicated condition and used to assault her. Panchayat about it was collected in the village of mama of the accused in which Raj Kumar had agreed to keep her but did not come to her maternal house to take her

back. She states that she does not know whether Raj Kumar committed any incident with his second wife Pooja. The Investigating Officer had visited her place and told her that Raj Kumar has assaulted Pooja on her head with a 5kg cylinder and murdered her. She had told the Investigating Officer about her marriage and showed him her identity card and gave a photocopy of it to him after signing it. The photocopy of the Voter ID is Card Form No.12 which contains her signature is proved by her as Exb: Ka-2 to the records.

In her cross-examination she states that she is staying at her maternal uncle house since last five years. Both her children are staying with her. When the accused married for the second time she made a complaint at Mahila Thana but no one from Thana visited her. She did not lodge a report regarding it since the accused in the Panchayat had agreed to take her back. When Raj Kumar agreed to take her back his second wife was living with him. She did not institute any case of maintenance against the accused.

She states that it is incorrect that after Panchayat she did not herself try to go and live with Raj Kumar. She did not give any evidence about her marriage. She only gave her statement to the Investigating Officer and did not lodge any report against Raj Kumar. She states that it is incorrect that Raj Kumar solemnized second marriage with her consent. She further states that it is incorrect that as Raj Kumar was a driver he was not having sufficient income and thus she was not living with him. She further states that it is incorrect that there is no complaint on record against Raj Kumar given by her. She states that if Raj Kumar comes to take her she is now not ready to go with him. She states that it

is incorrect that she is giving a false statement. She further states that it is incorrect that she has abandoned Raj Kumar due to which he has married for second time.

14. P.W.-4 Lady Constable Smt. Reena states that on 18.01.2017 she transcribed a GD No. 38 at 20.30 hours at the Police Station Tronica City after Constable Kamal Kumar transcribed the computerised chik first information report. The copy of the GD was filed by her which is marked as Exb: Ka-3 to the records.

15. P.W.-5 Dr. Mahesh Kumar Tomar conducted the postmortem examination on the body of the deceased Smt. Pooja. The details of the postmortem examination have already been stated above and thus are not being mentioned herein as being repetitive. He proves the said postmortem examination report which is Exb: Ka-4 to the records.

16. P.W.-6 Neeraj Kumar Dwivedi, Naib Tehsildar states that he was posted as Naib Tehsildar, Tehsil Loni. On the directions of the S.D.M. concerned he reached the place of occurrence and on his directions the inquest on the body of the deceased was conducted. He proves the inquest which is Exb: Ka-5 to the records. Further along with the inquest the requisite papers were prepared which were proved by him as Exb: Ka-6 to Exb: Ka-9 to the records.

17. P.W.-7 S.I. Gajendra Singh is the Investigating Officer of the matter. He states that on 18.01.2017 he was posted as S.S.I. at Police Station Tronica City. The present case was registered at the said police station in his presence on 18.01.2017 at 19:00 hours and its investigation was

given to him. He prepared first C.D. He then interrogated the first informant Smt. Kanta and recorded her statement and on her pointing out spot inspection was done and a site plan was prepared. The said site plan has been proved by him as Exb: Ka-10 to the records. On the same day he interrogated witnesses Ganga Ram and Deshveer. He then in front of the witnesses took the plain earth and blood stained earth in his possession and sealed it and prepared a recovery memo of it which has been proved by him which is Exb: Ka-11 to the records. On the information of police informer on the same day at about 21:50 hours he arrested the accused Raj Kumar from Gate No.2 of Tronica City and prepared an arrest memo. The same has been filed by him, proved and marked as Exb: Ka-12 to the records. He then recorded the statement of the accused who gave his confessional statement to him. He then asked accused Raj Kumar about the blood stains on the lower which he was wearing on which he stated that the same got stained at the time of incident when his wife was bleeding from her head. He confessed his guilt and his lower was also taken into possession after which a recovery memo was prepared which has been filed by him, proved and marked as Exb: Ka-13 to the records. He in his statement told him that the gas cylinder with which he has assaulted his wife has been kept by him in his room which is a rented room. On his statement he was taken to the said place from where in front of the witnesses the said gas cylinder was recovered which was having a pipe fitted in it and was blood stained. The cylinder was taken into possession and a memo was prepared. The same has been filed and proved and marked as Exb: Ka-14 to the records. He prepared a site plan regarding the recovery of the cylinder which has been

filed and proved by him and proved and marked as Exb: Ka-15 to the records. Then on 27.01.2017 he prepared the second C.D. and recorded the statement of Brijendra the landlord. On 03.02.2017 he prepared the third C.D. and recorded the statement of other witnesses. He had sent the recovered plain earth, blood stained earth, the lower of the accused which was blood stained to the Forensic Science Lab on 20.01.2017 for analysis, the copy of the said letter has been filed by him, proved and marked as Exb: Ka-16 to the records. On 26.02.2017 in the fifth C.D. he recorded the statement of Raj Kumar. On 05.03.2017 in the sixth C.D. he mentioned that the articles in the room of the accused have been wrapped and kept by the landlord. On 17.03.2017 he was told about Asha the first wife of the accused by Rajesh Devi the sister of the accused on telephone. On 26.03.2017 he interrogated Smt. Asha and annexed her Voter I-card in the case-diary. On 29.03.2017 he copied the inquest in C.D. No.9, on 01.04.2017 in C.D. No.10, he closed investigation and prepared a Charge-sheet No.1 of 2017 and forwarded it. The said charge-sheet has been filed by him, proved and marked as Exb: Ka-17 to the records. He further states that the lower, blood stained mud and plain mud and the gas cylinder stained with blood were recovered on the pointing out of the accused. He identifies the same amongst which the regulator and pipe of the gas cylinder were marked as material Exb-1. One other packet was opened in which clothes and articles were found. The same were marked as material Exb-2. The clothes of the lady were marked as material Exb-3. The blood stained mud and plain mud were sealed in different plastic bags which were marked as material Exb-4. Some of the articles of the deceased were also taken into possession which were marked as material Exb-5 to 9. Another

packet was opened which was also containing cylinder was packed which was having blood stains was marked as material Exb-10. A big packet was marked as Exb-11 and the same packets were marked as Exb-12.

In his cross-examination he states that he has been the Investigating Officer of the matter since the very beginning. He was present at the police station at the time of lodging of the first information report. He interrogated the scribe of the first information report and the scribe of GD. The first informant was present at the police station when investigation was entrusted to him. She has not signed on the first information report. When he reached the place of occurrence for the first time at that time the accused was not in his custody. The accused was taken into custody by him on the day of the incident at 21:50 hours.

He states that it is correct that the accused was not arrested from the place of occurrence. When he reached the place of occurrence the dead body of the deceased was lying there. He did not mention that there was an attempt to take the deceased to the hospital in an injured condition. It is incorrect to state that he intentionally in his investigation did not investigate the fact that the clothes of the informant were blood stained. It is correct that the application given for lodging of the report was not in the writing of the first informant. He had interrogated the scribe of the said application. He did not ask the scribe as to where the said application was written. It is incorrect that the said application was written in his presence and on his saying. He further states that after the arrest of the accused he was brought to the police station. At the police station he got the said

fact recorded and then he was sent to the lock-up and lodged there. He was at the place of occurrence prior to the arrest of the accused. When he reached the place of occurrence for the first time he did not recover the article of assault being the cylinder. After arrest of the accused from the place he was then on his saying brought to the room. The accused was arrested from Gate No.2 of Tronica City. He states that it is correct that people were present at the place from where the accused was arrested. He had tried to take public witnesses from the place of arrest to the place of recovery but no one was ready. The said fact has not been written by him in Exb: Ka-14. It is correct that he did not give any notice to the public witnesses present at the place of arrest but states that the said people without disclosing their names and address went away. He did not even write the body structure of the said persons in the memo. He further states that it is incorrect that he prepared the arrest memo at the police station and thus he did not mention the name and address of the witnesses in it. He did not call the forensic team at the place of occurrence. He did not send the recovered gas cylinder for examination of finger prints of the accused. He did not take finger prints of the accused separately. He did not investigate about the finger prints of the accused. He states that it is incorrect that he did not take finger prints of the accused as the cylinder did not contain it. He states that blood of the deceased was present at the place of occurrence. He states that it is incorrect that he had stained the cylinder with the blood stains of the deceased at the place of occurrence by himself. He states that he did not find any eye-witness of the incident. He further states that it is incorrect that he interrogated only interested witnesses. It is incorrect that as per the circumstances he managed false

evidence against the accused and did not do fair investigation. It is correct that he did not find any case being lodged by the first wife of the accused regarding his second marriage. He then states that his first wife told him about the second marriage of the accused.

In his investigation also he did not write about any case being lodged by the first wife of the accused regarding his second marriage. He was not given any document by the first wife of the accused during investigation. During investigation the fact that the father of the deceased is in jail in a case of murder was not disclosed.

18. P.W.-8 Constable 1961 Kamal Kumar transcribed the chik first information report of the present matter. He files the copy of the same which has been proved by him and marked as Exb: Ka-18 to the records.

19. As a court witness Dharamendra Tyagi C.W.-1 was examined. He states that Sanjay the father of the deceased is a driver working with him. The deceased lives near his house along with her husband on rent. He received an information on that day from Police Station Tronica City that the deceased has been murdered by a cylinder and information about it be given to her parents on which he informed her mother about it. The police told him that the murder has been done by her husband Raj Kumar by hitting her with a small cylinder which was told by him to the mother of the deceased. No cross-examination was done.

20. Heard Shri Dharmendra Kumar Chaubey, learned counsel for the appellant, Shri Manish Jaiswal, learned Panel Lawyer for the High Court Legal Services Committee, Shri A.N. Mulla and Shri Arun

Kumar Pandey, learned A.G.As for the State and perused the records.

21. Learned counsel for the appellant-accused submitted that the accused has been falsely implicated in the present case. It is submitted that the present case is a case based on circumstantial evidence in which there is no eye-witness to the murder. It is submitted that the investigation in the present matter has failed to make a link in the chain of circumstances. It is submitted that the circumstances relied by the prosecution to implicate the appellant in the present matter are three which are as under:-

(i) Whether the accused has a motive to commit the aforesaid offence?

(ii) Whether Section 495 I.P.C. is not made out?

(iii) Whether the prosecution has been successful in proving its case under Section 302 I.P.C.?

It is submitted that the accused-appellant is the husband of the deceased. He is a driver by profession. The deceased was found lying dead in her house. As per the evidence of C.W.-1 the information about the death of the deceased was given to Dharmendra Tyagi C.W.-1 by Police Station Tronica City for giving information to her parents on which he informed her mother about it. It is submitted that P.W.-1 Smt. Kanta the mother of the deceased and the first informant is a totally untruthful witness. She does not state about any information being given to her by Dharmendra Tyagi. She states of some matrimonial discord between the deceased and the accused-appellant and fights between them. It is submitted that the

P.W.-1 states in her testimony that the accused Raj Kumar was apprehended by the police at the place of occurrence but the said fact is incorrect in as much as P.W.-7 Gajendra Singh the Investigating Officer of the matter has stated that the accused was arrested by him on the day of the incident at 21:50 hours from Gate No.2 Tronica City. The arrest memo of the said arrest has been proved by him and marked as Exb: Ka-12 to the records. Thus the fact that the accused was arrested from the place of occurrence by the police as stated by P.W.-1 Smt. Kanta is totally false and incorrect. It is further submitted that Bijendra has been examined as P.W.-2 who is the landlord of the room where the present incident took place. He in his testimony states that after the said incident he received information about it and reached there where he found the wife of Raj Kumar lying dead and police being present there. He does not state of the presence of the accused-appellant at the said place and also does not state that he was arrested by the police from the said place. It is submitted that thus the case of P.W.-1 Smt. Kanta that the accused was arrested by the police from the place of occurrence when the police reached there is totally incorrect and without any foundation. It is submitted that the accused in his statement under Section 313 Cr.P.C. states that at the time of incident he was at his job and was driving a vehicle in Delhi wherein he received information about the present incident and then he reached there after which he was arrested by the police. It is submitted that the same thus goes in consonance with the version given by P.W.-7 regarding the arrest of the accused-appellant at 21:50 hours from Gate No.2 Tronica City. It is further submitted that the appellant has no motive to commit the aforesaid offence as despite having a wife

he married the deceased and was living with her. There is nothing substantial coming on record which would be the reason for his committing the offence. It is further submitted that in so far as the report of the Forensic Science Lab is concerned, although the lower of the appellant was found to contain blood which was further identified as human blood but its origin could not be deciphered. It is submitted that the same thus also does not conclusively establish that the blood was of the deceased. It is submitted that the room which was place of occurrence was a small room and it is alleged that a cylinder was recovered from the said room on the pointing out of the accused-appellant which is the prosecution case but the said fact also does not transpire confidence as the site plan which was prepared on 18.01.2017 on the pointing out of P.W. 1 Smt. Kanta as Exb:Ka 10 of the place of occurrence goes to show that the cylinder was recovered from point 'B' as marked in the site plan which is an open place within the room itself and could have been easily seen by anyone present there and as such the same was not concealed by anyone and it cannot be said that it was at a place which was in the special knowledge of the accused-appellant. It is submitted that thus even the recovery of the said alleged cylinder would not in any manner be incriminating. It is submitted that the present case is a case in which links in the chain of circumstances are thoroughly incomplete and there is no credible evidence against the accused-appellant and thus he be acquitted of the charges levelled against him and the judgement and order of the trial court be set-aside.

22. *Per contra*, learned counsel for the State vehemently opposed the appeal and argument of learned counsel for the

accused-appellant and submitted that in the present matter the accused is the husband of the deceased. The cylinder which was the article of assault was recovered on his pointing out. The accused had given his statement to the police regarding assault by him on the deceased due to which she died. It is further submitted that the accused-appellant had a motive of concealing the factum of his first marriage with the informant and solemnized second marriage with the deceased and thus had committed an offence under Section 495 I.P.C. He assaulted the deceased with the cylinder which was recovered on his pointing out from the room which is the place of occurrence and thus he is involved in the matter.

In so far as the fact regarding the arrest of the accused-appellant is concerned learned counsel for the State submits that the accused was arrested on the same day of the incident at 21:50 hours from Gate No.2 Tronica City by P.W.-7 S.I. Gajendra Singh regarding which a memo was prepared which is Exb: Ka 2 to the records. It is submitted that at the time of arrest of the accused he was wearing a lower which was found to be blood stained and the report of the serologist with regards to the lower states that it was found to be stained with human blood and thus the same is a link in the chain of circumstances. It is submitted that the appeal thus be dismissed.

23. After having heard learned counsels for the parties and perusing the records, it is evident that the present case is a case of circumstantial evidence. There is no eye-witness to the incident. The law with regards to appreciation of evidence in cases resting on circumstantial evidence is trite.

24. The case of *Queen-Empress Vs. Hosh Nak : 1941 All LJ 416* is worth referring at this juncture which is a locus classicus on the issue of circumstantial evidence. This is a very old decision which was printed in the Allahabad Law Journal after sixty years of its decision on the recommendation of Rt. Hon'ble Sir Tej Bahadur Sapru. In the case of **Hosh Nak (supra)**, it has been held that to prove an offence by the circumstantial evidence four things are essential. They are:

(1) : That the circumstance from which the conclusion is drawn be fully established.

(2) : That all the facts should be consistent with the hypothesis.

(3) : That the circumstances should be of a conclusive nature and tendency.

(4) : That the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved.

25. Then in the case of *Hanumant, son of Govind Nargundkar Vs. State of Madhya Pradesh : AIR 1952 SC 343* it has been held in para 10 by the Apex Court as under:

"10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they

should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused....."

26. Thereafter, in the case of ***Khasbaba Maruti Sholke Vs. The State of Maharashtra : (1973) 2 SCC 449*** it was held by the Apex Court as under:

"18. In order to base the conviction of an accused on circumstantial evidence the court must be certain that the circumstantial evidence is of such a character as is consistent only with the guilt of the accused. If, however, the circumstantial evidence admits of any other rational explanation, in such an event an element of doubt would creep in and the accused must necessarily have the benefit thereof. The circumstances relied upon should be of a conclusive character and should exclude every hypothesis other than that of the guilt of the accused. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances must show that within all reasonable probability the impugned act must have been done by the accused. If two inferences are possible from the circumstantial evidence, one pointing to the guilt of the accused, and the other, also plausible, that the commission of the crime was the act of some one else, the circumstantial evidence would not warrant the conviction of the accused....."

27. The circumstantial evidence must be so complete as to exclude every

hypothesis other than that of guilt of the accused.

28. In the celebrated case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra : (1984) 4 SCC 116*** the Apex Court has described five principles of circumstantial evidence as the pillars on circumstantial evidence. The five principles have been narrated in para 153 which is extracted herein :

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) *the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in ***Shivaji Sahabrao Bobade v. State of Maharashtra : [(1973) 2 SCC 793; para 19, p. 807]*** where the following observations were made : "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

(2) *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable and any other hypothesis except that the accused is guilty.*

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as to leave by reasonable grounds for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Further in paragraph 154 of the said judgment it was held as under:

"154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence".

29. The cardinal principle of criminal jurisprudence is that the prosecution has to stand on its own legs and it should prove its case beyond reasonable doubt. Doubt must be of a reasonable man and reasonableness of doubt must be commensurate with the nature of the offence to be investigated.

30. Before appreciating the evidence on record it is necessary to point out Section 27 of the Indian Evidence Act, 1872 which reads as under:

"27: How much of information received from accused may be proved: Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not,

as relates distinctly to the fact thereby discovered may be proved."

31. It is clear from the reading of Section 27 of the Evidence Act that this Section is based on doctrine of confirmation by subsequent facts. That doctrine is that where, in consequence of a confession otherwise inadmissible, search is made and facts are discovered, it is a guarantee that the confession made was true. But only that portion of the information can be proved which relates distinctly or strictly to the facts discovered.

32. In the case of ***Ram Kishan Mithan Lal Sharma Vs. State of Bombay : AIR 1955 SC 104***, it is held by the Apex Court that Section 27 of the Evidence Act is an exception to the rules enacted in Sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Where, however, any fact is discovered in consequence of information received from a person accused of any offence in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not.

33. In the case of ***Pulukari Kottaiah Vs. King Emperor : AIR 1947 PC 67*** it has been held as follows : "the condition necessary to bring S. 27 into operation is that the discovery of a fact must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved".

34. The Section is based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence, but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

35. In the case of **Delhi Administration Vs. Balkrishan : AIR 1972 SC 3** the Apex Court has held that Section 27 of the Evidence Act is by way of a proviso to Sections 25 and 26 and a statement by way of confession made in police custody which distinctly relates to the fact discovered is admissible is evidence against the accused.

36. It cannot be lost sight of that Section 27 of the Evidence Act has frequently been misused by the police against an accused. Court should, therefore, be cautious and vigilant about the application of the above provision. The protection afforded by the provisions under Sections 25 and 26 of the Evidence Act is sought to be overcome by the police by taking resort to the provisions of Section 27 of the Evidence Act. The validity of Section 27 of the Evidence Act has been upheld by the Apex Court.

37. The recovery of the dead body on the pointing out of the appellant has been relied upon by the prosecution as one of the evidences against him.

38. No doubt, mere recovery in pursuance of Section 27 of the Evidence Act is not a clinching proof for holding an accused guilty. However, there is no doubt that it is good piece of evidence which may

be relied upon as a link in the chain of circumstances in the present case for holding the guilt.

39. It is a well settled principle of law that a conviction cannot be founded on circumstantial evidence alone unless it cannot be explained on any hypothesis other than that of the guilt of the accused.

40. It is well settled that in a case which rests on circumstantial evidence, law postulates two fold requirements:-

(i) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

(ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

41. In the case of **Sharad Birdhichand Sarda (supra)** has enunciated the aforesaid principle as under:-

"The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the Accused and inconsistent with his innocence".

42. It is well settled that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case in which all the links of the chain are complete and pointing to the guilt of the accused. Each link unless connected together form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.

43. In cases where the evidence is purely circumstantial in nature, the circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must form a complete chain unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. Referring to several earlier decisions the Apex Court in the case of **Geejaganda Somaiah v. State of Karnataka : (2007) 9 SCC 315** in para 15 held as follows:-

"15. Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation,

upon any other reasonable hypothesis than that of his guilt; and (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted."

The same principle has been reiterated in a catena of later judgments.

44. The law regarding evidence of last seen has been reiterated by the Apex Court in the case of **Shailendra Rajdev Pasvan Vs. State of Gujarat : AIR 2020 SC 180 [2019 SCC Online SC 1616]** which is quoted herein:

"14. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In the case of Bodh Raj Alias Bodha v/s State of Jammu and Kashmir, (2002) 8 SCC 45, Rambraksh v/s State of Chhattisgarh, (2016) 12 SCC 251, Anjan Kumar Sharma v/s State of Assam, (2017) (6) SCALE 556 following principle of law, in this regard, has been enunciated:-

"The last seen theory comes into play where the time gap between the point of time when the Accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the Accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the Accused when there is a long gap and possibility of other persons coming in

between exists. In the absence of any other positive evidence to conclude that Accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases".

45. The dispute in the present matter arises regarding the place and time of arrest of the accused-appellant. P.W.-1 Smt. Kanta Devi states that the accused was arrested by the police from the place of occurrence. P.W.-7 S.I. Gajendra Singh states that the accused was arrested by him on the day of incident at 21:50 hours from Gate No.2 Tronica City after which he prepared an arrest memo which was filed by him and marked as document no. Exb: Ka 2 to the records. Thus in so far as the arrest of the accused is concerned, there is credible evidence regarding his arrest on the day of incident at 21:50 hours from Gate No.2 Tronica City. In so far as the other evidence thus is concerned, since the arrest of the accused-appellant was not from the place of occurrence his presence at the place of occurrence has not been established by the prosecution through any cogent and reliable evidence. P.W.-2 Brijendra the landlord of the premises where the present incident took place reached the place of occurrence on hearing about it through a neighbour immediately thereafter. He does not state of the presence of the accused-appellant at that point of time at the place of occurrence. Thus the fact that the accused was present at the relevant time at the place of occurrence does not find lending support from any evidence or credible evidence whatsoever. The same finds more consistent with the version given by the accused in his statement under Section 313 Cr.P.C. that he was at his place of duty and on receiving information about the incident reached there. The recovery of the cylinder which is being relied by the

prosecution also is not of any worth in as much as the room where the occurrence took place is the place from where the said cylinder is said to be recovered. The same was not concealed, hidden or kept at a place which was in the special knowledge of the accused-appellant as could be seen from the statement of the officer allegedly affecting the said recovery and even the site plan of the incident. More so, the Investigating Officer P.W.-7 S.I. Gajendra Singh states that he prepared the site plan on the very first day of taking over the investigation of the matter on 18.01.2017. After reaching the place of occurrence, interrogating the first informant Smt. Kanta and preparing the site plan on her pointing out which was marked by him as Exb: Ka 10 to the records. In the said site plan itself and as is seen in its index at item no. 3 and marked at point 'B' a small gas cylinder was found to be kept in the room. Thus the said cylinder was found by him at the first instance itself even prior to the arrest of the accused-appellant on the same day and thus the version that the same was got recovered on the pointing of the accused-appellant is also not trustworthy at all.

46. In view of the discussions as above, the law on the subject, this Court comes to a conclusion that the links in the chain of circumstances are thoroughly incomplete and do not point out to the only conclusion that Raj Kumar the husband of the deceased is the accused in the present matter. The prosecution has failed to prove its case beyond reasonable doubt against the accused-appellant.

47. The accused-appellant is thus acquitted of the charges levelled against him. The appeal is *allowed*.

48. The accused-appellant is in jail. He be released forthwith unless wanted in any other case whatsoever.

49. Copy of this judgement along with trial court records be communicated forthwith to the trial court concerned for compliance and necessary action.

(2025) 12 ILRA 57

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 09.12.2025

BEFORE

**THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.**

Criminal Appeal No. 618 of 1990

**Rahishe @ Rahise & Ors. ...Appellants
Versus
State of U.P. ...Respondent**

Issue for Consideration

Matter pertains to whether the prosecution proved beyond reasonable doubt that the surviving appellant committed murder under S. 302/34 IPC, particularly when the conviction rested substantially on the testimony of a related and interested witness whose presence at the place of occurrence was doubtful and where no independent eyewitness was examined. (Paras 21-23, 27)

Headnotes

Criminal Trial - Proof - Interested witness - Last seen theory - Failure to examine independent witness - Effect - Where the sole eyewitness is a real brother of the deceased and his conduct appears "highly unnatural", his testimony requires careful scrutiny - When such testimony is found unreliable and the prosecution fails to examine another alleged eyewitness, the omission assumes significance and entitles the accused to benefit of doubt. (Paras 21, 23 - 25, 27)

Criminal Law - Murder - Circumstantial evidence - Motive - Weak motive

Where the alleged motive is based on a long-past enmity which, according to prosecution witness himself, had ceased and family relations had become cordial,

motive is weak and does not support conviction. (Para 26)

Held: In a criminal trial, the burden of proof always lies upon the prosecution to prove their case beyond reasonable doubt - It is highly unnatural for the informant that after witnessing the appellants, beating his brother, Kallu, he ran away and stayed the entire night at the dera in Gulamipur with heera and made no effort to find out what happened to his brother - The above conduct of the informant raises serious doubt about his presence at the place of occurrence - The prosecution has not produced [Heera] in evidence and discharged him from testifying in Court - As the evidence of P.W.1, Batuni is found not reliable and the prosecution has not explained why the other eye-witness was not examined - This aspect of the matter assumes significance and lends to an adverse inference - motive alleged to commit murder is very weak - It appears that Kallu was murdered by someone else at an unknown time - It is a blind murder - Prosecution has failed to prove its case beyond reasonable doubt and the Trial Court failed to appreciate the evidence on record correctly and findings of guilt were recorded by the Trial Court on surmises and conjectures and on incorrect appreciation of evidence - The impugned judgment and order of conviction and sentence is liable to be set aside. (Paras 21,23,25,26,27,28,29) (E-7)

Case Law Cited

Hem Raj v. State of Haryana, (2005) 10 SCC 614

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Blind murder; Common intention; Lathi; Danda; Post-mortem; Ante-mortem injuries; Inquest report; Interested witness; Adverse inference; Motive; Enmity; Abated; beyond reasonable doubt; last seen; benefit of doubt;unnatural conduct

Case Arising From

APPELLATE JURISDICTION: Judgment and order dated 21.03.1990 passed by the 5th Additional Sessions Judge, Allahabad, in Sessions Trial No. 308 of 1986, arising out of

Case Crime No. 85 of 1985, Police Station Kokhraj, District Allahabad.

Appearances for Parties

Advs. for the Appellant:

Mr. Ram Awadh Mishra

Advs. for the Respondents:

Mr. Ghanshyam Kumar, learned Additional Government Advocate-I

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by the appellants, namely, Rahishe @ Rahise, Chhikani, Bakuni all sons of Munesara and Nazir son of Mahadev, all residents of Village Kesaria, Police Station Saini, District Allahabad, against the judgment and order dated 21.03.1990, passed by the Court of 5th Additional Sessions Judge, Allahabad, in Session Trial No.308 of 1986, under Section 302/34 Indian Penal Code (in short I.P.C.), Police Station Kokhraj, District Allahabad.

2. By the impugned judgment and order, the appellants, Rahishe @ Rahise, Chhikani, Bakuni and Nazir have been convicted for offence punishable under Section 302/34 I.P.C. and sentenced to undergo imprisonment for life.

3. Feeling aggrieved by the impugned judgment and order, this appeal has been filed by all the four convicts. During the pendency of this criminal appeal, appellant No. 1, 2 and 4, namely, Rahishe @ Rahise, Chhikani and Nazir, have died, and the appeal against them stands **abated** vide order dated 04.11.2025. Therefore, the appeal has been heard in respect of the surviving appellant, Bakuni alone.

4. The brief facts of the prosecution case are that the informant, Babani, son of

Kharsen, resident of Todi ka Purwa resident of Nevadia, Police Station Kokhraj, District Allahabad, gave an oral information at Police Station Kokhraj stating that Kallu was his real brother. Kallu's daughter was married to Nazir's son. There was animosity between the informant and Munesara, Nazir's brother, for the last 20-25 years, which the informant had forgotten, and both parties had now become relatives. It is alleged that due to the old enmity, the accused, Chhikani, Rahise and Bakuni, in furtherance of their common intention, enticed the informant's brother Kallu while they were in the market, to go along with them. Thereafter, the informant, his brother, and Heera proceeded with them towards Jamlamau, and when they reached in front of village Sanjhagarh at about 9-10 p.m., the accused quarrelled with Kallu bringing up issues about the old enmity. As the dispute escalated they assaulted Kallu with sticks (*lathi*) and (*danda*). When the informant and Heera tried to intervene, the accused chased them away. The informant and Heera went over to the latter's house, believing that since the accused were their relatives, they would spare Kallu after a minor assault. However, in the morning, when they went there to take account of the situation, they found the informant's brother Kallu lying dead at the place where the accused had battered him. Upon this oral information, an FIR was lodged giving rise to Case Crime No.85 of 1985, under Section 302 I.P.C., Police Station Kokhraj, District Allahabad on 23.05.1985 at 10.25 a.m., against Rahise @ Rahish, Chhikani, Bakuni and Nazir.

5. After registration of the FIR, investigation commenced. The Investigating Officer reached the place of occurrence and collected plain earth and

blood-stained earth from the spot, securing it in a sealed box and prepared a recovery memo (Ext. Ka-10). The inquest was held and a report thereof was prepared. An autopsy followed. According to the *post-mortem* report, the deceased sustained seven injuries, including contusions, lacerated wounds, and incised wounds on different parts of the body, and in the opinion of the doctor, the cause of death was 'shock' and 'coma' as a result of the *ante-mortem* injuries. The Investigating Officer also recorded the statements of witnesses and inspected the place of occurrence. He prepared the site-plan (Ext. Ka-9).

6. After completion of investigation, the Investigating Officer submitted a charge-sheet against all the four accused under Section 302 I.P.C. before the learned Magistrate concerned. The learned Magistrate took cognizance and summoned the accused. The accused appeared before the Magistrate, and the Magistrate furnished them copies of the relevant prosecution papers under Section 207 Cr.P.C. He, thereafter, committed the case to the Court of Sessions for trial vide order dated 04.07.1986. The Sessions Court framed charges under Section 302/34 I.P.C. against all four accused, to which they pleaded not guilty and claimed to be tried.

7. The prosecution has examined five witnesses in support of the prosecution case, namely, P.W.1, Batuni (informant), P.W.2, Sudisht Singh (Head Constable), P.W.3, Bharat Singh (Constable), P.W.4, R.N. Singh (Inspector) and P.W.5, Dr. N.K. Saxena.

8. Out of them, P.W.1 Batuni is the informant and an eye-witness of the incident. He has stated that he knows all the

accused. Nazir's father Mahadev, and Chhikani, Raheesa and Bakuni's father Muneshwar were real brothers, both of whom have passed away. Muneshwar was murdered when the informant was very young, and in that case some accused were acquitted. The sons of Muneshwar suspected that the informant's father had a hand in Muneshwar's murder. However, when they grew up, they harboured no animosity against Nazir or the others so much so that the informant's brother Kallu married his daughter to Nazir's son. He further said that they are engaged in the profession of ear wax cleaning and are nomadic. They leave their homes during the month of *Kunwar* (Hindi calendar month) and return in the month of *Jyeshtha* (another Hindi calendar month), staying at different places in the meantime. At the time of the incident, his family had set up camp in village Shindhya, and the accused were camping in village, Jamalamau. On the date of the incident, the informant had gone to Bharwai market alongwith Kallu and Heera, where they met the accused. All the four accused told Kallu to accompany them to their dera. Kallu was not interested, but upon their insistence, the informant, Kallu and Heera accompanied them. When they reached in front of village Jhanjhagarh at about 10:00 p.m., the accused struck conversation with Kallu regarding Muneshwar's death, and as passions escalated, all the four accused battered Kallu with sticks (*lathi*) and (*danda*). The informant and Heera objected, but the accused chased them away. The informant and Heera ran away from the spot and stayed at Heera's dera in Gulamipur, thinking that since the accused were relatives, they would spare Kallu after giving him one or two *lathi* blows. In the morning, when the informant went there to ascertain the situation, he found Kallu's

dead body lying at the spot. Thereafter, he went to the Police Station and lodged a report.

9. In his cross-examination, P.W.1 has stated that he did not raise any alarm during the assault because he ran away from the place of occurrence. He further said that the Bharwari Police Outpost is about one and a half miles away from the place of occurrence, but he did not give any information there. Instead, he went to Gulamipur, which is about four miles away from the place of occurrence, and informed the Pradhan of the village. He reached Gulamipur within an hour and asked Mewa Lal, the Pradhan, to accompany him to the place of occurrence. He has further said that he did not go to the place of occurrence during the night but went there the next morning at about 9:00 a.m. because he never anticipated that they would murder his brother. He has also said that Kallu did not raise alarm and the informant did not sustain any injury. He did not try to save Kallu because he was not carrying a *lathi* or *danda*.

10. P.W.2, Sudisht Singh (Head Constable), is the scribe of the *chik* FIR. He has stated that he prepared the *chik* FIR on the basis of the verbal account of the informant, and, thereafter, entered its gist in G.D. No. 23 on the same day. He has proved the *chik* FIR (Ext. Ka-1) and the copy of G.D. No. 23 (Ext. Ka-3). He has further said that no cognizable or non-cognizable report was entered on 23.05.1985 between 10:25 a.m. and 10:25 p.m.

11. P.W.3 Bharat Singh (Constable) is also a formal witness, who conveyed the dead body of the deceased Kallu from the

place where the inquest was held to the mortuary for *post-mortem* examination.

12. P.W.4 R.N. Singh (Inspector) is the Investigating Officer of the case. He has deposed regarding the investigation conducted by him and stated that the written report was lodged in his presence. Thereafter, he proceeded to the place of occurrence where the inquest was done under his supervision and an inquest report prepared. He has proved the inquest report as Ext. Ka-4 and the connected papers, namely *photo-nash*, *challan-nash*, letter to the C.M.O., and letter to the R.I., as Ext. Ka-5 to Ext. Ka-8, respectively. He has further said that he searched for the accused and arrested Bakuni on the same day, while the remaining accused could not be found at that time. He recorded the statements of the informant and other witnesses, inspected the place of occurrence on the same day, and prepared the site-plan, which he proved as Ext. Ka-9. He also collected samples of blood-stained earth and plain earth from the spot, kept them in separate boxes, and prepared the recovery memo, which he proved as Ext. Ka-10. On 25.08.1985, he arrested the remaining accused and recorded their statements. Upon completion of the investigation, he submitted the charge-sheet before the Court on 31.05.1985, which he proved as Ext. Ka-11.

13. In his cross-examination, P.W.4 has stated that the distance and direction from the place of occurrence to the police station are not mentioned in the inquest report. In the *challan nash*, the distance is shown as 4 km, but the direction is not mentioned. In the *chik* FIR, this distance is mentioned as 3 km.

14. P.W.-5, Dr. N.K. Saxena, conducted the *post-mortem* examination upon the deceased's cadaver. He has said that on 24.05.1985, he was posted as the Senior Medical Officer, Tej Bahadur Sapru Hospital, Allahabad, and on that day, at about 5:30 p.m., he conducted the *post-mortem* examination of the deceased. The deceased was about 50 years old and had died approximately one and a half to two days earlier. He found the following *ante-mortem* injuries on the body:

“(i) Contusion measuring 6 cm × 5 cm on the back of the left forearm.

(ii) Lacerated wound measuring 7 cm × 4 cm, bone deep, on the left side of the chin; the mandible bone was fractured.

(iii) Lacerated wound measuring 3 cm × 1 cm, bone deep, just above injury no. 2, involving fracture of the lower mandible.

(iv) Lacerated wound measuring 2 cm × 2 cm, bone deep, above the nose.

(v) Lacerated wound measuring 5 cm × 2 cm, bone deep, above the left eyebrow; the underlying bone was fractured.

(vi) Lacerated wound measuring 4 cm × 2 cm, bone deep, on the left side of the head 10 cm above the left ear.

(vii) Contusion measuring 9 cm × 6 cm on the left forehead.”

In the internal examination, he found that the scalp bone was fractured under injury nos. 4 and 5. There were fractures of the anterior and middle cranial fossa. In the opinion of the doctor, the

cause of death was shock and unconsciousness as a result of the *ante-mortem* injuries. He proved the *post-mortem* report as Ext. Ka-12 and stated that the death could have occurred on 22.05.1985 between 9:00 and 10:00 p.m. Injury no. 6 could have been caused by falling on any pointed hard object. All the injuries except injury no. 6 could have been caused by *lathi* or *danda*. Injury no. 6 was bone-deep and, in the ordinary course, could have been caused by a sharp-edged weapon. He received the papers on 24.05.1985 at 4:30 p.m., and the dead body had reached the mortuary on the same day at 9:00 a.m. Injury no. 6 could also have been caused by falling on a sharp-edged brick.

15. The prosecution has produced following documentary evidence in support of its case i.e. Ext. Ka-1, FIR, Ext. Ka-2, G.D. No.17, Ext. Ka-3, G.D. No.23, Ext. Ka-4, inquest report, Ext. Ka-5, photo nash, Ext. Ka-6 challan nash, Ext. Ka-7 and Ext. Ka-8 two letters to C.M.O., Ext. Ka-9, site plan, Ext. Ka-10, recovery memo of bloodstained and plain soil, Ext. Ka-11, charge-sheet and Ext. Ka-12, postmortem report.

16. After closure of prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C., wherein they denied the prosecution case and stated that false evidence had been adduced against them and that the case had been lodged against them due to enmity. The accused did not produce any evidence in their defence.

17. The learned Trial Court, after hearing both the parties and examining the evidence on record, came to the conclusion that the prosecution had been able to prove

its case beyond reasonable doubt. It was observed by the Trial Court that the conduct of P.W.1, Batuni was natural and his explanation for not reporting the matter to the Police and coming back to the place of occurrence the next morning, is reliable. The Trial Court also observed that the presence of P.W.1 Batuni should not be disbelieved on the ground that he fled the spot. As a result, all the appellants were held guilty and convicted for the offence punishable under Section 302 read with Section 34 I.P.C., and sentenced to undergo imprisonment for life.

18. Heard Mr. Ram Awadh Mishra, learned Counsel for the appellants, Mr. Ghanshyam Kumar, learned Additional Government Advocate-I on behalf of the State and perused the record.

19. It is argued on behalf of the appellants that it was a blind murder and nobody witnessed the incident. The appellants have been falsely implicated in this case due to enmity. It is further submitted that the presence of P.W.1, Batuni, at the place of occurrence, is highly doubtful. He is a relative of the deceased and an interested witness. His conduct is very unnatural, and, therefore, his testimony cannot be relied upon.

20. On the other hand, it is submitted on behalf of the State that the prosecution has proved its case beyond reasonable doubt. P.W.1, Batuni is an eye-witness of the incident, before whom the appellants had taken away the deceased and battered him. When the informant objected, he was chased by the appellants, whereupon he fled the spot. On the next day, the dead body of the deceased was found at the same place. Therefore, it is the appellants, who without doubt murdered the deceased. It is

further submitted that the ocular testimony is supported by the medical evidence. Hence, this appeal has no force and is liable to be dismissed.

21. In a criminal trial, the burden of proof always lies upon the prosecution to prove their case beyond reasonable doubt. In the instant case the first part of incident is alleged to have happened before the informant. There is nobody who saw the appellants committing the murder of the deceased. According to the prosecution, P.W.1, Batuni saw only the earlier part of the incident where Kallu was assaulted with sticks (*lathi* and *danda*) by the appellants, and the appellants did not commit the murder in his presence. It is not in dispute that the deceased, Kallu, and the informant, Batuni, are real brothers. Therefore, P.W.-1, Batuni is relative and an interested witness. With regard to witnesses, who are relatives of the victim, the law is well settled that their testimony cannot be discarded on the sole basis that they are relatives and no good witnesses. But, it has to be examined carefully.

22. In the present case, the place of occurrence is not challenged by the defence. In this case, the incident took place on the road near village Sajhagarh. According to the *post-mortem* report, there were seven *ante-mortem* injuries on the body of the deceased, consisting of contusions and lacerated wounds. On internal examination, fractures of the skull bone and the middle cranial fossa were found. The cause of death was shock and coma resulting from *ante-mortem* injuries. Therefore, it is evident that the death was not natural and that the deceased was murdered. The next question is whether the appellants were the persons, who committed the murder of the deceased.

23. To prove this, the prosecution has produced only one witness of fact, namely P.W.2, Batuni, the brother of the deceased. In view of the statement of P.W.1, Batuni, his testimony is not trustworthy, rather it is unreliable. According to P.W.1, on the fateful night when he along with deceased Kallu, and Heera were going along with the appellants and reached near village, Janjhangarh at about 10:00 p.m., appellants quarrelled with the deceased regarding his father, Muneshara's murder. Thereafter, all the four appellants beat him up with sticks (*lathi* and *danda*). When the informant and Heera objected, the appellants chased them. They ran and reached at Heera's dera in Gulamipur. He said that he reached the place of occurrence the next day at about 9:00 a.m. and saw the deceased lying dead. It is highly unnatural for the informant that after witnessing the appellants, beating his brother, Kallu, he ran away and stayed the entire night at the *dera* in Gulamipur with Heera and made no effort to find out what happened to his brother. It has come in his statement that there was a police outpost at Bharwai about one and a half miles away from the place of occurrence. He has admitted that he did not go to the Police outpost to give information that his brother was being beaten. It has also come in his evidence that instead of going to the Police outpost, he went to Gulamipur, the distance of which was more than double, being about four miles away from the place of occurrence. He has further said that in Gulamipur, he informed Mewa Lal, village Pradhan, about the incident and asked him to go there. There is no evidence on record that either of them bothered to go to the place where the deceased was being assaulted. On the other hand, if he suspected that it was a serious matter then he should have informed the Police or insisted the Pradhan to call help or garnered

the support of some people and returned to the place of occurrence. Here, it is also relevant that according to the informant, the appellants asked the deceased to accompany them, then there was no reason for the informant and Heera to go with them. Why did informant and Heera go with them is not disclosed. If the alleged incident had actually happened before the informant, then it is highly unlikely that he would run away and stay the entire night at Gulamipur without inquiring about the whereabouts of his brother. A natural reaction for him would have been to wait for some time for the return of his brother Kallu, and if he did not return within a reasonable time, the informant would have gone to the place of occurrence to know what had actually happened to him. The above conduct of the informant raises serious doubt about his presence at the place of occurrence.

24. It has also come in the evidence of P.W.1, Batuni, that he did not try to save his brother, Kallu, when the accused commenced assault. It is highly unlikely that he would not have come forward to defend his brother, if there. It has further come in his evidence that the informant did not receive any injury in the incident nor raised alarm. When the informant and the deceased were real brothers and the appellants had suspicion that their father, Muneshara, was killed by the deceased's father (who was also the father of the informant) then it is quite surprising that the appellants would take revenge only upon Kallu and spare the informant, his real brother.

25. In **Hem Raj v State of Haryana 2005 (10) SCC 614**, the Supreme Court has held that non-examination of independent witness by itself may not give rise to an

adverse inference against the prosecution. However, when the evidence of the eye-witnesses raises serious doubt about their presence at the time of occurrence, the unexplained omission to examine independent witnesses would assume significance. The authority squarely applies to the present case. In the present case there was Heera, who according to prosecution, was an eye-witness and was there with the informant and the deceased at the place of occurrence. The prosecution has not produced him in evidence and discharged him from testifying in Court. As the evidence of P.W.1, Batuni is found not reliable and the prosecution has not explained why the other eye-witness was not examined. This aspect of the matter assumes significance and lends to an adverse inference about the prosecution case.

26. With regard to motive for the appellants to commit the murder, it is submitted on behalf of the State that the appellants had harboured a grudge against the deceased on account of suspecting that the deceased's father was involved in the murder of their father, Muneshra. This served as the motive for them to commit the crime. The above contention on behalf of State has no force. According to P.W.-1, Batuni, Muneshara was murdered long ago, and his sons, that is, the appellants Chhikani, Rahise and Bakuni, suspected that he had been murdered by the deceased's father. In his cross-examination, he has spoken contrarywise and said that Muneshara's murder was not discussed with his sons and the relations between them have been cordial. He has also said that when they grew up, there was no such animosity between the parties. He has further said that even his brother, Kallu, had married his daughter to the son of the

appellant, Nazir. If this part of the informant's testimony were accepted, there is no reason to believe that there was any enmity between parties and the appellants would raise the old issue of their father's murder at the time of the incident and assault Kallu, particularly when the latter had married his daughter in the family of appellant, Nazir, and ultimately kill him. It has also come in his evidence that before the alleged incident, there was no quarrel or dispute between parties regarding the murder of Muneshara. Thus, the motive alleged to commit murder is very weak. Beside this, from the evidence on record there is no immediate cause or motive which could have prompted the accused to commit such a crime. Therefore, on this account also, the prosecution case is weak and not reliable.

27. In view of the above discussion, the presence of P.W.1, Batuni, at the place of occurrence, is highly doubtful. Therefore, there is no reliable evidence that the deceased was last seen with the appellants before his murder. It appears that Kallu was murdered by someone else at an unknown time. It is a blind murder, and the appellants have been falsely implicated in this case. According to the prosecution, the incident occurred at a lonely place where there is no habitation nearby. It was in the dark of night that Kallu was murdered.

28. In view of the above discussion, we come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and the Trial Court failed to appreciate the evidence on record correctly and findings of guilt were recorded by the Trial Court on surmises and conjectures and on incorrect appreciation of evidence. Thus, the impugned judgment and order of

conviction and sentence passed by 5th Additional Sessions Judge, Allahabad in Sessions Trial No. 308/86 is liable to be set aside. Therefore, the instant criminal appeal is **allowed**. The impugned judgment and order dated 21.03.1990 passed by the Trial Court is **set aside** and the surviving appellant, Bakuni acquitted of the offence punishable under Section 302/34 IPC.

29. The appellant No.3, **Bakuni** is in jail. He is directed to be released forthwith, if not wanted in any other case.

30. Let a copy of this order be sent to the trial Court concerned alongwith the Trial Court record for information and necessary compliance.

(2025) 12 ILRA 65

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 12.12.2025

BEFORE

**THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE ABDHESH KUMAR
CHAUDHARY, J.**

Criminal Appeal No. 967 of 2012

**Paras Nath Sahu & Anr. ...Appellants
Versus
State Of U.P. ...Respondent**

Issue for consideration

Discretion of Court to award punishment u/s 304-B I.P.C.

Headnotes

Indian Penal Code-sec 304-B-deceased burned to death by her husband and her father-in-law-not mandatory for the Courts to award life imprisonment in every case-Courts could award sentence in exercise of it discretion between seven years to life imprisonment-must not be less than 7 years and the extreme punishment of life terms should be awarded in

'rare cases'-ends of justice if the maximum sentence of life is reduced to the period already undergone.

Appeal partly allowed. (E-9)

Case Law Cited

1. Hem Chand Vs State of Haryana, reported in (1994) 6 SCC 727
2. State of Karnataka Vs M.V Manjunathe gowda & Anr. reported in (2003) 2 SCC 183
3. G.V. Siddaramesh vs State of Karnataka, reported in (2010) 3 SCC 152
4. Hari Om v. State of Haryana, reported in (2014) 10 SCC 577

List of Acts

Indian Penal Code

List of Keywords

Dowry death, culpability of the convict, amount of punishment

Appearances of parties

Counsel for Appellant(s) : Akhilesh Chauhan, Abhishek Tiwari, Ashok Kumar Singh, Chandresh Mani Shukla, Hemant Tripathi, Pranav Trivedi, Raj Baksh Singh, Rajendra Prasad Mishra, Ravi Shankar Mishra, Shantanu Mishra, Smt.Suman Lata Singh.

Counsel for Respondent(s) : Govt Advocate

(Delivered by Hon'ble Rajesh Singh Chauhan, J.

&

Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as to 'Cr.P.C.') has been filed by the appellants/accused Paras Nath Sahu and Umesh against the judgment and order dated 29.06.2012 passed by the Sessions Judge, District Pratapgarh, in Sessions Trial No. 273 of 2009 (*State Vs. Paras Nath Sahu and another*) arising out of Crime No. 143 of 2008, wherein they have been convicted and sentenced for punishment for the substantive offence under Section 304-

B I.P.C. for imprisonment of life, under Section 498-A I.P.C. for three years rigorous imprisonment along with fine of Rs. 3000/- to each and in default of fine, one-year additional imprisonment and one-year of rigorous imprisonment along with fine of Rs. 2000/- to each, under Section 4 of the Dowry Prohibition Act and in default of fine six months' additional imprisonment. The benefit of Section 428 of the Code of Criminal Procedure, 1973 relating to concurrent running of all the said sentences of conviction has also been granted to the appellant by the Ld. Trial Court.

CASE OF THE PROSECUTION

2. The case of the prosecution as elaborated by the learned Trial Court in the impugned judgment is briefly enumerated as herein under:

2.1 The complainant, Banshilal Gupta (P.W.-1), son of Mohanlal Gupta, resident of Shivani Ka Purwa, Vihar, Police Station Baghrai, District Pratapgarh, filed a written report (**Exhibit-Ka-1**) at Police Station- Baghrai on August 19, 2008, at 9:00 AM, leading to registration of a F.I.R. (**Exhibit-Ka-3**), stating inter-alia that he had arranged the marriage of his daughter, Sangeeta Devi, aged 21 years, with Umesh (Appellant No.2), son of Paras Nath Sahu, (Appellant No.1), resident of village Dandwa, Namdevpur, Police Station Baghrai, District Pratapgarh.

2.2 It was stated therein that ever since the wedding, which had been about three years ago, the daughter's husband, Umesh, and his father, Paras Nath, constantly harassed and physically abused Sangeeta, demanding dowry and asked her to go and bring a gold chain and money,

which her daughter repeatedly told to her mother, brother and relatives. It was also stated by the *defacto*- complainant that his son-in-law(Umesh/Appellant No.2) is a habitual alcoholic.

2.3 It was also stated in the said F.I.R. that on August 19, 2008, at around 6:30 AM, his another son-in-law, Banwari Lal, son of Chedilal, a resident of Mangalpur, Police Station- Baghrai District-Pratapgarh came to his house and informed that his daughter Sangeeta (since deceased) had been burned to death by her husband Umesh and her father-in-law Paras Nath, due to demands of dowry and the dead body is lying in her matrimonial home.

2.4 The complainant along with his son-in-law (Banwari Lal) accompanied by other relatives arrived at the place of incident, wherein they came to learn that the incident had taken place last night.

3. Based on the aforesaid written report (**Exhibit-Ka-1**) filed by Banshilal Gupta (P.W.-1), Head Constable Sanjay Shukla at Police Station- Baghrai registered a chik preliminary information report (**Exhibit-Ka-3**) regarding this incident, which he referred in General Diary, Entry No. 4 and filed a permanent case dated 19.08.2008 at 9:15 AM (**Exhibit-Ka-4**).

4. The inquest report of the deceased-Sangeeta Devi was prepared by Ram Kewal Tripathi, Nayab Tehsildar, Manikpur. On his instructions, the Sub-Inspector of the concerned police station seized the deceased's belongings from the crime scene, including an empty 5-liter kerosene can, a matchbox and loose matchsticks soaked in kerosene, which were lying near the body. He also seized a green and purple colored shirt, an iron

tongs, and strands of hair scattered near the body, and prepared a seizure memo (**Exhibit-Ka-13**). He prepared the sample seal (**Exhibit-Ka-6**), letter of Reserve Inspector (**Exhibit-Ka-7**), letter of Constable (**Exhibit-Ka-8**), Photographs (**Exhibit-Ka-9**) and CMO report (**Exhibit-Ka-10**), and after duly sealing the dead body, sent the same to the District Hospital, Pratapgarh for post-mortem examination.

5. Postmortem of the dead body was conducted by Dr. Padmakar Singh (P.W.-3), who also prepared and signed the postmortem report (**Exhibit-Ka-2**).

6. During investigation, the Investigating Officer/Circle Officer Sadar, Ms. Rashmi Mishra recorded the statement of the witnesses and on the pointing out of the complainant (P.W.-1), and after investigating the place of occurrence, site plan (**Exhibit-Ka-12**) was prepared. After completing the formalities of investigation, the Investigating Officer filed the charge-sheet on 10.09.2008, against the appellants (i) Paras Nath Sahu and (ii) Umesh, under Sections 498-A, 304-B I.P.C. and 3/4 of the Dowry Prohibition Act (Ex. Ka- 11).

PROCEEDINGS BEFORE THE TRIAL COURT

7. The case came to be committed to the Sessions Court *vide* an order dated 24.08.2009 and to the charges framed against both the appellants on 02.11.2009, both of them pleaded not guilty and claimed Trial.

8. The prosecution, in order to prove its case, have examined seven witnesses. The details of the witnesses being: -

P.W.-	Banshi Lal	Complainant/father

1		of the deceased
P.W.- 2	Kalawati	Complainant's wife/mother of the deceased
P.W.- 3	Dr. Padmakar Singh	Doctor who conducted postmortem examination of the dead body of the deceased.
P.W.- 4	Constable Sanjay Kumar Shukla	Scriber of the First Information Report and entry in the G.D.
P.W.- 5	Sri Ram Kewal Tripathi	Nayab Tehsildar Manikpur, who prepared the inquest report and on whose instruction recovery memo was prepared by the concerned police station.
P.W.- 6	Smt. Rashi Mishra	Investigating Officer/Circle Officer Sadar The Investigating Officer who prepared site plan and charge sheet against the accused/appellants.
P.W.- 7	Sri Ram Kewal Tripathi	Nayab Tehsildar Manikpur, who has already been examined as P.W.-5

9. Apart from the oral evidence led by the prosecution, various documents have also been exhibited and proved running from **Exhibit. Ka-1** to **Exhibit. Ka-12**.

10. Thereafter, the statement of the accused/appellants were recorded under Section 313 of the Cr.P.C. on 14.07.2011 and additional statements of the accused/appellant were recorded on

01.05.2012, wherein they denied the fact of being involved in the present incident and setting ablaze of the deceased- Sangeeta. In their statements recorded under Section 313 Cr.P.C. and in additional statements, both the accused persons have admitted that marriage of the deceased-Sangeeta and appellant no. 2 -Umesh was solemnized three years ago, however, they denied allegations made by the complainant/father of the deceased in the F.I.R. and allegations made by the P.W.-2 mother of the deceased. In their additional statements, they have also denied the opinion of the Doctor-Padmakar Singh, P.W.-3 and claimed that this is the false case against them with the ulterior motive to harass them. They also chose to lead defence evidence.

11. However, none of the accused/appellants produced any defence witnesses in their favour.

12. After hearing the arguments of both the sides and on basis of the evidence available on record, the Learned Trial Court returned a finding that the oral and documentary evidence placed before the Court by the prosecution were found adequate for successfully proving the entire chain of whole evidence from beginning to end in a coherent manner. The Trial Court rejected the defence version made during trial that the wife committed suicide because of her husband being alcoholic. The Trial Court also rejected the version of the defence that the dowry accusation was presumably to be customary in their culture for the son-in-law to get upset and demand something. The version of the defence that the present incident was a suicide case, as no one came from the parental home of the deceased to invite her for Raksha Bandhan was also repelled by the Ld. Trial Court.

The doctor's opinion was believed to be correct to the effect that the deceased received ante-mortem injuries and she was burnt after her death. The Ld. Trial Court meticulously after shifting through the evidence brought on record, went on to conclude that since the surrounding objects were not burned, and the body was superficially burnt from head to toe, the same indicated that the burning occurred after death and concluded that the statement of the appellant recorded under Section 313 Cr.P.C. to be totally false and without any supporting evidence.

13. Along-with analyzing the evidence available on record, the Learned Trial Court has also decided the case on the basis of three ingredients needed to attract the penal provisions of Section 304- B I.P.C. Those points being (i) that the death must have occurred within seven years of the marriage; (ii) that the death of the deceased may have occurred in unusual and unnatural circumstances and (iii) demand of dowry has been made just before the death. According to the learned Trial Court, the chain of all these three point formed an unbreakable chain pointing towards the culpability of the appellant, since the death occurred within 3 years of the marriage, and the death of the deceased being found in unnatural circumstances as the body was found burnt in a location where surrounding objects were not burnt and no plausible explanation or evidence was led by the appellants to discharge the presumption under Section 113 B read with Section 106 of the Indian Evidence Act. Thus, the Ld. Trial Court recorded its full satisfaction for holding the guilt of both the appellants and as such awarded the maximum punishment of imprisonment for life under Section 304-B I.P.C., three years under Section 498-A I.P.C. and one year

under Section 4 of the Dowry Prohibition Act, 1961.

PROCEEDINGS BEFORE THIS COURT

14. Being aggrieved by the aforesaid conclusion of the learned Trial Court, the present appeal being Criminal Appeal No. 967 of 2012 came to be filed by the appellants- Paras Nath Sahu (Appellant No. 1) and Umesh (Appellant No. 2).

14.1 In the first bail application filed by the appellants along with the present appeal, the appellant no. 1- Paras Nath Sahu being father-in-law and old aged, was granted bail but the Court rejected the prayer for grant of bail to the appellant no. 2-Umesh vide common order dated 21.03.2013. The second bail application of the appellant no. 2 was rejected for want of prosecution *vide* order dated 26.03.2015 and the third bail application came to be rejected *vide* order dated 13.04.2022, by a Co-ordinate Bench of this Court on the ground that before death of the deceased-wife of the appellant no. 2, she was administered poison and thereafter, she was burnt to death, which was clear from the viscera report. The Coordinate bench concluded that, since as per the postmortem report burn injury was found on the body of the deceased and the burden of proof was on the appellant no. 2 according to the provision of Section 113-B of the Evidence Act, which could not be discharged. The fourth bail application of the appellant no. 2 was rejected *vide* order dated 05.04.2024 on the ground of absence of any new ground.

14.2 However, the fifth bail application of the appellant no. 2- Umesh (husband) was filed but while arguing the

bail application, Mr. R.P. Mishra, learned counsel for the appellant has also pressed that since the paper book has been prepared and the actual period of incarceration of the appellant no. 2 was more than 15 years and 2 months (or 18 years 7 months including remission) as per the Custody Certificate issued by the Jail Authorities, therefore, the appeal may be heard and decided on its merits and prayed that the 5th bail application may be dismissed as being not pressed. Consequently, the bail application was dismissed being not pressed and the appeal has been heard on its merits.

14.3 It was also informed by the Ld. Counsel for the appellant that during the pendency of the present appeal, the appellant no.1 (Paras Nath Sahu) has left for his heavenly abode and as such although the present common appeal has been filed by both the appellants, however, for all technical purposes the appeal *qua* the deceased appellant no.1 may be construed as abated.

14.4 Thus, according to him the present appeal may be considered *qua* the appellant no.2 (Umesh) only.

SUBMISSION ON BEHALF OF THE PARTIES

15. Sri R.P. Mishra, learned Advocate assisted by Sri Aditya Mishra, Advocate for the appellant has submitted that the impugned judgment dated 29.06.2012 is illegal, perverse and have been passed only on surmises and conjectures. He has submitted that there is no evidence on record regarding cruelty of the deceased for demand of dowry, as there is no injury on the body of the injured. It is next contended that there is also no evidence regarding demand of dowry immediately before the

incident nor there is any injury on the body of the deceased, so as to attract the provisions of Section 304B I.P.C. It is next contended that there are several contradictions and infirmities in the statements of PW-1 and PW-2 and there is no definite opinion regarding the death of the deceased. According to the learned counsel, the appellant has been made liable merely on the basis of suspicion and as such is entitled to be acquitted from all the charges levelled against him. It is lastly contended that there is no definite opinion regarding administering of poison, as there is no medical report nor any visible sign which suggest that the poison was administered to the deceased by the contesting appellant.

16. Learned counsel for the appellant vehemently argued above sentence being highly excessive and not in commensurate with degree of offence. He has also sought to draw the attention of this Court to the evidence of P.W.-3 Dr. Padmakar Singh, who has conducted postmortem of the dead body of the deceased and according to the learned Counsel, the postmortem report clearly mentions that the cause of death could not be ascertained and as such viscera was preserved, however, it was mentioned in the postmortem examination report that the deceased has received burn injury after her death, which according to him is contradictory to each other. Thus, he submits that since the appellant is being connected to the offence of murder, due to invocation of the provisions of presumption under Section 113-B read with Section 106 of the Evidence Act, therefore, it is his submission that a reading of the prosecution witnesses and the material brought on record, reveals that there are various missing links and as such the appellant cannot be convicted in the

absence of the completion of chain, which is a *sine quo non* for any case to be proved by circumstantial evidence. Thus, he prays for setting aside of the judgment dated 29.06.2012 passed by the Sessions Judge, Pratapgarh in Sessions Trial No. 273 of 2009 and prays for the acquittal of the appellant in the present case and in the alternative prays for leniency, as the appellant- Umesh has already spent more than 18 years and 7 months in Jail, though Section 304B I.P.C. prescribes a minimum punishment of 7 years only and he has an old mother and a young girl child of marriageable age, born out of the wedlock with deceased to support. Further, there is no criminal history and he has a sense of repent for not saving his wife.

17. *Per contra*, Sri S.P. Singh, learned A.G.A. for the State has submitted that the deceased committed suicide at her matrimonial home as she was administered poisonous substance (*Aluminum Phosphide*) and the deceased died under unnatural circumstances. He has submitted that it is also the statement of the doctor/PW-3 that the body was burned after the death. It is further submitted that the prosecution has fully established that the death of the deceased was done under unnatural circumstances, within three years of the marriage and soon before her death, she was subjected to harassment and cruelty due to demand of dowry and as such the appellant has been rightly convicted under Section 304B I.P.C. and Section 4 of Dowry Prohibition Act and on perusal of the judgment, it reveals that the prosecution has clearly established the charges levelled against the appellant and the prosecution has been successful in proving the guilt beyond any reasonable doubt, against the appellant and as such, he has been rightly convicted and sentenced to

the maximum punishment under Section 304-B of the I.P.C. Thus, he prays for dismissal of the appeal.

ANALYSIS AND FINDINGS

18. Heard the learned Counsel for the parties and perused the materials on record.

19. The present appeal has been filed against conviction of the appellants under the following provisions:

Section 304B I.P.C.	Punishment for life	Fine of Rs. 3000/-, in default 1 year additional Imprisonment
Section 498A I.P.C.	3 years R.I.	Fine of Rs. 3000/-, in default 1 year additional Imprisonment
Section 4 D.P. Act	1 years R.I.	Fine of Rs. 3000/-, in default 6 months additional Imprisonment

20. Section 304B I.P.C. is relating to Dowry Death, which is a social and cultural menace, which ensues from the ill practice of dowry in our society. The cultural practice of dowry has assigned a secondary status to women leading to various social ills, which often forces her to continue in abusive marriages either due to family or peer pressure or at times due to her own accord. No doubt, various laws have been enacted providing equal level playing ground for women in all sphere of life, whether it is education, employment or property rights, however, the urge to curb and rein in this dowry practice was needed,

which led to the enacting of the Dowry Prohibition Act, 1961. Even this Dowry Prohibition Act, which made the offering or accepting of dowry illegal, remained ineffective as the practice of dowry thrived unabated, irrespective of the caste or class. It was in this supervening background that Section 498A I.P.C. came to be inserted in the year 1983, which made the ill-treatment of women by her husband or in-laws, a punishable offence. Apparently, the said insertion also did not make much wonders, leaving the legislature to enact more stringent and heavier provision for curbing the said menace of dowry, leading to the insertion of Section 304B in the Indian Penal Code, which made dowry death punishable for a minimum sentence of 7 years and also a maximum punishment for life and raised a presumption against the person for all kinds of unnatural deaths, if the same has been occasioned within seven years of marriage, under Section 113-B of the Indian Evidence Act. Both these Sections were inserted in the year 1986 and ever since then, contrary to the ordinary fundamental cannon of criminal jurisprudence of 'presumption of innocence' that prosecution ought to prove the case beyond reasonable doubt stands transformed to 'presumption of guilt,' if certain conditions are fulfilled as per Section 304-B of the I.P.C. for culpability of the accused person. The law states that a foundational fact has to be merely proved against the accused person and by virtue of the legal presumption, the burden of proof stands shifted to the accused to prove his innocence by explanation and evidentiary proof, in view of Section 113 B of the Indian Evidence Act.

21. The Hon'ble Supreme Court in the case of *Kashmir Kaur & Ar. V/s State of Punjab*, reported in *2012(13) SCC 627*;

after tracing the law and various judgments on dowry death, culled out the following principles at paragraph 16 of the said judgment as follows:

“16. From the above decisions the following principles can be culled out:

(a) To attract the provisions of Section 304B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for

the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act.

(i) Therefore, the expression “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

(j) However, the expression “soon before” should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

(k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied.

(m) The specific significance to be attached is to the time of the alleged

cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.”

22. Keeping the above principles in mind, this Court proceeds to marshal the evidence and material brought on record by the prosecution, so as to examine the culpability of the appellant under Section 304B I.P.C. , 498A I.P.C. read with Section 4 of the Dowry Prohibition Act, 1961.

23. PW-1 (Bansi Lal) is the father of the deceased and PW-2(Kalawati) is the mother of the deceased. PW-1 is the *de-facto* complainant of the FIR and has stated that he got his daughter (deceased-Sanageeta Devi) married to Umesh (Appellant No.2) about three years prior to the incident. He stated that there was no dowry demand during the marriage, however, on the next day of marriage, on the occasion of Khichdi (ritual performed on the next day of marriage), the Convict-Umesh (Appellant No.2) demanded Rs. 10,000/- and a Gold chain, wherein PW-1 expressed his inability to meet the said demand with folded hands. It has also been stated that when PW-1 approached the father of the Convict- Umesh, even his father/ co-convict (now deceased during pending appeal), he came for a rude shock as he supported his son and told PW-1 to meet the demand of convict-Umesh, wherein again he expressed his inability with folded hands. According to PW-1, it was with great pampering and effort that convict- Umesh performed the Khichdi ritual and then took the bride/deceased to her matrimonial home. The said witness

has also stated that when his daughter came back from her matrimonial home after 15 days, she told her father/PW-1, mother/PW-2 and her brother about taunting for not bringing the dowry of Rs. 10,000/- and Gold Chain. According to PW-1, his daughter was harassed and beaten at her matrimonial home for not bringing the said dowry of Rs. 10,000/- and Gold Chain, which was disclosed to him, whenever she visited her parental home and even when PW-1 personally visited the matrimonial home of the deceased. The said witness has also stated that his deceased-daughter had gone merely seven days before from her parental home to her matrimonial before the said incident, wherein after she was burnt to death in the intervening night of 18/19.08.2008. He has exhibited the *Tehrir* (**Exhibit- Ka—1**) and confirmed the date of incident. The version of this witness remained intact, although, he has been put to extensive cross-examination. There appears to be no inconsistency in the statement made by the said witness.

24. Similarly, PW-2(Kalawati) is the mother of the deceased. She has stated that her daughter was married to convict-Umesh three years before the incident. She also supported the version of demand of dowry of Rs. 10,000/- and a Gold Chain and deposed that the deceased have been continuously harassed by her in-laws for that said reason. She stated that her deceased daughter had told her that she was being beaten for not bringing the said dowry. In her examination in-chief, this witness states:

“मरने से एक हफ्ता पूर्व मेरी लड़की मैके से ससुराल गयी थी। उस समय भी जंजीर व रुपये की मांग करते तथा न जाने के कारण मारने पीटने की बात बतायी थी और बताया कि उमेश शराब पीकर के मारते थे व बिना शराब पिये भी मारते थे।”

25. The statement of both the witness appears to be natural and their statement remained intact, although they were subjected to extensive cross-examination. Both the witness stood the test of veracity and this Court does not find any reason to disbelieve the version of the parents, who had lost their beloved 21 years old married daughter, in the hands of menance of dowry.

26. Further, PW-4 (Constable Sanjai Kumar Shukla) is the witness, who proved the FIR (**Exhibit Ka-3**) having been recorded on the basis of *Tehrir* given by PW-1 and recorded in his own handwriting in the G.D. (**Exhibit- Ka-4**). PW-5 (Ram kewal Tripathi) is the Naib Thesildar, who has proved the Inquest report (**Exhibit-Ka-5**) to have been written in his own hand-writing. The said witness along with other witnesses, visited the crime spot and on his instruction recovery memo was prepared by the concerned Police station and the dead body was sent for post-mortem. The said report mentions the date, time and place of dead body. It also mentions that one kerosene oil plastic empty jerking, match box and strewn match sticks, unburnt hair, one shirt green colour, etc. were recovered from the crime spot (**Exhibit Ka-13**). As far as the status of the body is concerned, the said report mentioned that the body was found lying on its stomach on the floor, with one bed-sheet covering the body. Altogether six *panchs* have signed the *panchayatnama*. One of the *panch* was of the opinion that the deceased had been killed and then burnt, whereas other *panchs* opined that the deceased committed suicide by setting herself on fire and mentioned that the body was recovered after breaking open the door, which was locked from inside.

27. The next, witness examined by the prosecution was PW-6 (Rashmi Mishra), who is the Investigating Officer of the present case and she has entered the witness box and gave statement related to recoveries (**Exhibit Ka-13**) made, site plan drawn (**Exhibit Ka-12**) and statement of witnesses recorded during investigation. She has collected various documents, including police photos, post-mortem report, Inquest report etc. She has also given statement related to sending of viscera to the forensic lab, Lucknow and obtaining the same on 12.01.2009. According to the said witness, the site plan was drawn on the marking of the Convict, wherein it was shown that the dead body was lying in a passage, which had two doors, which were both closed and it was the south door, which was broken open by people and body was recovered from the passage through the said door.

28. Therefore, the following uncontroverted facts evolve from the aforesaid version of PW-1 and PW-2:

I. The marriage of deceased with the convict-Umesh was three years old and as such the incident of death was within seven years of marriage. Besides, the evidence of PW-1 and PW-2, the said statement has not been controverted in the cross-examination, nor this Court finds any dispute relating to the years of Marriage. Further, both the convicts *i.e.* appellant no.1 and 2 have admitted to the said fact of having the marriage between the deceased and appellant no.2 (Umesh) being solemnized three years ago. Thus, since the death of the deceased is within 3 years of marriage, thereby the main condition prescribed under Section 304B *i.e.* death, within seven years of marriage stands fulfilled.

II. The dead body of the deceased was found in a passage of the house at her matrimonial home, as proved by the Inquest report (Exhibit Ka-5) and site plan (Exhibit- Ka-12)

III. There was demand of dowry immediately (seven days) before the incident of death as proved by PW-1 and PW-2. Although, the learned Counsel for the appellant has tried to create a doubt by pointing out the discrepancy in the said statement, in as much as PW-1 stated that the *factum* of coming of the daughter to her parental home, seven days prior to the said incident and telling about the demand of dowry, was not told to the police during investigation, but has been stated in the evidence recorded in the Court. This Court does not find the said inconsistency to be material, as the same has to be understood in the context the depositions were made. The said inconsistency cannot be termed as improvement of the version of PW-1 as it was reiteration of the fact that the dowry demand had been existing since the beginning of the marriage and remained unfulfilled for this three years of marriage until the death of the deceased.

IV. This Court is conscious that the usage of the word “soon” in Section 304-B I.P.C. ought not to be interpreted in terms of days or months or years, but as necessarily should indicate that the demand of dowry should not be stale or an aberration of the past, but rather should be a continuing cause for the death under Section 304B of the I.P.C. Once the presence of this concomitants are established or shown or proved by the prosecution even to their foundational effect by preponderance of possibility, the initial presumption of innocence is faded and replaced by an assumption of guilt by the deeming provision of law, thereby shifting the

burden of proof upon the guilty to dislodge his guilt beyond reasonable doubt as per Section 113B of the Indian Evidence Act, which inter-alia states as herein under:

113B. Presumption as to dowry death. -- *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death*

Explanation. For the purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).

29. As far as the explanation and evidence led by the convict to dispel the presumption raised against them under Section 113B of the Indian Evidence Act is concerned, this Court finds that statement recorded of the convicts under Section 313 Cr.P.C, both of them have admitted the *factum* of the marriage having been three years old. Although, a ground has been raised that some money was sought as a loan from the father of the deceased from convict no.1 and the deceased was adamant to get the demand of her father fulfilled and since the said demand could not be met, she committed suicide, however this Court finds that besides the stray allegations nothing has been brought on record to prove the said allegations. No defence witnesses has entered the witness box to prove the version of the convict persons. The demand of dowry of Rs. 10,000/- and gold chain existed even before seven days of death of the deceased i.e. soon before her death.

30. The next question which falls for our consideration is the cause of death

because Section 304B of the I.P.C. inter-alia states:

304B. Dowry death. -- (1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

31. As far as the cause of death of the deceased is concerned, there appears to be two versions in the Inquest report. The first being, wherein one of the *panchs* has stated that the deceased was killed and thereafter set on fire, whereas on the other hand most of the *panchs* have stated that it was a suicide case, wherein the deceased after closing the door from inside, set herself on fire. To understand both the proposition, this Court has examined two documents i.e. (i) Inquest Report (**Exhibit-Ka-5**) and (ii) Site Plan (**Exhibit- Ka-12**) and the relevant deposition of the witnesses. The inquest report mentions the status of the dead body, which says that the body had only a petticoat on her, while she was lying dead by the side of her stomach on the ground.

The kerosene Jar of 5 Litres along with strewn matches and matchbox was also found from the spot near the dead body. Presumably, the second version of suicide is to be believed, the manner in which the dead body was found i.e. in a semi-nude condition (for no one would become nude and put herself on fire) and the location of the dead body from where it was recovered i.e. in the passage locked by two doors, one in the north and the other in the south, creates a serious doubt on the suicidal story. Although, the *panchs* have indicated in their *panchayatnama*, that they have seen the dead body after breaking open the south door, but nothing has been told about the north door as to whether it was locked from inside or outside. Further, it can be seen from the Site-plan that the passage is located near the kitchen and two rooms and a verandah. Generally, kerosene oil is stored in the kitchen, then why if anyone wants to commit suicide would carry the kerosene oil to a passage (not even a room) and then lock the two doors of the passage (in kitchen or in room, there is only one door and it would had been easy to lock one door, than two as is found in passage) and become semi-nude and commit suicide by burning herself to death. Further, the recovery of the kerosene oil jar and the strewn matches on the floor and the kerosene oil spread over the said passage speaks that in case it was a suicide there would had not been unburnt match stick or jar or any clothes left in the said passage as they would had also been burnt altogether, as fire does not discriminate any thing or any one and it spreads equally to all corners. The selective burning of the body and the fire not spreading anywhere in the room, shows that it cannot be a suicide case. Moreover, it was quite strange that even the noise of the deceased while burning alive or committing suicide was

not heard by any of its neighbour, although it has come in the site-plan that there are many houses adjoining to the crime spot. There appears to be something amiss and flawed in the story of suicide built around the dead body and most importantly, if the story of suicide had any legs, it would had been any of the convicts, who would had informed the father of the deceased (PW-1) in the first place and/or had rushed the victim/deceased to doctor, in whatever condition, which is not the present case and would had been relevant evidence under Section 8 of the Indian Evidence Act.

32. Thus, this Court is led to rule out the suicidal theory and is prompted to look further for the real cause of death. At this stage the evidence of PW-3(Dr. Padmakar Singh), the doctor who conducted the post-mortem becomes handy and throws some light. The post-mortem report (Exhibit- Ka-2), mentions that there are superficial to deep burn present over face, head, neck and upper part of chest, left axilla and shoulder arm and forearm and upper part of arm and no other ante-mortem injuries are seen. It concludes by stating inter-alia that ***“even after careful post mortem, cause of death could not be ascertained, so vicera is being preserved”***. However, PW-3 in his examination-in-chief has stated that the deceased had burn injuries after her death and there was no cross-examination on the said point. The said witness was recalled for further examination under Section 311 Cr.P.C, and he, thereafter explained the reasons as to why he stated in his previous examination that the burn injuries were after the death of the deceased. He very well stated in his cross-examination that since there was no line of redness there could not be any death due to burn and even the lungs did not had carbon particles, which showed that the deceased did not die

due to burn injuries, although, he admits that these all facts have not been mentioned by him in the post-mortem report(**Exhibit-Ka-2**).

33. Although, the witness deposed that the death was caused prior to the deceased having put on fire, however the cause of death was still unknown and it is at this juncture that the viscera report from the forensic laboratory comes into the picture, which mentions vide its report dated 12.01.2009 that poisonous material *“Aluminium phosphate”* was found in the body of the deceased. The said forensic report has not been exhibited, however, in view of the express provisions of Section 293 of Cr.P.C., which allows certain reports from government scientific experts to be used as evidence in legal proceedings without the expert having to appear in the Court to testify can be read as evidence. The Hon’ble Supreme Court in the case of ***Rajesh Kumar & Anr. v/s State of NCT of Delhi***, reported in ***(2008) 4 SCC 493***; after referring to various judgments on the issue, held that as per provisions contained in sub-sections (1) and (2) of Section 293 of the Cr.P.C. it is not obligatory that an expert, who furnishes opinion on the scientific issue of the chemical examination of substance should be necessarily made to depose in proceedings before the Court. In the case in hand, the forensic report has been admitted during the recording of evidence of Investigating officer (PW-6). Such a document can also be marked on admission in view of Section 293 Cr.P.C. and used as evidence in the trial. Further, this Court finds that the defense has not even filed any application to summon the expert to disprove the same nor object to the manner the said forensic report has been admitted by the Investigating Officer. In any case, we find that the learned Trial

Court has not solely relied on the forensic report to convict the appellant. Even if, the said report is left out of consideration, the learned Trial Court has held the appellants to be guilty in view of unimpeachable evidence of other witnesses.

34. In view of the above, for the cause of death, we have the following proposition; firstly the story of suicide appears to be fallacious in view of other supervening circumstances. Secondly, the Inquest report and the *panchs* points towards the deceased sustaining fatal burn injuries. However, thirdly, the evidence of PW-3 (Doctor), points towards the death having been occasioned prior to burning, which means death was not due to burning and fourthly, the forensic report says that poisonous particles of *Aluminium phosphate* was found in the dead body of the deceased.

35. Therefore, by joining the dots, we have the following analogy for the cause of death in the present case. In consideration of the overall evidence brought on record, the death was primarily due to consumption of '*Aluminium Phosphate*' and thereafter, the body of the deceased was tried to be burnt, so as to pass off as a suicide case (*suicide because the door was found latched from inside*). Having said so, the appellant would have also been tried for causing disappearance of evidence of offence, punishable under Section 201 I.P.C., which fetches a punishment of upto seven years. However, we see that the said charges were not levelled against the convicts and rightly so, because there has been no investigation or any evidence led by the prosecution as to whether the administration of the poisonous substance '*Aluminium phosphate*' was voluntary or involuntary. Further, even the viscera

report was not proved as per law, which obviously would go to the benefit of the accused persons. Apparently, the learned Trial Court in absence of any cogent evidence or investigation on the point of administration of poisonous substance to the deceased causing her death has rightly restricted itself to the theory of death having been otherwise than under normal circumstances, an important ingredients to attract the penal provision of Section 304B of the I.P.C.

36. The moment, we arrive at a proposition that the death of the deceased-Sangeeta Devi has occurred otherwise than under normal circumstances, within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and therefore, such husband or relative shall be deemed to have caused her death. Further, nothing was pointed out to hold that the conclusion arrived by the Ld. Trial Court was perverse or was there any illegality or irregularity.

37. For all the aforesaid reasons and taking into account all the above supervening factors, the evidence brought on records clearly established the legal requirements for an offence falling under Sections 304B and 498A of the I.P.C. with the aid of Section 113B of the Indian Evidence Act to be conclusively proved against the appellant and the conviction, therefore, do not call for any interference. Thus, the judgment as far as the conviction by the learned Trial Court under Section 304-B I.P.C., 498-A I.P.C. and Section 4 of the Dowry Prohibition Act is concerned the same are *upheld*.

38. Now, the question arises as to whether this Court can reduce the appellant's sentence and if so, to what extent, as urged by the learned Counsel for the appellant, keeping in view the prayer of leniency and the Evidence brought on record.

39. This issue has engaged the attention of this Court, as well as the Hon'ble Supreme Court in several cases, which arose out of Section 304B read with 498A I.P.C. and wherein the Supreme Court while interpreting the expression 'may' mentioned in Section 304B I.P.C. held that it is not mandatory for the Courts in every case to award life imprisonment to the accused, once he is found guilty of offence under the said provision. It was held that the Courts could award sentence in exercise of its discretion between seven years to life imprisonment, depending on the facts of each case, which must not be less than 7 years and the extreme punishment of life terms should be awarded in 'rare cases' but not in all cases as a routine. In the case of **Hem Chand Vs State of Haryana**, reported in (1994) 6 SCC 727, the Trial Court had awarded life term to the accused under Sections 304B read with 498A I.P.C., however, the Supreme court reduced the sentence to 10 years and held as under:

"7. Now coming to the question of sentence, it can be seen that Section 304-B IPC lays down that:

"Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The point for consideration is whether the extreme punishment of

imprisonment for life is warranted in the instant case. A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. It is also important to note in this context that there

is no charge under Section 302 IPC. The trial court also noted that there were two sets of medical evidence on the file in respect of the death of the deceased. Dr Usha Rani PW 6 and Dr Indu Lalit PW 7 gave one opinion. According to them no injury was found on the dead body and that the same was highly decomposed. On the other hand, Dr Dalbir Singh PW 13 who also examined the dead body and gave his opinion, deposed that he noticed some injuries at the time of re-post-mortem examination. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also Section 304-B IPC would be attracted. But this aspect has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. As a matter of fact, the trial court only found that the death was unnatural and the aspect of cruelty has been established and therefore the offences punishable under Sections 304-B and 201 IPC have been established. The High Court in a very short judgment concluded that it was fully proved that the death of the deceased in her matrimonial home was a dowry death otherwise than in normal circumstances as a result of cruelty meted out to her and therefore an offence under Section 304-B IPC was made out. Coming to the sentence the High Court pointed out that the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case."

40. The said proposition of law was consistently followed by the Hon'ble Supreme Court in the case of *State of Karnataka Vs M.V Manjunathe gowda & Anr.* reported in (2003) 2 SCC 183; and *G.V. Siddaramesh vs State of Karnataka*, reported in (2010) 3 SCC 152; wherein in both the cases the life term was reduced to 10 years. The Hon'ble Supreme Court in *Hari Om v. State of Haryana*, reported in (2014) 10 SCC 577; considering the aforesaid judgments as precedents reduced the life term awarded by the Trial Court and the High Court to a term of 10 years, while recording that Courts below did not assign any reasons as to why the case was found to be a rare case for conviction under Section 304B I.P.C.

41. Further, there is another aspect of the matter in as much as the Constitutional Bench of the Hon'ble Supreme Court, in the case of *Union of India v. V. Sriharan*, reported in (2016) 7 SCC 1; was dealing with an issue, as to whether imprisonment for life in terms of Section 53 read with Section 45 of the I.P.C. means imprisonment for the rest of the life of the convict or the same can be reduced. The Constitutional Bench after referring to the various precedents, including *Swamy Shraddananda (2) v. State of Karnataka*, reported in (2008) 13 SCC 767; has answered the same in paragraph nos. 104 and 105 of the said judgment i.e. *V. Sriharan (Supra)*, in the following words:

"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this

Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

(emphasis added)

"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

(emphasis added)

42. Moreover, the Hon'ble Supreme Court in the case of **Shiva Kumar v. State of Karnataka**, reported in **(2023) 9 SCC 817**; after considering both of the aforementioned judgments of **V. Sriharan**

(Supra) and **Swamy Shraddhananda (2) (Supra)**; in paragraph no. 14, has held that:

"14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.P.C."

(emphasis supplied)

43. Therefore, in view of the mandate of the Constitutional Bench in the case of **V. Sriharan (Supra)** and later clarified in the case of **Shiva Kumar (Supra)**, there is no iota of doubt in the mind of this Court, as being a Constitutional Court, that a punishment of life imprisonment can be converted into a fixed term keeping in view, the facts and circumstances of a particular case, with the only caveat that the said fixed term cannot be less than 14 years.

44. As far as the present case is concerned, considering the aforesaid proposition of law and the overall facts and circumstances, keeping in view the evidence brought on record, by virtue of which the appellants were convicted, we in our considered view need to set a chord of balance between the culpability of the convict on the basis of evidence collected and brought on record on the one hand with the amount of punishment inflicted due to the said culpability. This Court does not

find any plausible reason appended by the learned Trial Court as to why the maximum punishment of life imprisonment had been awarded to the appellants in this present case. No doubt, the crime committed is one of the most heinous crime and does not calls for any leniency, keeping in view that notwithstanding the stringent law, dowry death is rampant and it refuses to recede, even after four decades it was enacted.

45. However, this Court besides its role to set an example for the society is to also strike a balance with the right of the individual convict and his apparent responsibilities. It has come on record, by virtue of the custody certificate, filed on records that the convict has already spent more than 15 years and eight months (18 years and 7 months, including remission) in jail, though Section 304B of the I.P.C. prescribes a minimum punishment of 7 years only. The appellant no.1, who was the father of the appellant no.2 has since been deceased during the pendency of the present Appeal. It has also come on record that the appellant no.2 has an old mother and a young girl child of marriageable age, born out of the wedlock with the deceased to support.

46. Thus, keeping in view the totality of the facts and considering the balance sheet of aggravating and mitigating circumstances and there being no criminal background and adverse history against the **convict/appellant no.2- Umesh**, we consider that the ends of justice would be met in this case, if the maximum sentence of life under Section 304B of the I.P.C is reduced to the period already undergone, i.e. actual sentence of 15 years and 8 months. However, the sentence under Section 498A I.P.C., and Section 4 Dowry Prohibition Act, including the fine amount imposed shall remain unaltered.

CONCLUSION

47. As sequel to the above, the present appeal as far as the appellant no.1 (Paras Nath Sahu) is concerned stands *abated* and as far as the appellant no.2 (Umesh) is concerned is *dismissed* on the point of conviction under Sections 304B, 498A of the I.P.C. read with Section 4 of the Dowry Prohibition Act; however, on the point of sentence, the Appeal is *partly allowed* to the extent of sentence of 15 years and 8 months, i.e. the period already undergone.

48. However, the entire amount of fine awarded by the Trial Court shall be deposited by the appellant, within four weeks from the date of his release, in default, he shall be liable to undergo the same punishment of imprisonment, as the learned Trial Court has awarded.

49. Having said so, it is directed that the appellant- Umesh may be released forthwith, having already undergone the sentence of punishment under the present Sessions Trial No. 273 of 2009 (*State Vs. Paras Nath Sahu and another*) arising out of Crime No. 143 of 2008, if he is not needed in any other case(s).

50. There shall be no order as to cost(s).

(2025) 12 ILRA 82
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.12.2025

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Criminal Appeal No. 1150 of 1988

Trilok Ram & Anr.	...Appellants
State	...Respondent
Versus	

Issue for consideration

Validity of realisation warrant if accused are acquitted.

Headnotes

Code of Criminal Procedure Code-sec 499- Impugned order was passed to realize the penalty issuing the realization warrant-Appeal u/s 499 Cr.P.C.- defaulter accused Rais has already been acquitted-as the main accused has been acquitted-the penalty imposed on the appellants is hereby waived off.
Appeal allowed.(E-9)

Case Law Cited

Nil

List of Acts

Code of Criminal Procedure Code

List of Keywords

realization warrant

Appearances of parties

Counsel for Appellant(s) : Shamimul Hasnain
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

None has appeared for the appellant. Mr. Ratan Singh, Learned AGA-I for the State is present.

The present appeal has been filed under Section 449 Cr.P.C. against the judgement and order dated 11.04.1985 passed by Additional Sessions Judge, Muzaffarnagar in Criminal Misc. Case No. 18/86 (State v. Amar Singh and others) under Section 446 Cr.P.C.

The present criminal appeal pertains to the year 1988 and is listed today under the caption of "Oldest Pending Cases In This High Court For Priority Hearing."

At the very outset, learned AGA for the State submits that the instant appeal has

merit as the main accused Rais S/o Hakimuddin in Sessions Trial No. 69 of 1986 (State v. Munavvar and others) tried under Sections 395/397 IPC, PS-Kandhla, District-Muzaffarnagar has been acquitted on 08.12.1987 by the learned First Additional Sessions Judge, Muzaffarnagar.

With the assistance of the learned AGA and from the perusal of the records, it transpires that the proceedings under Section 446 Cr.P.C. was initiated against the appellants (sureties) as the accused Rais committed a default in not attending the Court and a show-cause notice was issued to the surety to an amount of Rs. 5,000/- each which was to be realized from them as penalty. As the appellants did not appear on the date fixed despite the personal service, the impugned order dated 06.02.1987 was passed to realize the penalty issuing the realization warrant.

Aggrieved by the order of realization warrant, the instant appeal has been preferred by the appellants under Section 449 Cr.P.C.

Accordingly, the Court is convinced that the defaulter accused Rais has already been acquitted vide order dated 08.12.1987 passed by first Additional Sessions Judge, Muzaffarnagar acquitting the accused Munavvar and Rais of a charge under Section 395 IPC framed against them and the his surety bond and a personal bond has been cancelled.

As the main accused has been acquitted, the penalty imposed on the appellants is hereby waived off.

Accordingly, the criminal appeal filed under Section 449 Cr.P.C., is hereby **allowed.**

(2025) 12 ILRA 84
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1529 of 1989

Bhola		...Appellant
	Versus	
State		...Respondent

Issue for consideration

Delay in Test Identification Parade

Headnotes

Test Identification Parade-only on the ground of test identification parade- even after delay of more than two months- accused-appellant could not be held guilty for the commission of the heinous crime like murder.
Appeal allowed.(E-9)

Case Law Cited

1.Harinath and another Vs. State of U.P., (1988)
 1 SCC 14

List of Acts

Indian Penal Code, 1860

List of Keywords

Test Identification Parade, heinous crime, delay

Appearances of parties

Counsel for Appellant(s) : Akhilesh Tripathi,
 Sanjeeva Kumar Yadava
 Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Vinai Kumar
 Dwivedi, J.)

1. This Criminal Appeal has been filed against the judgment and order dated 10.07.1989 passed by Additional District and Sessions Judge, Gyanpur, Varanasi in Session Trial No. 37 of 1982 arising out of

Case Crime No. 52 of 1981, under Sections 147, 148, 149, 302, 120B IPC, police station Gyanpur, district Varanasi. By the impugned order, the Additional Sessions Judge has acquitted the accused Brahm Shankar, Vijay Shankar, Nirahoo and Awadh Narain and has convicted and sentenced the accused-appellant Bhola to life imprisonment under section 302 IPC. Aggrieved by the judgment and order dated 10.07.1989 by which the accused-appellant Bhola was convicted under Section 302 IPC, he filed the instant criminal appeal challenging the aforesaid judgment and order dated 10.07.1989.

2. In short compass, the facts of the case are that on 27.05.1981, a written report was given to the Inspector, Police Station Gyanpur, District Varanasi by PW-1 Lalmani Dubey alleging inter alia that there was enmity between him and Brahm Shankar @ Bechu. Due to old enmity, Brahm Shankar @ Bechu and Vijay Shankar @ Mothai alongwith three unknown persons came at his house from the North keeping lathi, danda and country-made pistol and attacked his cousin Aadhya Prasad and nephew Faujdar, who were sleeping at the door, by lathi-danda. The unknown person who wore kurta pajama fired from the country-made pistol upon his nephew Rakesh Kumar, who was also sleeping on the cot, which hit his chest and the blood started oozing. On hearing the noise of the fire-shot and screaming, he and Aadhya Prasad, Faujdar and younger brother Chaturgun and neighbours Phoolchandra Dubey, Shivshankar and Jayshankar and many people of the locality came at the spot. On seeing the aforesaid persons, the culprits ran towards the East direction. The complainant alongwith the persons gathered at the spot identified the accused persons Brahm Shankar and Vijay

Shankar in the light of the torch. The first informant claimed that he can also recognize the three unknown assailants on seeing them. The assailants were chased but they could not be caught. Thereafter, the condition of the injured Rakesh Kumar started deteriorating and he was taken to the hospital but he died on the way.

3. On the basis of the aforesaid report, a case was registered as Case Crime No. 52 of 1981, which was proved as Ext. Ka-3. Investigation of the crime was started by the police. The investigating officer of the case recorded the statement of the witnesses of the crime. Panchayatnama and post mortem of the dead body of the deceased were conducted. After completing all the formalities of the investigation, investigating officer submitted charge-sheet against accused Brahm Shankar @ Bechu, Vijay Shankar @ Mothai and Nirahoo, which was proved as Ext. Ka-14. Thereafter, the charge-sheet was also submitted by the investigating officer against the accused-appellant Bhola which was proved as Ext.Ka-4.

4. The charge was framed under Sections 147, 148, 149, 323 read with Section 149 IPC against the accused Bhola, Brahm Shankar @ Bechu, Vijay Shankar @ Mothai, Nirahoo and Awadh Narain by the trial Court on 31.03.1983. Against the appellant-accused Bhola, the charge was framed under Section 302 IPC (simplicitor) by the trial Court. The charge was framed under Section 120B IPC against the accused Nirahoo and Awadh Narain. All the accused persons including the accused-appellant Bhola denied the charges framed against them and claimed for trial.

5. After recording the evidence of the prosecution witnesses and taking into

consideration their evidence on record, statement of the accused-appellant Bhola and other accused were recorded under Section 313 Cr.P.C.

6. Vide judgment and order dated 10.07.1989, trial Court after hearing the arguments of the prosecution and defence, on the basis of the evidence available on record, acquitted accused Brahm Shankar @ Bechu, Vijay Shankar @ Mothai, Nirahoo and Awadh Narain under Sections 147, 302/149, 323/149 and 120B IPC, by giving benefit of doubt. The accused-appellant Bhola was also acquitted of the charge under Sections 148, 302/149, 323/149 IPC but he was held guilty under Section 302 IPC (simplicitor) and convicted for life imprisonment. No fine was imposed upon the accused-appellant Bhola.

7. It is also worthwhile to mention here that against the acquittal order of the trial Court in respect of accused Brahm Shankar @ Bechu, Vijay Shankar @ Mothai, Nirahoo and Awadh Narain, State of Uttar Pradesh has not filed any appeal.

8. Learned counsel for the accused-appellant Bhola submitted that in the written report Ext. Ka-1, accused-appellant Bhola has not been named whereas accused Brahm Shankar and Vijay Shankar have been named in the F.I.R. Informant Lalmani Dubey, who is PW-1, has stated three kinds of enmity only against the named accused Brahm Shankar and Vijay Shankar. No enmity or cause or reason has been stated by the informant/PW-1 Lalmani Dubey against the accused-appellant Bhola, therefore, no motive for the commission of the crime by the accused-appellant Bhola has emerged from the F.I.R. The trial Court on the basis of the evidence acquitted the

accused Brahm Shankar, Vijay Shankar, Nirahoo and Awadh Narain from the charge under Sections 147, 302/149, 323/149 and 120B IPC. The trial Court wrongly relied on the evidence of the informant/PW-1 Lalmani Dubey, PW-2 Chaturgun and PW-10 Isht Dev Prasad Rai and convicted and sentenced the accused-appellant Bhola under Section 302 IPC.

9. It is also submitted by learned counsel for the appellant that on the test identification parade of accused-appellant Bhola by the informant/PW-1 Lalmani Dubey and PW-2 Chaturgun, the trial Court wrongly and illegally held guilty the accused-appellant Bhola. It is also submitted by the counsel for the appellant that date of incident is 26/27.05.1981 at about 12:15 O'clock in the night.

10. The accused-appellant Bhola was arrested by the investigating officer on 03.07.1981 and his test identification parade was conducted in Sub Jail, Gyanpur, Varanasi on 07.09.1981, i.e., after about two months from the date of his arrest. From the evidence of PW-10 Isht Dev Prasad Rai, it is clear that before the test identification parade of the accused-appellant Bhola, prosecution witnesses already knew and were familiar to the accused-appellant Bhola, because village of the first informant Lalmani where incident occurred on 26/27.05.1981 and village of accused-appellant Bhola are situated in close vicinity.

11. On the above arguments, learned counsel for the accused-appellant Bhola submitted that without proper appreciation of the prosecution evidence, trial Court convicted the accused-appellant Bhola against the set principles of law of evidence in this regard. Hence, it is submitted by the

counsel for the accused-appellant Bhola that accused-appellant Bhola is also entitled for acquittal by giving benefit of doubt.

12. Per contra, learned A.G.A. representing the State of U.P. has submitted that the trial Court in proper prospective and in legal way after appreciating the prosecution evidence found the accused-appellant Bhola guilty for commission of the alleged crime. The accused-appellant Bhola is the sole accused person, who fired at the deceased Rakesh Kumar on his chest from a country-made pistol, thereby murdered Rakesh Kumar. It is also submitted that judgment of conviction and sentence as passed by the trial Court is fully based on the evidence of the prosecution. The finding and conclusion drawn by the trial Court is legally sound as per law and parameters in this regard. Hence, the criminal appeal filed by the accused-appellant Bhola is liable to be rejected and conviction and sentence passed by the trial Court must be confirmed.

13. We have heard learned counsel for the appellant and the A.G.A. for the State of U.P. We have also perused the oral and documentary evidence as available on the record and gone through the record in the light of the arguments as adduced by the counsel for the accused-appellant and the A.G.A. representing the State.

14. From perusal of the written report Ext. Ka-1 and evidence of the first informant/PW-1 Lalmani Dubey and PW-2 Chaturgun, it is amply clear that three kinds of enmity were stated by the informant/PW-1 Lalmani Dubey and witness PW-2 Chaturgun only against the accused Brahm Shankar and Vijay Shankar, Nirahoo and Awadh Narain.

Neither any single reference about enmity or reason has been stated by the informant/PW-1 Lalmani Dubey in his written report Ext. Ka-1 nor in his oral evidence. In his evidence of PW-2 Chaturgun also has not stated any enmity, cause or reason, which motivated the accused-appellant Bhola to come at the residence of the first informant/PW-1 Lalmani Dubey in the night of 26/27.05.1981 and fire at Rakesh Kumar son of Chaturgun PW-2. It is also not stated by any of the prosecution witness that accused-appellant Bhola is a hired assassin. During the course of investigation by the investigating officer S.I. Sarju Prasad Chaudhary/PW-7, no fact of enmity between the informant side and accused-appellant Bhola has come into light. From the evidence of the prosecution witnesses, no single sentence has been stated about the motive, reason or cause, that has motivated or inspired the accused-appellant Bhola to commit the alleged crime. Despite the so-called enmity between the family of the informant Lalmani Dubey and accused Brahm Shankar and Vijay Shankar, accused Brahm Shankar and Vijay Shankar have been acquitted by the trial Court. This fact in absence of any motive against the accused-appellant Bhola makes the prosecution story suspicious and doubtful. Therefore, testimonies and evidence of the prosecution witnesses in this regard are not found to be trustworthy and believable.

15. In the written report Ext. Ka-1, name of accused-appellant Bhola has not been stated by the informant/PW-1 Lalmani Dubey. The date of the incident is 26/27.05.1981. Accused-appellant Bhola was arrested on 03.07.1981 alongwith accused Nirahoo. The investigating officer/PW-7 Sarju Prasad Chaudhary has stated in his cross-examination that "only

on the ground of doubt and information (*mukhbiri*), name of accused Bhola has come into light in respect of the alleged crime. The accused Awadh Narain in his statement has stated about the involvement of the accused Bhola in the commission of the crime and on believing many other causes, accused Bhola has been arrested."

16. From the above statement of the investigating officer/PW-7 Sarju Prasad Chaudhary as given by him in his cross-examination, it is amply clear that accused-appellant Bhola was arrested by the investigating officer only on the ground of doubt, suspicion and statement of other co-accused Awadh Narain. From the above, it is clear that only on the ground of suspicion and doubt, the accused-appellant Bhola got involved and implicated in this case as an accused.

17. The accused-appellant Bhola was arrested by the investigating officer/PW-7 on 03.07.1981 alongwith co-accused Nirahoo. The so-called test identification parade was organized on 07.09.1981 at Sub Jail, Gyanpur, Varanasi by PW-10 Isht Dev Prasad Rai.

18. From the aforesaid, it is clear that date of incident is 26/27.05.1981 and after about 36 days, accused-appellant Bhola was arrested on 03.07.1981 by PW-7 SI Sarju Prasad Chaudhary. Thereafter, the test identification parade was conducted under the supervision of the prosecution witness PW-10 Isht Dev Prasad Rai on 07.09.1981 after a delay of about two months from his arrest. The above fact of about two months delay has also been confirmed by PW-2 Chaturgun from his statement that after two months and five days from the date of incident, he with Lalmani Dubey, Aadhya Prasad and Autar

have gone in the test identification parade to identify the culprit. Apart from this, the first informant Lalmani Dubey has stated in his cross-examination that "accused Bhola is resident of village Bhagwas. The test identification of accused Bhola has been done after two months from his arrest. There was his land in village Bhagwas where he does agricultural work. He knew accused Bhola for the last about 4^{1/2} years. He had seen firing from country-made pistol by the accused Bhola."

19. Thus from the above statement of informant/PW-1 Lalmani Dubey, it is clear that accused Bhola is resident of village Bhagwas. The agricultural land of informant/PW-1 Lalmani is situated in village Bhagwas where he does agricultural work. This fact also becomes clear that informant PW-1 Lalmani Dubey is also known to the accused-appellant Bhola and well-acquainted with him.

20. We have also perused the evidence of PW-2 Chaturgun and find that PW-2 Chaturgun allegedly denied that he had heard the name of Bhola for the first time. PW-2 Chaturgun stated that he does not go to village Bhagwas in any marriage ceremony or other functions. Thus from the two contradictory statement on the same point by informant/PW-1 Lalmani Dubey and PW-2 Chaturgun, the fact emerged that PW-2 Chaturgun is trying to conceal this fact that he does not go to village Bhagwas where accused-appellant Bhola resides. Thus, from the above contradictory statement of the first informant/PW-1 Lalmani Dubey and PW-2 Chaturgun, it becomes amply clear that PW-2 Chaturgun is purposely trying to conceal this fact that he did not know or was acquainted with the accused-appellant Bhola, who is resident of village Bhagwas. From the contradictory

statement of PW-1 Lalmani Dubey and PW-2 Chaturgun, it is apparent that village Chhatrashahpur where the incident happened on 26/27.05.1981 and village Bhagwas where the accused Bhola resides is located in the close vicinity of each other.

21. In other words, village Chhatrashahpur where the complainant's side resides and village Bhagwas where accused Bhola resides are located in the vicinity of each other. Although PW-1 Lalmani and PW-2 Chaturgun in their evidences tried to conceal this fact but in cross-examination, this fact emerged in the statement of PW-1 Lalmani Dubey.

22. The test identification parade of the accused-appellant Bhola was conducted by the prosecution on 07.09.1981 after a delay of about two months from his arrest on 03.07.1981. No cause or explanation for two months delay has been explained or stated by the PW-10 Isht Dev Prasad Rai. When we see this fact in totality of the circumstances of the case and in the light of the fact that accused-appellant Bhola is not named in the written report Ext. Ka-1, then the delay of two months in conducting the test identification parade, proceeding of the test identification parade in the above circumstances and facts become totally doubtful, suspicious and, thereby unbelievable.

23. From the perusal of the evidence as given by the prosecution witness Ist Dev Prasad Rai and in his cross-examination, it appears that PW-10 Isht Dev Prasad Rai, who conducted the test identification parade has stated in his cross-examination that "witnesses Aadhya Prasad and Autar had given statement to him that they have come to identify accused Bhola".

From the above, statement of PW-10 Ist Dev Prasad Rai, it explicitly becomes clear that PW-1 Lalmani Dubey and PW-2 Chaturgun, Aadhya Prasad, Faujdar are familiar and acquainted with the accused-appellant Bhola, before commission of the alleged crime. In other words, test identification witnesses are well-acquainted and known to accused-appellant Bhola. Without considering this fact and without giving any reason on this point, the trial Court held accused-appellant Bhola guilty. How and by which means, PW-10 Isht Dev Prasad Rai stated that they had come to identify accused Bhola. Meaning thereby that prosecution witnesses, who participated in the test identification parade, were familiar and acquainted with the accused-appellant Bhola. These prosecution witnesses before the date of incident were known to the accused-appellant Bhola and accused Bhola was also familiar and known to the prosecution witnesses. Since village Chhatrashahpur and village Bhagwas where complainant's side and accused-appellant Bhola respectively reside, are located in the close vicinity of each other. The agricultural land of the complainant Lalmani Dubey is located and situated in village Bhagwas. Both the above villages are neighbouring village, so in this facts and circumstances of the case, it could not be presumed that complainant's side and the appellant Bhola are not familiar and acquainted with each other.

24. We have gone through the judgment of the Hon'ble Apex Court in the case of **Harinath and another Vs. State of U.P., (1988) 1 SCC 14**. From perusal of the fact of the above case law of Hon'ble Apex Court, it appears that facts and circumstances of the said case are nearly similar to the facts and circumstances of the present criminal

appeal at hand. From perusal of the aforesaid case law, we find that above case is fully applicable in the facts and circumstances of the case at hand, wherein Hon'ble Apex Court has held that :

"The evidence establishing the identity of the culprits assumes particular materiality in a case, as here, of a dacoity occurring in the darkness of the night. The evidence of the test identification would then call for a careful scrutiny. In the present case the fact that the prosecution witness could reasonably be expected to have known some of the accused-appellants as residents of villages in close vicinity of his village and as students of the same institution in which he was a student is a statable probability and that his feigned ignorance of any prior familiarity with identity of the accused becomes irreconcilable with what are incidents of ordinary human intercourse. The omission to disclose their identity in the FIR would raise a reasonable doubt about their complicity in the crime. Moreover, there was a serious lapse on the part of the prosecution in putting up the suspected culprits for a test identification after a lapse of four months after their arrest without any explanation for the delay. The benefit of this wholly unexplained lack of promptitude in holding the test identification enures to the accused-appellants. The evidence of test identification lacks the requisite element of reassurance to support the conviction. A reasonable doubt, therefore, arises."

25. When we see the evidence of the witness of the test identification parade in the light of the law as held by the Hon'ble Apex Court, we find that accused-appellant Bhola was arrested on 03.07.1981 after about 36 days from the date of incident on 26/27.05.1981.

26. The test identification parade was organized and conducted by the prosecution on 07.09.1981 after two months of his arrest on 03.07.1981. No explanation for the delay of two months in conducting the test identification parade has been given by the prosecution. It is also surprising that village Chhatrashahpur where the complainant's side resides and village Bhagwas where the accused resides, are located in the close vicinity of each other. The villagers of neighbourhood villages situated in close vicinity are well-acquainted and familiar with each other. The delay of about two months in conducting the test identification parade after arrest of the accused-appellant Bhola, even without any explanation of delay, itself becomes highly doubtful and suspicious. Therefore, only on the ground of test identification parade even after delay of more than two months, accused-appellant Bhola could not be held guilty for the commission of the heinous crime like murder.

27. This delay of about two months in conducting the test identification parade makes the prosecution story as projected by the prosecution against the accused-appellant Bhola, highly doubtful and unbelievable.

28. In light of the case law as held by the Hon'ble Apex Court in the case of Harinath and another (supra), we find that judgment and order dated 10.07.1989 as passed by the learned trial Court in Session Trial No. 37 of 1982 (State Vs. Bhola and others) holding guilty the accused-appellant Bhola is not sustainable as per the law.

29. We find that accused-appellant Bhola is also entitled to be acquitted of the

charge under Section 302 IPC by giving benefit of doubt.

30. In the light of the above discussions and analysis, we find that Criminal Appeal No. 1529 of 1989 (Bhola Vs. State) deserves to be allowed.

31. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 10.07.1989 of conviction and sentence passed against the accused-appellant Bhola by learned trial Court in Session Trial No. 37 of 1982 arising out of Case Crime No. 52 of 1981, under Sections 147, 148, 149, 302, 120B IPC, police station Gyanpur, district Varanasi. The appellant Bhola is acquitted of the charge under Section 302 IPC. The appellant is on bail. His bail bond is cancelled and sureties are discharged. He need not surrender.

32. Office is directed to certify the judgment to the learned trial Court forthwith along with lower court record.

(2025) 12 ILRA 90

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 12.12.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 1701 of 2004

Phool Chandra & Ors.	...Appellants
Versus	
State of U.P.	...Respondent

Issue for consideration

Culpable Homicide and murder

Headnotes

Culpable Homicide-sudden quarrel- incident occurred in heat of passion- conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. not sustainable - liable to be converted under Section 304 Part-II I.P.C. read with Section 34 I.P.C-motive may only be a relevant factor to form an opinion.(E-9)

Case Law Cited

1. Jagriti Devi Vs. State of Himachal Pradesh; (2009) 14 SCC 771
2. Yudhishtir Vs. The State of Madhya Pradesh; 1971 (3) SCC 436
3. Mahesh Balmiki alias Munna Vs. State of M.P.; (2000) 1 SCC 319
4. Litta Singh and Another Vs. State of Rajasthan; (2015) 15 SCC 327
5. Pulicherla Nagarjun Vs. State of Andhra Pradesh; (2006) 11 SCC 444
6. Suresh Chandra Bahri Vs. State of Bihar and Others; 1995 Supp(1) SCC 80
7. Shahid Ali Vs. State of Uttar Pradesh; (2024) 14 SCC 243
8. Kariman Vs. State of Chhatisgarh; (2024) 13 SCC 136
9. State of Madhya Pradesh Vs. Shyamlal and Others; (2025) 4 SCC 616

List of Acts

Indian Penal Code

List of Keywords

Exception 4 to Section 300 I.P.C., culpable homicide not amounting to murder, motive and intention to kill

Appearances of parties

Counsel for Petitioner(s) : Abdul Rafey Siddiqui, Avinash Kumar Srivastava, Rajesh Kumar Awasthi, Vishnu Swaroop Srivastava
Counsel for Respondent(s) : Govt. Advocate, Avinash Tiwari, Balak Ram, Rama Niwas Pathak, Ravi Kant Pandey, Sudhir Kumar pandey, Y.N. Pandey

(Delivered by Hon'ble Rajnish Kumar, J.)

(1) Heard Sri Avinash Kumar Srivastava, learned counsel for the appellant No.1, Sri Rajesh Kumar Awasthi, learned counsel for the appellant No.2, Sri

Pawan Kumar Mishra, learned A.G.A. for the State and Sri Ravi Kant Pandey, learned counsel for the complainant.

(2) The instant Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (here-in-after referred as Cr.P.C.) has been filed against the judgment and order dated 03.08.2004 passed by learned Sessions Judge, Ambedkar Nagar in Sessions Trial No.21/2000; *State Vs. Phool Chandra and Others*, arising out of Case Crime No.311/1999, under Sections 302, 504 and 506 of the Indian Penal Code, 1860 (here-in-after referred as I.P.C.), Police Station Baskhari, District Ambedkar Nagar, by means of which, the appellants have been convicted under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced under Section 302 I.P.C. for life imprisonment alongwith fine of Rs.10,000/- each and in default of payment of fine, to undergo additional six months' rigorous imprisonment and under Section 506 I.P.C. to pay fine of Rs.5,000/- each and in default of payment of fine, to undergo three months' rigorous imprisonment and all the appellants have been acquitted from the charge of Section 504 I.P.C.

(3) The complainant; Ashok Kumar Mishra R/o Village Hajiyapur, Police Station Baskhari, District Ambedkar Nagar submitted a written report at Police Station Baskhari, District Ambedkar Nagar on 09.12.1999, which is extracted below:-

"नकल तहरीर हिन्दी वादी

सेवा में श्रीमान थानाध्यक्ष महोदय थाना बसखारी जि० अम्बेडकर नगर मान्यवर निवेदन है कि प्रार्थी अशोक कुमार मिश्र S/o देव मणि मिश्र ग्राम हजियापुर थाना वसखारी जि० अम्बेडकरनगर का निवासी है आज दि० 9.12.99 को मैं वा मेरे पिता वा मेरे भाई अजय कुमार सरोज कुमार अपने खेत में गेहूँ की

बुवाई कर रहे थे। साथ में मेरा मजदूर रामदुलार जो मेरे गांव का था गांव के फूलचन्द पुत्र रामबदन तिवारी हरिचन्द पुत्र रामवदन वा रामवदन पुत्र गोमती जिनका खेत हमारे खेत के बगल है। अपने खेत में काम कर रहे थे। फूलचन्द हमारा मेड़ काट रहे थे। हमारे भाई अजय कुमार ने मना किया इस पर रामवदन ने ललकारा तथा हरिश्चन्द तथा फूलचन्द ने गाली देते हुए कहा आज मार डालों सालो को इस पर तीनों आदमी टूट पड़े फूलचन्द ने कुदाल से मेरे भाई अजय कुमार को समय करीब 9 बजे दिन में सर में मारा। जिससे वह गिर पड़े और चिल्लाये हम लोग बचाने दौड़े तो हरिचन्द्र हाथ में कट्टा लिये हम लोगो का मारने की धमकी देते हुए कट्टे से फायर करते हुए हम लोगो को दौड़ये हम लोग हल्ला मचाते हुए घर कि तरफ भागे हल्ला गुहार सुनकर गांव के तमाम आदमी दौड़े तब तीनों आदमी उत्तर की तरफ भाग गये मेरे भाई मौके पर ही मर गये है। उचित कार्यवाही की जाया प्रार्थी हस्ताक्षर अशोक कुमार मिश्र अशोक कुमार मिश्र पुत्र देवमणि मिश्र ग्रा० हजियापुर थाना बसखारी जि० अम्बेडकरनगर दि० 9.12.99।

नोट- तहरीर की नकल अक्षरशः किया गया।

हस्ताक्षर

एच.एम

9.12.99

(महादेव चौहान)"

(4) On the basis of aforesaid written report submitted by the complainant, F.I.R. under Section 302, 504 and 506 I.P.C. was registered vide Case Crime No.311/1999 at 14:30 hours on 09.12.1999. The investigation was started by the Investigating Officer immediately after lodging of F.I.R. He recorded statement of complainant in Police Station and thereafter he reached on the spot alongwith the complainant. He prepared inquest report and sent the dead body for post mortem. The Investigating Officer also prepared the site plan, collected blood stained mud and plain mud from the spot and on the recovery memo, he took signatures of the witnesses. The spade (*kudal*) and the broken wooden handle (*beint*) of spade, having blood stains on them, was lying near the dead body, which was also taken

into possession by the Investigating Officer and the recovery memo was signed by witnesses also. After completing the investigation, charge sheet was filed. The F.S.L. report was also placed on record, when the same was received.

(5) The learned Magistrate took cognizance on the charge sheet and committed the case to Court of Session. The charges under Section 302 I.P.C. read with Section 34, 504 and 506 I.P.C. were framed against the appellants. The appellants denied the charge and prayed for trial, therefore, the trial proceeded.

(6) In order to prove its case, eight witnesses were examined by the prosecution i.e. Ashok Kumar as P.W.-1, Dev Mani Mishra as P.W.-2, Constable Suresh Narayan Tiwari as P.W.-3, Arvind Pratap Singh as P.W.-4, Jiya Lal Yadav as P.W.-5, Jairam as P.W.-6, Dr. Major V.N. Singh as P.W.-7 and Ram Naresh Yadav as P.W.-8. The prosecution also placed on record and proved the documentary evidences, which were exhibited.

(7) After conclusion of the prosecution evidence, statement of the accused under Section 313 Cr.P.C. were recorded, wherein they admitted that two and a quarter biswa of land on the eastern side of their house is of Dev Mani. They also admitted that the said land is undivided. It has also been admitted that their chak is in the north of chak of Dev Mani, in which potato was sown in the western half part and eastern half part was vacant and in some parts, sugarcane was planted. It has also been admitted that in the eastern half chak of Dev Mani, there is a tube well and the said chak is in two parts but they denied the remaining evidence and stated that the false evidences have been adduced. Rohini

Kumar Pathak, Lekhpal was examined in defence as D.W.-1, who produced the evidence regarding possession of the chak of the complainant and the accuseds and their numbers.

(8) After considering the arguments advanced by learned counsel for the parties and evidence as well as material on record, the impugned judgment and order of conviction and sentence has been passed by the learned trial Court. Hence the present appeal has been filed.

(9) During pendency of the present appeal, the appellant No.3; Ram Badan died, therefore, the appeal abated on his behalf and it was recorded in the order dated 11.01.2019. Hence this appeal survives on behalf of the appellant No.1; Phool Chandra and appellant No.2; Harish Chandra both sons of Ram Badan.

(10) Learned counsel for the appellants submitted that the appellants have been convicted and sentenced by means of the impugned judgment and order without considering the evidence and material on record. He further submitted that the time and place of incident is doubtful and the conviction is based solely on the related and interested witnesses. He further submitted that an independent witness, who was present at the place of incident, has not been examined. He further submitted that the injuries are not corroborated because the *Kudal* is a sharp edged weapon and no injury of the sharp edged weapon has been found and blood stained mud was not recovered from the spot. The motive is also not proved. The incident has been shown to have happened on a trivial issue, on account of which, the offence under Section 302 I.P.C. cannot be committed. He further submitted that even

if the case of the prosecution is taken to be correct and the evidence adduced before the learned trial Court is considered giving due weight to the same, at the most the offence under Section 304 Part II I.P.C. can be said to have been committed as it was not pre-meditated and may be on account of sudden quarrel and provocation and if this Court comes to the conclusion that the offence has been committed by the appellants, then the same is liable to be converted into Section 304 Part II I.P.C. and the sentence is liable to be reduced accordingly.

(11) On the basis of above, learned counsel for the appellants submitted that the impugned judgment and order is not sustainable in the eyes of law and the same is liable to be set aside.

(12) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellants. He submitted that the F.I.R. has been lodged promptly and delay, if any, has been explained. He further submitted that the contention of learned counsel for the appellants, that the time and place of incident is doubtful, is misconceived and not tenable because the F.I.R. was lodged promptly and immediately after lodging of the F.I.R., the Investigating Officer went with the complainant to the place of incident and found the deceased lying in the field and also recovered the weapon of assault etc. He further submitted that presence of the appellants and a tractor has also been shown in the site plan. Tube well and the mound of drainage on the northern side of field of complainant's side, which was being broken, on account of which, the incident had occurred, has also been shown in the site plan.

(13) He further submitted that there is no contradiction in the evidences of P.W.-1

and P.W.-2, who are the eye witnesses and their evidences have also been corroborated by the evidence of P.W.-4. He further submitted that P.W.-5 and P.W.-8 have proved the material collected from the spot and also as to how he made the investigation and no cross-examination has been done from him.

(14) On the basis of above, learned A.G.A. submitted that the contention of learned counsel for the appellants are liable to be repelled as the impugned judgment and order has rightly been passed in accordance with law and the appellants have been convicted and sentenced. There is no illegality or error in the impugned judgment and order. The appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(15) We have heard learned counsel for the parties and perused the records.

(16) A written report was submitted by the complainant, Ashok Kumar Mishra on 09.12.1999 at Police Station Baskhari, District Ambedkar Nagar, intimating therein that on the said date, he, his father and his brother, namely, Ajai Kumar were sowing wheat in their fields and a labour of his village, namely, Ram Dular was also present with them. The field of Phool Chandra, Harish Chandra and Ram Badan is adjacent to their field and they were also working on their field at that time. Phool Chandra started cutting their northern mound (मेड़) of drainage, therefore, the brother of complainant, Ajai Kumar forbade him for doing so, on which, Ram Badan exhorted and Phool Chandra and Harish Chandra, hurling abuses shouted to kill him and all the three broke on him. Phool Chandra had beaten him with *kudal* at 01:00 in the afternoon, on account of

which, he fell down and cried. When the complainant etc. rushed, the Harish Chandra, having country made pistol in his hand, threatened them of killing and opened fire and ran behind them. The complainant etc. raising alarm ran towards the house and on hearing the alarm, many villagers ran but all the three accused fled away towards the North. It was also stated in the written complaint that his brother died on the spot. On the basis of aforesaid written complaint, the F.I.R. was lodged at 02:30 PM.

(17) It has been stated by P.W.-1 in his evidence that after 20-25 minutes of the incident, his father asked him to lodge a report. In the cross-examination, he stated that it was said by him at the field as they were weeping for 10-15 minutes. He further stated in the cross-examination that he had not written report at the house on account of hurry and anxiety and purchased a paper at a crossing before the Police Station and got written the report at a shop of cycle. Thereafter, he went to the Police Station, to lodge the F.I.R., on foot with cycle. The F.I.R. of incident at 01:00 PM was lodged at 02:30 PM at Police Station, which was at a distance of about 04 Km. Thus, the report has been lodged promptly and the delay, if any, has been explained by the complainant.

(18) P.W.-1 stated that after lodging of the F.I.R., his statement was recorded at the Police Station and the Inspector went alongwith him at the spot of incident from the Police Station. Constable Suresh Narayan Tiwari, who appeared as P.W.-3, has stated in his evidence that the dead body for post mortem was received by him from the place of incident alongwith the inquest report etc. In cross-examination, he stated that he went to the spot at 02:30 in

the afternoon and when he went, Inspector Sri Ram Naresh Yadav and other constables were with him. Ram Naresh Yadav appeared as P.W.-8, who stated in his evidence that the F.I.R. was written by H.M. Mahadev Chauhan at Chik No.68 at 14:30 hours. He further stated that investigation was received by him on 09.12.1999 and he recorded the statement of complainant; Ashok Kumar in the Police Station, thereafter, he went to the spot in Village Hajiypur alongwith the complainant, where he found the dead body lying in the field and spade and it's handle having blood on them, was lying near dead body. He, after inspecting the dead body, prepared the inquest report and other relevant documents. The inquest report; Ex. Ka-2 shows the distance of the Police Station from the spot as 04 Km. and the time of lodging of F.I.R. as 14:30 hours, start time of investigation as 15:10 hours. Thus, the inquest report indicates that immediately after lodging of the F.I.R., the Investigating Officer went on the spot and prepared the inquest report.

(19) The condition of the dead body has been mentioned in the inquest report, which shows that there was a lot of bleeding from the head. The Investigating Officer, being in agreement with the opinion of the witnesses that the deceased has died on account of injuries suffered by him in the head and the post mortem may be got done, sent the dead body for post mortem. The father of the deceased, Dev Mani Mishra, who appeared as P.W.-2, has proved that he signed the inquest report, which was prepared before him as well as Jiya lal Yadav, the Pradhan, who appeared as P.W.-5 and he has also signed the inquest report and proved the signatures on the same. An independent witness, Arvind Pratap Singh, examined as P.W.-4, has also

proved the incident and place of incident. Nothing could be extracted from them in cross-examination, which may create any doubt about their testimony in this regard. Thus, the place of incident has also been proved, which is corroborated by the site plan also.

(20) After inquest, the dead body was sent for post mortem. The post mortem report is Ex. Ka-5. According to the post mortem report, five injuries were found, which are as follows:-

"i) Lacerated wound 11 cm x 3 cm x bone deep on left side of head 10 cm above Lt. ear underlying bone fractured.

ii) Traumatic swelling 9 cm x 6 cm on left side of head 2 cm above lt. ear.

iii) Contusion 2 cm x 1 cm on Rt. Shoulder.

iv) Lacerated wound 1.5 cm x 1 cm x 0.5 cm on submandibular region 3 cm below chin.

v) Abrasion 5 cm x 0.5 cm on dorsal aspect of lt. forearm 3 cm above Lt. wrist joint."

It is further noticed that brain has been shown as 'lacerated in relation to injury' and membranes have been shown as 'lacerated and congested in relation to injury'. Stomach and its contents were shown as 'partially digested food 100 gms'. The cause of death has been shown as shock and hemorrhage as a result of ante mortem injuries.

(21) The post mortem report and the injuries have been proved by the P.W.-7; Dr. Major V. N. Singh, Medical Officer,

who conducted the post mortem. He has stated in his cross-examination that the deceased had died in the winter season. He has also stated that ante mortem injuries may have been caused by two different thick head (**blunt**) weapons and the abrasion could have been caused on account of rubbing with rough surface. He has also stated that the death may have been caused at about 01:00 PM on 09.12.1999. However, in the cross-examination, he has stated that there may be difference of three hours' time on both the sides in the time of death.

(22) P.W.-1 and P.W.-2 have stated that they went to the field alongwith others at about 08:00 in the morning and around 10:00 AM to 11:00 AM, they had taken breakfast, which had come from the house. Partially digested food of 100 gms. has been found in the stomach of the deceased, therefore, the contention of learned counsel for the appellants that since digested food was found in the stomach and the doctor has stated that there may be three hours difference on either side, the death may have been caused earlier and at some other place is wrong and misconceived and not tenable as it is in consonance with the time of death shown by the witnesses, inquest report, post mortem report and the evidence of Doctor. Merely because the doctor has stated in cross-examination that there may be three hours difference on either side, it cannot be said that the time of death was earlier, when it is proved by all other evidence including post mortem.

(23) One of the arguments of learned counsel for the appellants was that P.W.-1 has stated that when the accuseds persons ran away from the spot and they went near the dead body and touched, it was not warm, therefore, the death must have occurred much

prior to that time, whereas the death had occurred in the winters and in open field, therefore, it cannot be said that the death may have been caused earlier. Even otherwise, as per inquest, there was bleeding from the head when the inquest was made and P.W.-8; Investigating Officer has proved the same and no cross-examination has been made from him by the defence. The Investigating Officer has also proved the recovery of the blood stained mud and plain mud from the spot and the blood stained *kudal* of iron lying near the dead body and also wooden *beint*, which have been exhibited as Exhibit Ka-3 and Ka-4.

(24) An argument was advanced on behalf of the appellants that they had not shown in the F.I.R. that Phool Chandra has assaulted from the back (*pasa*) of *kudal* but in the evidence of P.W.-1 and P.W.-2, they have stated that the Phool Chandra had assaulted with the back of *kudal*, which is used to be an hard object and the injury No.1 was not possible from the same, whereas the Doctor, who appeared as P.W.-7, has stated that the injuries may have been caused by thick head (**blunt**) weapon. No contrary evidence has been adduced and it is settled law that F.I.R. is not an encyclopedia of events, therefore, contention of learned counsel for the appellants in this regard is also misconceived and not tenable.

(25) The F.S.L. report i.e. Ex. Ka-16 indicates that human blood was found on all the articles i.e. kurta, baniyan and lungi. However, disintegrated blood was found on the blood stained mud, plain mud, underwear and janeu, therefore, the origin could not be determined. Thus, contention of learned counsel for the appellants that the blood stained mud was not recovered from the spot is not tenable.

(26) The F.I.R. was lodged alleging therein that while the complainant and his family members were sowing wheat in their field, the accused persons were working in their field adjacent to the field of the complainant's side. The appellant, Phool Chandra started breaking the northern mound of drainage of their field on the northern side, which was aside the field and the vacant field of the appellants. When the brother of the complainant; Ajai Kumar asked him not to do the same, Ram Badan exhorted and Harish Chandra and Phool Chandra hurling abuses, stated that kill him and all the three attacked on him and Phool Chandra assaulted in his head by the *kudal*. It has come in the evidence that the Phool Chandra was assaulting from the back side and remaining two were on the front side. The site plan i.e. Ex. Ka-14 indicates the drainage aside the field of the complainant and the deceased's side and the vacant field of the accuseds in northern side. A tube well has also been shown in the site plan in the center of the field of the complainant's side in the eastern side. The places of the deceased, accuseds, witnesses and the weapon of assault and tractor have also been shown in the site plan. It has also been stated by the P.W.-1 and the P.W.-2 that the accused persons ran away towards the northern side from their field, which has also been shown in the site plan. The site plan was prepared on pointing of the complainant and it has also been proved by the Investigating Officer. The inquest report also shows the condition of the dead body and the place of weapon of assault, where it was found, which is in consonance with the site plan and evidence.

(27) In view of above, the incident, time and place of incident, weapon of assault, which has also been recovered, have been proved. The ante-mortem

injuries and time of injuries have been proved, which have corroborated the prosecution case. Thus, the prosecution has proved its case, therefore, merely because a witness, who was present at the spot, has not been produced, it can not be said that there is any dent in the prosecution case. Even otherwise, an independent witness has been examined, who supported the case of prosecution and his testimony could not be doubted. Thus, **Yudhishtir Vs. The State of Madhya Pradesh; 1971 (3) SCC 436**, relied by learned counsel for the appellant No.2 is not applicable on the facts and circumstances of the case.

(28) Lastly, learned counsel for the appellants had argued that even if the prosecution case is found proved by this Court, it was a case of sudden quarrel and provocation and would fall under Section 304 Part-II I.P.C. and not under Section 302 I.P.C. as it was not premeditated murder, therefore, the conviction and sentence under Section 302 I.P.C. is not sustainable and the same is liable to be converted under Section 304 Part-II I.P.C. with lesser sentence.

(29) The F.I.R. discloses that while the complainant and his family members were working in their field, the accused persons and their family members were also working in their field, which was adjacent to the field of the complainant's side. In the meantime, Phool Chandra started cutting northern mound of drainage aside the complainant's field to merge in his field, which was in between their field, therefore, the brother of the complainant Ajai Kumar, asked him not to do the same, on which, Ram Badan exhorted and Harish Chandra and Phool Chandra hurling abuses, said to kill him today, on which, all the three broke on him and Phool Chandra hit *kudal* on the

head of the deceased; Ajai Kumar, on account of which, he fell down and raised voice, on which, the complainant's side rushed to save him but Harish Chandra, threatening them, opened fire from the country made pistol and on the noise, certain people of the village came but the the accused persons ran away. P.W.-1 and P.W.-2 have stated the same in their evidence. They have also stated that they had heard "बाता कही" i.e. quarrel on this issue between them. Thereafter, the assault was made. Thus, the assault was made on account of sudden quarrel by the *kudal*, which is an agricultural instrument. Admittedly, both the sides were working in the field, therefore, they must have the same, therefore, it is apparent that the incident occurred on account of sudden quarrel due to breaking of mound of drainage by the accused persons in heat of passion, therefore, it cannot be said that it was pre-meditated. Even if there was any enmity between the parties, though it could not be proved.

(30) In view of above, it is a case of an incident occurred in broad day light, in which, the deceased had suffered serious injuries, on account of which he succumbed to death. Since the motive could not be proved and it was on account of sudden quarrel in the heat of passion, therefore, it may be a case in which the intention to kill may not be there even if the accuseds knew that the deceased may die. If the motive and intention to kill is not proved and apparently the case was on account of a quarrel on spot, then it is required to be considered as to whether the offence would fall under the category of murder or not otherwise it may be a case of culpable homicide not amounting to murder. Sections 299, 300 and 304 I.P.C.,

which are relevant for the purpose, are extracted below:-

"299. Culpable homicide.-

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Murder.- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly.- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.- When culpable homicide is not murder.- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the

provocation or causes the death of any other person by mistake or accident.

public servant and without ill-will towards the person whose death is caused.

The above exception is subject to the following provisos:-

First.- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.- Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Exception 5.- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

304. Punishment for culpable homicide not amounting to murder.-

Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

(31) In view of above, to bring a case under Section 300 I.P.C., firstly it must be established that a bodily injury is present; secondly the nature of the injury must be proved and thirdly it must be proved that there was an intention to inflict that particular bodily injury and it was not

accidental or unintentional or that some other kind of injury was intended and fourthly it must be proved that injury inflicted on the deceased is sufficient to cause death in the ordinary course of nature. If all these elements are established by the prosecution, the offence would be murder under Section 300 I.P.C. and case would fall under Section 302 I.P.C., which is extracted below:-

"302. Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine."

(32) Exception 4 to Section 300 I.P.C. provides that culpable homicide is not murder, if it is committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without undue advantage by offender and acting in a cruel and unusual manner. The Hon'ble Supreme Court, in the case of **Mahesh Balmiki alias Munna Vs. State of M.P.; (2000) 1 SCC 319**, relied by learned A.G.A., has explained it in paragraph 7, which is extracted below:-

"7. Now Exception 4 to Section 300 I.P.C., is in the following terms :

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

The requirements of this exception are :

(a) without premeditation in a sudden fight;

(b) in the heat of passion upon a sudden quarrel;

(c) the offender has not taken undue advantage; and

(d) the offender has not acted in a cruel or unusual manner.

Where these requirements are satisfied, culpable homicide would not be murder."

(33) In the aforesaid case of **Mahesh Balmiki alias Munna** (Supra), the Hon'ble Supreme Court further held that there is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The paragraph 9 is extracted below:-

"9. Adverting to the contention of a single blow, it may be pointed out that there is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is

on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

(34) The Hon'ble Supreme Court, in the case of **Litta Singh and Another Vs. State of Rajasthan; (2015) 15 SCC 327**, has held that the intention to cause death with the knowledge that the death will probably be caused, is an important consideration for coming to conclusion that death is a murder or culpable homicide not amounting to murder. The relevant paragraph 24 is extracted below:-

"24. It is well settled proposition of law that the intention to cause death with the knowledge that the death will probably be caused, is very important consideration for coming to the conclusion that death is indeed a murder with intention to cause death or the knowledge that death will probably be caused. From the testimonies of the witnesses, it does not reveal that the accused persons intended to cause death and with that intention they started inflicting injuries on the body of the deceased. Even more important aspect is that while they were beating the deceased

the witnesses reached the place and shouted whereupon the accused persons immediately ran away instead of inflicting more injuries with intent to kill the deceased. "

(35) The Hon'ble Supreme Court, in the case of **Ajmal Vs. State of Kerala; (2022) 9 SCC 766**, considered distinctive features and consideration relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder and relevant consideration by the Hon'ble Supreme Court in different cases. The relevant paragraph 17 is extracted below:-

"17. The distinctive features and the considerations relevant for determining a culpable homicide amounting to murder and distinguishing it from the culpable homicide not amounting to murder has been a matter of debate in large number of cases. Instead of referring to several decisions on the point reference is being made to a recent decision in Mohd. Rafiq v. State of M.P. [Mohd. Rafiq v. State of M.P., (2021) 10 SCC 706 : (2022) 1 SCC (Cri) 116] , wherein Ravindra Bhatt, J. speaking for the Bench, relied upon two previous judgments [Ed. : The reference appears to be to State of A.P. v. Rayavarapu Punneyya, (1976) 4 SCC 382 : 1976 SCC (Cri) 659; Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500] dealing with the issue as narrated in paras 11, 12 and 13 of the Report which are reproduced below : (SCC pp. 711-15)

"11. The question of whether in a given case, a homicide is murder punishable under Section 302IPC, or culpable homicide, of either description,

punishable under Section 304IPC has engaged the attention of courts in this country for over one-and-a-half century, since the enactment of IPC; a welter of case law, on this aspect exists, including perhaps several hundred rulings by this Court. The use of the term “likely” in several places in respect of culpable homicide, highlights the element of uncertainty that the act of the accused may or may not have killed the person. Section 300IPC which defines “murder”, however refrains from the use of the term likely, which reveals absence of ambiguity left on behalf of the accused. The accused is for sure that his act will definitely cause death. It is often difficult to distinguish between culpable homicide and murder as both involve death. Yet, there is a subtle distinction of intention and knowledge involved in both the crimes. This difference lies in the degree of the act. There is a very wide variance of degree of intention and knowledge among both the crimes.

12. The decision in *State of A.P. v. Rayavarapu Punnayya* [State of A.P. v. Rayavarapu Punnayya, (1976) 4 SCC 382 : 1976 SCC (Cri) 659] notes the important distinction between the two provisions, and their differing, but subtle distinction. The Court pertinently pointed out that : (SCC p. 386, paras 12-13)

‘12. In the scheme of the Penal Code, “culpable homicide” is genus and “murder” its specie. All “murder” is “culpable homicide” but not vice versa. Speaking generally, “culpable homicide” sans “special characteristics of murder”, is “culpable homicide not amounting to murder”. For the purpose of fixing punishment, proportionate to the gravity of this generic offence, the Code practically recognises three degrees of culpable

homicide. The first is, what may be called, “culpable homicide of the first degree”. This is the greatest form of culpable homicide, which is defined in Section 300 as “murder”. The second may be termed as “culpable homicide of the second degree”. This is punishable under the first part of Section 304. Then, there is “culpable homicide of the third degree”. This is the lowest type of culpable homicide and the punishment provided for it is, also, the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

13. The academic distinction between “murder” and “culpable homicide not amounting to murder” has vexed the courts for more than a century. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300.’

13. The considerations that should weigh with courts, in discerning whether an act is punishable as murder, or culpable homicide, not amounting to murder, were outlined in *Pulicherla Nagaraju v. State of A.P.* [*Pulicherla Nagaraju v. State of A.P.*, (2006) 11 SCC 444 : (2007) 1 SCC (Cri) 500] This Court observed that : (SCC pp. 457-58, para 29)

‘29. Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty

or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course,

not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention.' ""

(36) The Hon'ble Supreme Court, in the case of **Pulicherla Nagarjun Vs. State of Andhra Pradesh; (2006) 11 SCC 444**, considered in the aforesaid case by the Hon'ble Supreme Court, has observed as to what is to be considered for deciding a case as to whether it falls under Section 302 or 304 Part-I or 304 Part-II and also the intention to cause death can be gathered from a combination of circumstances.

(37) The Hon'ble Supreme Court, in the case of **Suresh Chandra Bahri Vs. State of Bihar and Others; 1995 Supp(1) SCC 80**, has held that sometimes motive plays an important role and becomes a compelling force to commit a crime and, therefore, motive behind the crime is a relevant factor for which evidence may be adduced. However, it further noticed that in a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty of the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime. Therefore, motive may only be a relevant factor to form an opinion as to whether in a given circumstances there was an intention to kill on account of which the case may fall under Section 302 I.P.C.

(38) The Hon'ble Supreme Court, in the case of **Shahid Ali Vs. State of Uttar**

Pradesh; (2024) 14 SCC 243, has set aside the conviction and sentence in Section 302 I.P.C. and convicted and sentenced in Section 304 Part-II I.P.C., in which death has occurred in celebratory firing in marriage. The relevant paragraph 20 is extracted below:-

"20. In this context, keeping in view the totality of circumstances of the case i.e. especially the fact that: (i) there was no previous enmity between the deceased; (ii) no intention may be attributed to the appellant as may be culled out from the record to cause death of the deceased; and (iii) position of law enunciated by this Court in Kunwar Pal [Kunwar Pal v. State of Uttarakhand, (2014) 12 SCC 434 : (2014) 6 SCC (Cri) 778] and subsequently, followed in Bhagwan Singh [Bhagwan Singh v. State of Uttarakhand, (2020) 14 SCC 184 : (2020) 4 SCC (Cri) 730], we find that the appellant is guilty of commission of "culpable homicide" within the meaning of Section 299IPC i.e. punishable under Section 304 Part II IPC."

(39) The Hon'ble Supreme Court, in the case of **Jagriti Devi Vs. State of Himachal Pradesh; (2009) 14 SCC 771**, considering that there was an altercation preceding the incident of murder in which accused-appellant was insulted by the deceased and by doing so the deceased provoked the accused-appellant, therefore, the deceased also took out the 'Khukri', which was under the pillow, with the intention of assaulting the appellant-accused, which was used in the commission of offence and was being kept by the deceased under her pillow while she was sleeping in the veranda outside the house, therefore, there was no intention on the part of the appellant-accused to kill the deceased and held that the case cannot be said to be falling under Section 302

I.P.C. but under Section 304 Part-II I.P.C. The Hon'ble Supreme Court further observed that Section 304 Part-II I.P.C. comes into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death.

(40) The Hon'ble Supreme Court has taken similar view in **Kariman Vs. State of Chhatisgarh; (2024) 13 SCC 136**. The relevant paragraph 19 is extracted below:-

"19. The accused can at best be attributed with the knowledge that the injury of the nature which he inflicted upon Dasmot Bai (deceased) was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death. Thus, the act of the accused is covered under Part II of Section 304 IPC which is extracted hereinbelow for ready reference:—

"304. Punishment for culpable homicide not amounting to murder. —

... ..or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, **if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.**"

(41) Coming back to the facts of the case in hand, it is proved that there was a sudden quarrel on account of breaking of northern mound of drainage of the complainant's side between the fields of complainant's side and the appellants' side and incident occurred in heat of passion, wherein the appellant; Phool Chandra hit the deceased by spade and, thereafter, from the broken handle of the spade, which was in the field as both the sides

were working in the fields and the deceased suffered ante mortem injuries, on account of which, he died on the spot. The blood stained spade (kudal) and its handle (beint) alongwith blood stained mud was recovered from the spot. Thus, this Court is of the view that it cannot be said to be a case falling under Section 302 I.P.C. but under Section 304 Part-II I.P.C., therefore, the conviction of the appellants under Section 302 I.P.C. read with Section 34 I.P.C. and sentence under Section 302 I.P.C. is not sustainable and it is liable to be converted under Section 304 Part-II I.P.C. read with Section 34 I.P.C. and sentence under Section 304 Part-II I.P.C.

(42) The appellants were enlarged on bail in the year 2004 and they were also on bail during trial. The incident had taken place about 26 years back and both the appellants are alive. They must be of about 55 years of age and nothing has been brought before this Court to show that they have misused the liberty granted by this Court. Section 304 Part-II I.P.C. provides imprisonment for either description, which may extend to ten years, or with fine, or with both. This Court is of the view that the conviction is to be made under Section 304 Part-II I.P.C., therefore, no purpose would be served by sending the appellants in jail again. The Hon'ble Supreme Court, in the case of **State of Madhya Pradesh Vs. Shyamlal and Others; (2025) 4 SCC 616**, declined to interfere in the judgment of High Court and the sentence of undergone under Section 304 I.P.C. read with Section 149 I.P.C., as the substantial amount of Rs.16,000/- each was imposed by the High Court by way of fine and the incident had taken place about 28 years back, when the High Court had passed the said order.

(43) In view of above and considering the over all facts and circumstances of the case, the conviction and sentence of the appellant

No.1-Phool Chandra and appellant No.2-Harish Chandra under Section 302 I.P.C. is set-aside. The appellant No.1-Phool Chandra and appellant No.2-Harish Chandra are convicted for an offence under Section 304 Part-II I.P.C. read with Section 34 of I.P.C. and they are sentenced equivalent to the period already undergone alongwith fine of Rs.50,000/- each. In case of default of payment of fine, appellant Nos.1 and 2 shall have to undergo one year's rigorous imprisonment. The conviction and sentence awarded to the appellants No. 1 and 2 under Section 506 I.P.C. remains unaltered and are confirmed.

(44) Out of the aforesaid fine as well as the fine under Section 506 I.P.C. awarded by the learned trial Court, Rs.1,00,000/- (Rupees One Lakh) shall be paid to the legal heirs of the deceased.

(45) With the aforesaid, the appeal is **partly allowed.**

(46) Let the original record of trial Court and a copy of this judgment be transmitted to the Court concerned for information and compliance forthwith.

(2025) 12 ILRA 105
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2157 of 1989

Ram Bharosey		...Appellant
	Versus	
State		...Respondent

Issue for consideration

Applicability of sec 34 IPC

Headnotes

Sections 302 Indian penal Code-prosecution totally unsuccessful to prove the pre-plan, premeditation and participation-Appellant was purposely and intentionally implicated-due to jealousy and revenge-no person could be held guilty for the commission of the crime-only by presence at the time of incident-role of the appellant-not proved-main ingredients of Section 34 IPC not established.

Appeal allowed. (E-9)

Case Law Cited

1. Suresh Sakham Nam Gare Vs. State of Maharashtra (2012) 9 SCC 239
2. Criminal Appeal No.355 of 2023 Constable Surendra Singh and another Vs. State of Uttarakhand, decided on 28.01.2025
3. Criminal Appeal No. 1209 of 2011 Chandra Pratap Singh Vs. State of M.P., decided on 09.10.2023

List of Acts

Indian Penal Code, 1860

List of Keywords

Pre-plan; premeditation or prior meeting of minds; Section 34 IPC

Appearances of parties

Counsel for Appellant(s) : Ardhendu Shekhar Sharma, Ram Babu Sharma
Counsel for Respondent(s) : D.G.A.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. Heard Mr. Ram Babu Sharma, Counsel assisted by Mr. Ardhendu Shekhar Sharma, Counsel for the surviving appellant no.2 and Mr. Nagendra Kumar Srivastava, learned A.G.A. for the State.

2. The present criminal appeal has been preferred by the accused appellant No.2 – Raj Bala against the judgment and order of conviction and sentence dated 04.11.1989, passed by the IVth Additional

Sessions Judge Bulandshahar in Sessions Trial No. 175 of 1986, arising out of Case Crime No.707 of 1985, under Sections 302/34, 307/34, 323/34 IPC, Police Station - Kotwali Nagar, District Bulandshahar, whereby the accused – appellant no.2– Raj Bala has been convicted and sentenced to life imprisonment under Section 302/34 IPC. The accused- appellant no.2- Raj Bala has also been convicted and sentenced for three years rigorous imprisonment under Section 307/34 IPC.

3. As per F.I.R. version on 10.11.1985 at 05.30 P.M. accused Ram Bharosey, accused Smt. Rajbala and accused Km. Geeta were quarreling with Smt. Kaushalya and showering abuses on her in the courtyard situated in front of their house. Hearing the noise several neighbours including Dharmpal Singh (P.W.1), Mahendra Pal Singh (deceased), Kailash (P.W.2), Deen Dayal s/o Mahendra Pal Singh, Shish Pal s/o Natthan Singh & others reached there and tried to intervene in the matter in order to pacify them. In the meantime accused Geeta gave a Danda blow at the head of Smt. Kaushalya and accused Kunwarpal Singh, Advocate brought licenced rifle of Ram Bharosey and a country made pistol from the room of Ram Bharosey situated at the first floor of his house, and gave country made pistol to Smt. Rajbala and rifle to accused Rambharosey. Accused Kunwarpal Singh while giving arms to Ram Bharosey and Smt. Rajbala told them to wipe out her (Smt. Kaushalya) and her supporters of the locality and to finish the quarrel once and for all (ROJ ROJ KA JHANJHAT KHATAM KAR DO). Ram Bharosey fired shot from his rifle and killed Mahendra Pal Singh on the spot. Smt. Rajbala fired from the country made pistol, the pellets of which hit PW.2 Kailash and caused injuries

to him. Dharm Pal Singh, Kailash & others tried to apprehend Ram Bharosey Smt. Rajbala, Kunwarpal and Km. Geeta, but Rambharosey fired shots from rifle to score away Dharm Pal, Kailash & others and ran away along with Smt. Rajbala & others accused.

4. On the basis of the above-mentioned report, a case was registered as case crime No. 707 of 1985 under Sections 302, 307, 323 IPC which was proved as Exhibit Ka-17.

5. After registration of the FIR, Investigation Officer, Dhannu Singh Yadav, PW-6 started investigation. After investigation, PW-6 prepared site plan, recorded the statement of witnesses and after completion of all the formalities of investigation, he submitted charge-sheet to the concerned Magistrate Court.

6. Since the case was triable by the Sessions Court, learned Magistrate committed the case to the Sessions Court.

7. The charge-sheet was filed under Sections 302/307/323 IPC. The charge was framed against Ram Bharosey, Smt. Raj Bala, Geeta and Kunwar Pal Singh under Sections 302/34, 307/34, 323/34 IPC and all accused including sole survival accused Raj Bala denied from the charge and they claimed trial.

8. In the present case, PW-1 Dharam Pal, PW-2 Kailash, PW-3 Kaushalya Devi, PW-4 Dr. P.C. Agrawal, PW-5 Jail Singh, PW-6 Dhannu Singh Yadav and PW-7 S.K. Jaiswal, are the prosecution witnesses. In defence, they also produced LK Rastogi – DW-1 as defence witness.

9. After completing the evidence of all the prosecution witnesses, incriminating circumstances culled out from the evidence

of the prosecution witnesses which were put before the appellant and thereafter, statement of the accused-appellant was recorded under Section 313 Cr.P.C.

10. After recording of the statement of the accused under Section 313 Cr.P.C., the defence also produced the oral and documentary evidences in the Trial Court.

11. Learned Trial Court after perusing all the evidence including oral and documentary, held the accused, namely, Ram Bharosey, Smt. Raj Bala and Kunwar Pal Singh guilty under Sections 302/34 IPC and convicted and sentenced them for life imprisonment. The accused were also sentenced for three years rigorous imprisonment for the offence under Section 307/34 IPC. Accused Ram Bharosey, Kunwar Pal Singh and Smt. Raj Bala were not found guilty under Section 323/34 IPC. The accused Km. Gita was also not found guilty for the offence punishable under Section 302/34, 307/34 IPC and she was acquitted thereunder, however, she was found guilty for the offence punishable under Section 323 IPC and she was released after due admonition.

12. Aggrieved by the judgment and order dated 4.11.1989 passed in Session Trial No.175 of 1986 (State vs. Ram Bharosey and others) convicting the accused-appellant, they have filed the present criminal appeal before this Court.

13. During pendency of the present criminal appeal, accused Ram Bharosey and Kunwar Pal Singh died. Accused-Smt. Raj Bala survives. The instant criminal appeal qua Ram Bharosey and Kunwar Pal Singh was dismissed as having abated vide order dated 16.10.2025 passed by this Court. Therefore, the present criminal

appeal survives only on behalf of surviving appellant - Raj Bala.

14. Learned counsel for the appellant submitted that Trial Court has misread and misinterpreted the evidence, thereby, wrongly holding the appellant guilty. The trial court erred by convicting an accused based solely on their physical presence, without sufficient corroborating evidence. Accused - Raj Bala was wrongly held guilty under Section 302/34 and 307/34 IPC. Learned counsel further submitted that as per prosecution story, appellant- Raj Bala fired from the country made pistol (katta) on Kailash but in injury report which is Exhibit Ka-20, prepared by Dr. S.K. Jaiswal - PW-7, no grievous injury and fire arm injury was found. In the injury report of Kailash (Exhibit Ka-20), all the injuries which were found on the body of Kailash were caused by hard and blunt object. PW-7, Dr. S.K. Jaiswal, who prepared the injury report was also not confirmed about injury no.1 of Kailash. PW-7 stated in his evidence that injury no.1 of Kailash could have been caused by fire arms or could not have been caused by fire arms. Meaning thereby, PW-7 was not sure about injury no.1 of Kailash. The circumstances in this case are far from conclusive and a conclusion of guilt could not be drawn when no fire arm injury was caused to Kailash. Appellant- Raj Bala has not participated in the crime but Trial Court by wrongly appreciating the prosecution evidence held the appellant – Raj Bala guilty. It has also been argued by learned counsel for the appellant- accused that prosecution has not proved the fact of pre-plan, premeditation and participation of the appellant in the commission of crime. The prosecution has completely failed to prove its case beyond reasonable

doubt. There is no cogent and clinching evidence to implicate the appellant-accused.

15. Learned counsel for the appellant further submitted that because of no fire arm injury was found on the body of Kailash, therefore, participation in the crime by the appellant was totally false and unproven by the prosecution. If participation of the appellant was not proved by the evidence of prosecution, then in this situation pre-planning and premeditation against the appellant could not be presumed by learned Trial Court. Merely by presence at the scene of occurrence, the appellant could not be held guilty and convicted for the crime.

16. Learned counsel for the appellant relied upon the judgement of Hon'ble Apex Court in **Criminal Appeal No.355 of 2023 Constable 907 Surendra Singh and another Vs. State of Uttarakhand, decided on 28.01.2025** as well as **Criminal Appeal No. 1209 of 2011 Chandra Pratap Singh Vs. State of M.P., decided on 09.10.2023.**

17. Learned A.G.A. for the State submitted that the evidence produced by prosecution in the Trial Court is sufficient to prove the guilt of the accused - appellant Raj Bala for the commission of the crime. He further submitted that from the evidence of prosecution witnesses, Dharam Pal, Kailash, Kaushalya Devi and PW-7, S.K. Jaiswal, facts of participation by the appellant, Raj Bala in the commission of the crime has been fully proved by the prosecution.

18. The Trial Court by perusing the prosecution evidence has found the evidence of participation, pre-planning and

premeditation of the appellant- Raj Bala in the commission of crime. In view of the above facts and evidences, the Trial Court has rightly held guilty and convicted the appellant- Raj Bala under Section 302/34, 307/34 IPC, hence, criminal appeal filed by appellant is liable to be rejected.

19. In view of the above arguments of both sides, we have gone through all prosecution evidence. As per written report, Exhibit Ka-1, appellant- Raj Bala fired a shot at Kailash by country-made pistol katta (tamancha). These facts were stated in their evidence by prosecution witnesses, namely, Dharam Pal (PW-1), Kailash (PW-2) and Kaushalya Devi (PW-3) but when we have perused the injury report of Kailash, which is Exhibit- Ka 20 on the record, all the injuries were found simple in nature and caused by hard and blunt object. All the injuries except injury No.1 were simple. X-ray of right shoulder was advised. The injuries which were found on the person of Kailash – PW2 are as follows :-

“1. Two lacerated wounds 1/2 c.m. apart measuring 3/4 c.m. x muscle deep, each, on front of right shoulder / Advised X ray right shoulder.

2. Abrasion 1 1/2 cm. X 1/4 c.m., on top of right shoulder under 5 c.m. medial to tip of shoulder.

3. Abrasion 3/4 c.m. x 3/4 c.m., on top of right shoulder.

4. Abrasion 1/4 c.m. x 1/4 c.m. on front of left side chest 6 1/2 c.m. below the inner end of left collar bone.

5. Abrasion 1/4 c.m. x 1/4 c.m. on right side of face head 3 c.m. above on right eye brow.

Opinion – All the injuries are caused by hard and blunt object. Fresh in duration and simple in nature. Except injury no. 1 which is kept under observation and for which advised x-ray Rt. Shoulder.”

20. PW-7 - Dr. S.K. Jaiswal, who prepared the injury report of Kailash, which is Exhibit Ka-20, has clearly stated that except injury no.1, all the other injuries were simple in nature and all the injuries were caused by hard and blunt object. PW-7 himself was not sure that injury no.1 was caused by fire arm or not. Due to the confusion, PW-7 advised for x-ray of injury no.1. In his cross-examination, PW-7 accepted that injury no.1 of Kailash can be caused by lathi. X-ray report of Kailash are not before him. Thus, from the evidence of PW-7, Dr. S.K. Jaiswal who prepared the injury report of injured Kailash, it is amply clear that there was no injury from fire arm on the body of Kailash PW-2. Therefore, the evidence of PW-7, Dr. S.K. Jaiswal has not proved the prosecution story against the appellant that she fired from katta (tamancha) upon Kailash.

21. No X-ray was done of injured Kailash for injury no.1 as advised by PW-7, Dr. S.K. Jaiswal. In the cross- examination, injured Kailash, PW-2 has clearly stated that X-ray of his injury has not been done.

22. In his cross-examination, PW-2 Kailash has accepted that report was written by Arjun Singh on the advice of Dharam Pal, Jail Singh, Kaushalya Devi. 15 to 20 minutes time were spent in advice and consultation.

23. Learned Trial Court has not given any attention to this fact and evidence as available on the record. No fire arm injury

was found on the body of injured Kailash – PW-2, then in this situation, it could not be presumed that appellant - Raj Bala has fired a shot from katta (tamancha) upon Kailash. Due to this reason and contradiction in oral evidence of Kailash - PW-2 regarding his injury report (Exhibit Ka-20) and evidence of PW-7 - Dr. S.K. Jaiswal, in this regard, prosecution story, as alleged by the prosecution against the appellant- Raj Bala, is totally doubtful and suspicious.

24. The Hon'ble Apex Court in case of **Suresh Sakham Nam Gare Vs. State of Maharashtra (2012) 9 SCC 239** has held in para 21 and 22 that :-

“21. Since the conviction of the appellant is based only with the aid of Section 34 IPC, it is useful to refer the same:

“34. Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

A reading of the above provision makes it clear that to apply Section 34, apart from the fact that there should be two or more accused, two factors must be established: (i) common intention, and (i) participation of the accused in the commission of an offence. It further makes clear that if common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In other words, it requires a prearranged plan and

presupposes prior concert, therefore, there must be prior meeting of minds.

22. We have already referred to the evidence of prosecution witnesses. Nobody has implicated the present appellant except the statements made by PW 5 and PW 7 (the approver). We are satisfied that absolutely there is no material from the side of the prosecution to show that the present appellant had any common intention to eliminate the deceased, who was physically disabled. The only adverse thing against the present appellant is that he used to associate with A-1 for smoking ganja. In the absence of common intention, we are of the view that convicting the appellant with the aid of Section 34 IPC cannot be sustained.”

25. In the light of law as laid down by the Hon'ble Apex Court, we found that prosecution was totally unsuccessful to prove the pre-plan, premeditation and participation of the accused- appellant - Raj Bala. Prosecution was unable to prove this fact that appellant - Raj Bala had pre-planned or pre-determined in this crime. Evidence of prosecution shows that there was no preparation, intention or premeditation by appellant- Raj Bala. Appellant - Raj Bala was living with accused- Ram Bharosey as his paramour as alleged by the prosecution. From this, it appears that due to this reason of jealousy and for the revenge, appellant - Raj Bala was purposely and intentionally implicated by the prosecution in the commission of the alleged crime. Only by presence at the time of incident, no person could be held guilty for the commission of the crime. The appellant - Raja Bala was living on the first floor of the house of accused- Ram Bharosey and she was living with accused- Ram Bharosey prior to the happening of

this incident. It emerges from the evidence and also from the circumstances of this case that appellant - Raj Bala was implicated in the incident only due to jealousy and revenge. This is also the fact that role of the appellant - Raj Bala was not proved in the commission of crime as alleged by the prosecution.

26. In the facts and circumstances of the case as well as the law as laid down by the Hon'ble Apex Court in the above case law, we find that prosecution was unable to prove the fact that appellant - Raj Bala has any pre-plan or premeditation for participation in the crime. We also find that participation of the accused- Raj Bala in so-called commission of the crime is doubtful and suspicious. The role, as assigned by the prosecution against appellant- Raj Bala, could not be proved by the prosecution by the evidence of Kailash - PW-2 and Dr. S.K. Jaiswal – PW-7, who prepared the injury report (Exhibit Ka-20) of Kailash that itself falsifies the prosecution story as alleged by the prosecution. Thus, from perusal of the prosecution evidence as a whole, we find that firing by appellant- Raj Bala by katta (tamancha) upon Kailash is highly doubtful and contradictory to the medical evidence. It appears that to strengthen and to give force into the case of prosecution, prosecution projected this story of firing by appellant- Raj Bala upon Kailash - PW-2.

27. The Hon'ble Apex Court in the case of **Constable 907 Surendra Singh (Supra)** has held in para 18 that :-

“18. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established

that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of :

(1) Ezajhussain Sabdarhussain and another v. State of Gujarat, (2019) 14 SCC 339;

(ii) Jasdeep Singh alias Jassu v. State of Punjab, (2022) 2 SCC 545;

(iii) Gadadhar Chandra v. State of West Bengal, (2022) 6 SCC 576; and

(iv) Madhusudan and others v. State of Madhya Pradesh, 2024 SCC OnLine SC 4035.”

28. Similarly, the Hon'ble Apex Court in the case of **Chandra Pratap Singh (Supra)** considering the application under Section 34 IPC and Section 302 IPC has held that :-

“18. We have carefully perused the evidence of PW-1 and PW-2. There is no evidence of the presence of common intention. Only the act of stopping the deceased Uma Prasad will not, by itself, bring the case within the purview of Section 34 of IPC. There is no overt act attributed to the appellant by any prosecution witness in the assault on deceased Uma Prasad. It is difficult to infer a prior meeting of minds in this case. There is no material to prove the existence of common intention which is the necessary ingredient of Section 34 of IPC. In this case, there is no overlap

between a common object and a common intention. Therefore, the conviction of the appellant under Section 302, read with Section 34 will have to be set aside."

29. Thus, from the law as laid down by the Hon'ble Apex Court in above case law, it is clear that for convicting any accused person, under Section 302 IPC with the help of Section 34 IPC, a pre-plan, pre-meditation, participation must be established and proved by the prosecution. In other words, by proving pre-plan, premeditation, prior meeting of minds and participation, prosecution can only establish this fact that there was common intention and act in the crime committed in furtherance of common intention of all the accused but in the present criminal appeal at hand, from perusal and analysis of the evidence of prosecution witnesses Dharam Pal - PW-1, Kailash - PW-2 and PW-3 - Kaushalya Devi, we find that in the evidence as given by the witnesses in the Court, there is no reference about the pre-plan, premeditation or prior meeting of minds among the accused persons including the present surviving appellant-accused - Raj Bala.

30. Since the prosecution was totally unable and unsuccessful to establish the elements of prior meeting of minds, pre-plan and premeditation among the accused person for commission of the crime, therefore, in such a situation without establishing and proving the main ingredients of Section 34 IPC as elucidated and laid down by the **Hon'ble Apex Court in the cases of Constable -907 Surendra Singh (Supra) and Chandra Pratap Singh (Supra)**, we are of the considered opinion that present surviving appellant accused - Raj Bala could not be held guilty under Section 302/34 IPC and under

Section 307/34 IPC for commission of the crime. We find that allegation upon the present accused-appellant, Raj Bala that she fired at PW-2 - Kailash from katta (tamancha) has not been proved by the evidence of prosecution. In this respect, statement of Kailash - PW-2 and Dr. S.K. Jaiswal - PW-7, who prepared the injury report (Exhibit Ka-20) also reflect this fact that there is no fire arm injury on the body of Kailash - PW-2. All the injuries of PW-2 are found simple and caused by hard and blunt object. This fact also shows that the allegation levelled upon appellant- Raj Bala for firing at Kailash with katta (desi tamancha) is doubtful, suspicious and totally false.

31. We have also perused and gone through the judgement as given by the Trial Court and we find that the Trial Court has not given proper reasoning and also not disclosed the prosecution evidence in this respect in a clear cut way and wrongly held the appellant - Raj Bala guilty under Sections 302/34, 307/34 IPC.

32. In the present criminal appeal at hand, accused - Ram Bharosey and Kunwar Pal Singh have died. In view of the above facts, appeal filed by accused - Ram Bharosey and Kunwar Pal Singh have been abated, therefore, we did not go into the findings recorded against the above said two accused.

33. In view of the above discussions and observations, we find that conviction of present appellant - accused Smt. Raj Bala under Sections 302/ 34 IPC and Section 307/34 IPC is not sustainable in the eye of law.

34. Therefore, we hereby set aside the conviction and sentence as passed by Trial

Court against the present- appellant - Raj Bala in Session Trial No. 175 of 1986, under Sections 302/34 & 307/34 IPC. We find that present appellant - accused Raj Bala is eligible for acquittal under Sections 302/34 and 307/34 IPC by giving benefit of doubt.

35. Thus, it appears and emerges from perusal of the prosecution evidence that involvement of accused - Raj Bala is highly doubtful. It appears from the evidence that accused-appellant - Smt. Raj Bala was paramour of accused- Ram Bharosey and due to this fact, to take revenge with Smt. Raj Bala - appellant/ accused, prosecution purposely and falsely implicated the appellant- accused Raj Bala in this case.

36. In the light of above observation, we find that appeal filed by accused should be allowed and judgment and order of conviction and sentence passed by Trial Court is liable to be set aside.

37. Accordingly, the judgment and order of conviction and sentence dated 04.11.1989, passed by the IVth Additional Sessions Judge Bulandshahar in Session Trial No. 175 of 1986, arising out of Case Crime No.707 of 1985, under Sections 302/34, 307/34, 323/34 IPC, Police Station - Kotwali Nagar, District Bulandshahar is **set aside** and the present criminal appeal is **allowed**.

38. The appellant Raj Bala is acquitted of the charge under Sections 302/34 & 307/34 IPC.

39. The appellant is on bail. Her bail bond is cancelled and sureties are discharged. She need not surrender.

40. Office is directed to certify the judgment to the learned trial Court forthwith along with lower court record.

(2025) 12 ILRA 113
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE PRAMOD KUMAR
SRIVASTAVA, J.

Criminal Misc. Writ Petition No. 19091 of 2025

Nitin Kumar Singh @ Nitin Kumar
...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether the arrest of the petitioner and the consequential judicial remand order dated 18.05.2025 were vitiated in law on account of alleged non-compliance with the mandatory constitutional and statutory safeguards enshrined under Article 22(1) of Constitution and s. 50 of Cr.PC / s. 47 of BNSS, 2023, and, if so, whether such alleged infirmity warranted quashing of remand order and a direction for the petitioner's release on interim bail in exercise of writ jurisdiction under Article 226 of Constitution.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 47, 58, 318(4), 338, 340(1), 340(2), 111 and 336(3) - Constitution of India, 1950 - Articles 21, 22(1) - The petitioner was arrested in connection with Case Crime No. 290 of 2025, pursuant to a search and recovery operation conducted by police/STF at the premises of Monad University, Hapur, allegedly uncovering a large-scale racket involving preparation and circulation of fake degrees and marksheets - The arrest followed the execution of a search warrant issued by a competent Magistrate, and the petitioner was produced before the Chief Judicial Magistrate/Duty Magistrate, Hapur, who passed a judicial remand order dated 18.05.2025 - Aggrieved by the said order,

the petitioner invoked the writ jurisdiction of High Court under Article 226 of Constitution, contending that the arrest was illegal and void ab initio on the ground that the mandatory grounds of arrest were not duly communicated to him in violation of Article 22(1) of Constitution and the corresponding statutory provisions, and that such illegality vitiated the very foundation of the remand order, thereby entitling him to quashing of the remand and release on interim bail.

Held: The Recovery Memo, prepared contemporaneously and signed by petitioner, explicitly detailed the articles recovered (fake marksheets, electronic equipment etc.) and listed the corresponding penal sections - The document served as a direct, written, and effective communication of the factual and legal grounds of arrest, thereby fulfilling the substantive constitutional requirement of Article 22(1) - Applying the authoritative ratio of Sri Darshan (infra) to these established facts, the technical omission of grounds in the separate Arrest Memo is a curable irregularity, and not a fatal constitutional defect - Consequently, the remand order passed on May 18, 2025, by competent Magistrate remains a valid judicial order that supports the continued detention, as the foundational illegality (the absence of grounds) asserted by petitioner did not, in fact, exist in substance - Arresting authority has substantially complied with the mandatory provisions, and the remand order is not tainted by perversity or lack of judicial application - Consequently, the detention of petitioner is deemed legal as per the subsisting remand order - The challenge to the legality of custody based on a procedural technicality, where the accused suffered actual prejudice, cannot succeed in the face of binding precedents - Thus, petition is devoid of merit, dismissed. [Paras 19, 34, 36] (E-13)

Case Law Cited

Pankaj Bansal v. Union of India, **(2024) 7 SCC 576**; Prabir Pukayastha v. State of (NCT of Delhi), **(2024) 8 SCC 254 - referred to**

State of Karnataka v. Sri Darshan, **(2025 KHC OnLine 6693) - followed**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023;
Constitution of India, 1950

List of Keywords

Article 21, Article 22(1) of Constitution of India; Writ of Certiorari, Writ of Mandamus; Judicial Remand Order; Arrest Memo; Illegal Detention; ab initio void; Fundamental Rights; Personal Liberty; Judicial Custody; Interim Bail; Release; FIR; Recovery Memo (Fard Baramadgi); Search Warrant; Accused / Co-accused; s. 47, 58 BNSS; Mandatory Provisions; Statutory Mandate; Grounds of Arrest; Reasons for Arrest; Constitutional Safeguard; Judicial Scrutiny; Procedure Established by Law; Illegality; Substantial Compliance; Procedural Infirmary; Prima Facie Case; Application of Judicial Mind; Jurisdiction; Extraordinary Writ Jurisdiction; Validity of Remand; Custody; 24-hour Rule; Statutory Remedy; Regular Bail Application; Quashing of Order; Constitutional Violation; Prejudice; Curable Irregularity; Judicial Review; Perverse Order; Efficacious Alternate Remedy.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ
Petition No. - 19091 of 2025

From the Judgment and Order dated 18.05.2025 passed by the Chief Judicial Magistrate/Duty Magistrate, Hapur, in connection with Case Crime No.290 of 2025.

Appearances for Parties

Advs. for the Petitioner:

Ashutosh Mishra, Rajiv Lochan Shukla

Adv. for the Respondent:

G.A.

(Delivered by Hon'ble Pramod Kumar
Srivastava, J.)

1. Heard, Shri Vinay Saran, learned Senior Counsel, assisted by Shri Ashutosh Mishra and Shri Shashank Pandey, learned counsel for the petitioner, and Shri Roopak Chaubey, learned Additional Government Advocate (AGA), representing the State Respondents.

2. This petition, under Article 226 of the Constitution of India, has been filed with the prayer that this Hon'ble Court may graciously be pleased to issue a suitable Writ, Order, or Direction, including a Writ in the nature of certiorari, quashing the judicial remand order dated 18.05.2025 passed by the Chief Judicial Magistrate/Duty Magistrate, Hapur, in connection with Case Crime No.290 of 2025, under Sections-318(4), 338, 340(1), 340(2) 111 & 336(3) of BNSS, Police Station- Pilakhuwa, District- Hapur.

3. The petitioner further seeks a declaration that his arrest in connection with the aforesaid Case Crime No.290 of 2025 is illegal and ab initio void for being in blatant violation of the mandatory provisions of Article 22(1) of the Constitution of India and Section 50 of the Cr.P.C. / Section 47 of the BNSS, 2023, as interpreted by the Court. Consequently, the petitioner prays for a Writ of Mandamus directing the concerned Respondents to immediately enlarge him on interim bail or release him forthwith, as a necessary corollary to the quashing of the fundamental remand order.

4. The brief factual matrix of the case is that the proceedings begins with the lodging of an FIR based on a detailed recovery memo, following the procurement of a search warrant from a competent Magistrate on May 17, 2025. Acting on this warrant, the Police/S.T.F. conducted a major, all-night raid at the premises of Monad University concerning a massive racket involved in the preparation of fake degrees and marksheets. This extensive operation resulted in the recovery of a huge quantity of incriminating articles, including fake marksheets, degrees, provisional certificates, mobile phones, iPads,

computers, and other electronic equipment, all indicative of a well-orchestrated criminal enterprise. A detailed recovery memo (Fard Baramadgi) was meticulously prepared on the spot, read over to the accused persons, and, with the consent of all co-accused the copy of recovery memo was provided to one co-accused. All the co-accused signed the recovery memo acknowledging and certifying its contents. The accused are shown to have been arrested on May 18, 2025, at 4:45 AM. Following the arrest, the petitioner and other co-accused were produced before the Duty Magistrate/Chief Judicial Magistrate, Hapur, within the mandatory 24-hour period under Section 57 Cr.P.C./Section 58 of BNSS. The Magistrate passed the remand order on May 18, 2025, remanding the accused to judicial custody, which the petitioner now challenges as perverse. Furthermore, in the same case crime number, co-accused Rajesh and Mukesh Thakur were granted interim bail by the High Court in separate Criminal Misc. Writ Petitions (No.15982/2025 and 17333/2025, respectively), setting crucial judicial precedents that the petitioner relies upon seeking parity for grant of interim bail to him.

5. The counsel for the petitioner challenges the legality of the arrest. He asserts that the failure of the arresting authority to formally and explicitly communicate the grounds of arrest to the petitioner at the moment of apprehension constitutes a fatal flaw that vitiates the entire process. This failure, he submitted, is an egregious breach of the constitutional right guaranteed by Article 22(1) and the corresponding statutory mandate of Section 50 Cr.P.C. / Section 47 BNSS. It is argued that the procedural documents themselves betray this non-compliance, as the format

of the Arrest Memo separately prepared contained no column mentioning the grounds of arrest. This structural omission, coupled with the arresting officer's failure to provide a written document detailing the grounds, is precisely the mischief sought to be prevented by the Hon'ble Supreme Court in its recent pronouncements, emphasizing that a person's liberty cannot be curtailed through a procedure that disregards the fundamental right of the defence to know the reasons for his confinement.

6. He further submits that a grave allegation was pressed regarding the timing of the detention, claiming the petitioner was taken into illegal custody on 17th May, 2025, prior to the recorded time of arrest and lodging of the FIR. This, if true, would mean the petitioner was produced before the Magistrate after the statutory maximum period of 24 hours (Section 57 Cr.P.C. / Section 58 BNSS), rendering the entire detention non-est in the eyes of law and forming the basis for challenging the subsequent remand order itself as flowing from a poisonous tree. Strong reliance was placed on the binding precedents of the Hon'ble Apex Court, notably **Pankaj Bansal Vs. Union of India; (2024) 7 SCC 576 and Prabir Pukayastha Vs. State of (NCT of Delhi); (2024) 8 SCC 254**, the core holding of which is that the right to be informed of the grounds of arrest is an inviolable fundamental right emanating from Article 21, and a violation of this right automatically invalidates the arrest. Furthermore, the petitioner seeks parity, asserting that since co-accused Rajesh and Mukesh Thakur were granted interim relief by this Court, therefore, the petitioner is entitled to the same. The learned counsel concluded that the continuous violation of Article 21, Article 22(1), and Section 47, 48 of BNSS Cr.P.C. necessitates the

intervention of this Court under its extraordinary jurisdiction. Learned counsel for the petitioner, in support of his arguments, relied on the following judgments:-

“1. State of Karnataka v. Sri Darshan; 2025 KHC OnLine 6693, 2. B.N. John Vs. The State of Uttar Pradesh; 2025 SCC OnLine SC 7/ 2025 INSC 4, 3. Pankaj Bansal Vs. Union of India; (2024) 7 SCC 576, 4. prabir Pukayastha Vs. State of (NCT of Delhi); (2024) 8 SCC 254, 5. Arvind Kejriwal Vs. Central Bureau of Investigation; 2024 SCC OnLine 2550, 6. directorate of Enforcement Vs. Subhash Sharma; 2025 SCC OnLine SC 240, 7. Vihaan Kumar Vs. State of Haryana; (2025) 5 SCC 799, 8. Ashish Kakkar Vs. UT of Chandigarh; 2025 SCC OnLine SC 1318, 9. Sachin Soni @ Aansu @ Sachin Kumar Soni Vs. State of U.P.; 2025 SCC OnLine All 4469, 10. Manjeet Singh @ Inder @ Manjeet Singh Chana Vs. State of U.P.; 2025 SCC OnLine All 2119, 11. Kasireddy Upender Reddy Vs. State of Andhara Pradesh; 2025 SCC OnLine SC 1228, 12. Anwar Dhebar Vs. State of U.P.; 2025 SCC OnLine All 3278, 13. Shashank Mishra Vs. State of U.P.; 2025 SCC OnLine.”

7. Per contra learned counsel for the respondent-State vehemently opposed the submissions of learned counsel for the petitioner, arguing that the police action was not arbitrary but was conducted after procuring a valid search warrant on 17th May, 2025, which apprised the accused of the authority and purpose of the action, a step justified by the investigation pertaining to large-scale offence involving recovery of fraudulent documents and electronic equipments. The State's primary contention is that of substantial compliance, asserting

that the grounds of arrest were clearly communicated at every critical stage. Specifically, the recovery memo, detailing the specific articles recovered and the corresponding statutory provisions in criminal law, was prepared concurrently with the arrest, was read over to the accused persons, and was voluntarily signed by all of them. This action, the learned AGA submitted, fulfills the mandatory requirement of Section 50 Cr.P.C. / Section 47 BNSS in substance, thereby negating any claim of non-disclosure of the grounds of arrest.

8. He further submits that even if the separate arrest memo format may technically lack a column for the grounds, the procedural infirmity is negated and cured by the simultaneous preparation and communication of the detailed recovery memo, which served as a clear and contemporaneous record of the basis for arrest. Moreover, the subsequent production before the Duty Magistrate, which was well within 24 hours of the recorded arrest time, cured any alleged initial defect, as the Magistrate independently applied his mind, passing a detailed order after perusing the prosecution papers. The fact that the accused later filed detailed bail applications before the Sessions Court, enumerating the entire facts, further confirms they were fully aware of the grounds and charges and cannot claim prejudice now. In support of the State's position, strong reliance is placed on the Supreme Court's judgment in **State of Karnataka Vs. Sri Darshan (Supra)**, submitting that mere procedural infirmities or a delay in fully documenting the grounds, where there is clear evidence of substantial compliance, cannot warrant a declaration that the detention is illegal. The learned AGA concluded by arguing that the

present writ petition is an attempt to seek interim bail by adopting a circuitous route, challenging the remand order instead of pursuing the regular statutory remedy of filing a bail application. Learned counsel for the respondent-State, in support of his submission, relied on the following judgments:-

"1. Union of India and Another Vs. W.N. Chadha; 1993 Supp (4) SCC 260 (96), 2. Sher Bahadur Singh and Others (in jail) Vs. State of U.P. and Others; 1994 CRI. L. J. 720, 3. State of Karnataka Vs. Sri Darshan; 2025 KHC OnLine 6693, 4. Madhu Limaye and Others Vs. Unknown."

9. We have considered the submissions of learned counsel for the parties and perused the material available on record.

10. The crux of the petition is that the non-compliance with the mandatory provisions contained under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973 (Cr.P.C.) (corresponding to Section 47 of the BNSS)—which safeguard the fundamental right of a person to be informed of the grounds of arrest "as soon as may be," and the corresponding statutory duty of the arresting officer to communicate the same—asserting that this non-disclosure, coupled with allegations of pre-arrest detention and a seemingly cursory remand order, has rendered his continued detention in judicial custody perverse and illegal, leading to a direct infringement of Article 21 and making the initial detention and subsequent remand orders unsustainable in law; consequently, the Court has carefully scrutinized the entire record, including the written

submissions tendered by both parties, the factual matrix documented in the FIR and the recovery memo, and the crucial judicial orders passed by this Hon'ble Court in the cases of the co-accused, to determine the maintainability and merits of the petition in the light of the settled constitutional jurisprudence.

11. This petition requires examination of the interplay between Article 21 (Protection of Life and Personal Liberty) and Article 22(1) (Right to be informed of Grounds of Arrest) of the Constitution.

11-A We find that Article 22(1) serves as a mandatory safeguard, a condition precedent for the exercise of the power of arrest. The Courts have consistently held that non-compliance with the duty to inform the person of the grounds of arrest, as soon as may be, would be an infringement of the due process clause under Article 21. The relevant provision of Article 21, Article 22(1) are extracted here-in-below:-

“21. Protection of life and personal liberty. —*No person shall be deprived of his life or personal liberty except according to procedure established by law.*

22. Protection against arrest and detention in certain cases. — *(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”*

12. We have also considered the constitutional provisions and the statutory mandates: Section 50 Cr.P.C. / Section 47

BNSS (Duty to inform grounds of arrest) and Section 57 Cr.P.C. / Section 58 BNSS (Maximum detention of 24 hours). The violation of any of these four provisions—Article 21, Article 22(1), Section 50/47, and Section 57/58—has been interpreted to have significant repercussions on the legality of the detention, potentially transforming a legal arrest into illegal confinement. The relevant provision of Section 47 and 58 of BNSS are extracted here-in-below:-

“47. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

58. No police officer shall detain in custody a person arrested without warrant for a

longer period than under all the circumstances of the case is reasonable, and such period

shall not, in the absence of a special order of a Magistrate under section 187, exceed

twenty-four hours exclusive of the time necessary for the journey from the place of arrest to

the Magistrate's Court, whether having jurisdiction or not..”

13. The Supreme Court in the case of **Pankaj Bansal Vs. Union of India (Supra)** has held that the constitutional right to be informed of the grounds of arrest, enshrined in Article 22(1), must be communicated to the arrested person advisably in writing. The relevant paragraphs 38, 42, 43 and 45 are extracted here-in-below:-

“38. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the officer's “reason to believe” that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before

the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] . Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.

43. *The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA.*

45. *On the above analysis, to give true meaning and purpose to the*

constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi [Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929] , which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained.”

14. This mandate was further reinforced and applied in **Prabir Purkayastha Vs. State of (NCT of Delhi) (Supra)**, where the Supreme Court held

that the failure to communicate the grounds of arrest in writing is an infringement of a fundamental right so severe that it vitiates the entire process of arrest and remand. The relevant paragraphs 19, 28, 29, 37 and 48 are extracted here in below:-

“19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the “grounds” of “arrest” or “detention”, as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

37. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the “reasons for arrest” which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the “grounds of arrest” would be personal in nature and specific to the person arrested.

“9. Reason for arrest

(a) Prevent the accused person from committing any further offence.

(b) For proper investigation of the offence.

(c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.

(d) To prevent such person from making any inducement, threat or promise

to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer.

(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured.”

48. *It may be reiterated at the cost of repetition that there is a significant difference in the phrase “reasons for arrest” and “grounds of arrest”. The “reasons for arrest” as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the “grounds of arrest” would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the “grounds of arrest” would invariably be personal to the accused and cannot be equated with the “reasons of arrest” which are general in nature.”*

15. This entire constitutional line of reasoning is rooted in the seminal case of **Madhu Limaye and Others Vs. Unknown (Supra)**, where the Supreme Court authoritatively held that the constitutional provisions of Article 22 are absolute and non-derogable, emphasizing the necessity of informing the accused of the grounds of arrest, establishing that any breach renders the initial detention illegal.

16. In **State of Karnataka Vs. Sri Darshan (Supra)**, the Hon'ble Supreme Court, following the settled legal principle that substance prevails over form, held that the judiciary should not elevate form over substance, meaning thereby that a technical or procedural infirmity, like an omission in a document, cannot, by itself, be the sole basis for declaring a detention illegal if the accused was, in reality, fully aware of the reasons for his arrest. The view in Sri Darshan (Supra) allows a Court to overlook the technical defect in the Arrest Memo because a comprehensive, signed recovery memo fulfils the substantive constitutional requirement. The relevant paragraphs of Sri Darshan (Supra) are extracted here-in-below:-

“20.1. *Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.*

20.1.1. *The learned counsel for the respondents - accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22 (1) of the Constitution and Section 50 Cr.P.C (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.*

20.1.2. *Article 22(1) of the Constitution mandates that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". Similarly, Section 50 (1) Cr.P.C. requires that "every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.*

20.1.3. *The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest - but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.*

20.1.4. *In **Vihaan Kumar v. State of Haryana**²², it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in **Kasireddy Upender Reddy v. State of Andhra Pradesh**²³, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post-Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.*

20.1.5. *While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of*

written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.

20.1.6. *The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on **Pankaj Bansal v. Union of India**²⁴ and **Prabir Purkayastha v. State (NCT of Delhi)** (supra), it concluded (paras 43, 49 - 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.*

20.1.7. *In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail.*

As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge

under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.”

17. We also considered it appropriate to address the submission advanced on behalf of the petitioner that the law laid down by the Hon’ble Apex Court in the case of **State of Karnataka Vs. Sri Darshan (Supra)** was rendered in respect of an offence under Section 302 IPC. The petitioner contended that the present case is not of such a heinous nature, and thus, the same rigorous standard should not be applied. We do not agree with the learned counsel for the petitioner on this suppositions distinction. The police raid resulted in the recovery of a large number of fake and forged mark sheets, academic documents, and other incriminating materials from the premises, indicative of a massive, well-organized criminal enterprise. While an offence under Section 302 IPC results in the death or loss of life of a single person, the creation and distribution of fake academic records compromise the integrity of the entire social and professional fabric of the nation. It is an economic and social offense that causes large-scale ruin to an entire section of society by facilitating the employment of unqualified individuals in positions of public trust and responsibility. Such an offence is arguably a matter of public concern due to its widespread and lasting deleterious impact. Accordingly, the seriousness of the offence under the BNSS

provisions herein fully warrant the rigorous application of the principle that substance prevails over form as laid down in **Sri Darshan (Supra)**.

18. The Supreme Court in the case of **Vihaan Kumar Vs. State of Haryana (Supra)** has held that the failure to communicate the grounds of arrest to the accused, as mandated under Article 22(1) and Section 50 Cr.P.C. (or Section 47 BNSS), is an infringement of a fundamental right so severe that it vitiates the arrest and subsequent custody. The judgment holds that the illegality of an arrest flowing from a constitutional violation cannot be cured by a subsequent judicial act, such as a remand order. However, the said judgment explicitly distinguishes cases where the accused was not served with any document whatsoever containing the grounds of arrest. The relevant paragraphs 16, 19, 20, 23 and 26.6 are extracted here-in-below.

“16. This Court held that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical, and therefore, this Court held that interpretation of Article 22(5) made by the Constitution Bench in Harikisan v. State of Maharashtra [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] , shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. We may also note here that in para 21, in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , this Court also dealt with the effect of violation of Article 22(1) by holding that any infringement of this fundamental right would vitiate the process of arrest and remand. Para 21 reads thus :

(Prabir Purkayastha case [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573], SCC p. 276)

“21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.”

(emphasis supplied)

19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental

right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

20. We have already referred to what is held in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450]. This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

23. In the present case, the first respondent relied upon an entry in the case diary allegedly made at 6.10 p.m. on 10-6-

2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, we are rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

26.6. When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

19. In view of the above, this Court is of the considered opinion that the factual matrix of the present case is clearly distinguishable from the extreme procedural violations found in **Vihaan Kumar (Supra)** and **Prabir Purkayastha (Supra)**. In the present matter, the Recovery Memo, prepared contemporaneously and signed by the Petitioner, explicitly detailed the articles recovered (fake marksheets, electronic equipment etc.) and listed the

corresponding penal sections. This document served as a direct, written, and effective communication of the factual and legal grounds of arrest, thereby fulfilling the substantive constitutional requirement of Article 22(1). Applying the authoritative ratio of **Sri Darshan (Supra)** to these established facts, the technical omission of grounds in the separate Arrest Memo is a curable irregularity, and not a fatal constitutional defect. Consequently, the remand order passed on May 18, 2025, by the competent Magistrate remains a valid judicial order that supports the continued detention, as the foundational illegality (the absence of grounds) asserted by the petitioner did not, in fact, exist in substance.

20. The Hon’ble Supreme Court in the case of **Arvind Kejriwal Vs. Central Bureau of Investigation (Supra)** has held that the continued incarceration of an individual for an extended period pending trial, where the trial is unlikely to conclude quickly, infringes upon the right to liberty guaranteed under Article 21, justifying grant of bail.

21. The Allahabad High Court, in **Anwar Dhebar Vs. State of U.P. (Supra)**, held that violation of the constitutional mandate under Article 22(1) and the statutory provisions of the Cr.P.C. (or BNSS) necessitates quashing the remand order, as the detention cannot be permitted to continue. The judgment in **Anwar Dhebar (Supra)** case is distinguishable on facts as the order in the present case is based on the fact that the recovery memo in the present case achieved substantial compliance with the required procedure.

22. The Allahabad High Court, in the case of **Sher Bahadur Singh and Others (in jail) Vs. State of U.P. and Others**

(Supra), clearly stated that the Magistrate has a non-negotiable duty to carefully check the documents, police reports, and materials presented for remand. The Court emphasized that the Magistrate's action must show a proper and deliberate judicial application of mind, and not just mechanically approve the police request, especially in serious cases. The Court further held that, in the context of compliance with constitutional and legal safeguards, it is submitted that based on the details recorded in the concerned police station's General Diary following the recovery memo, it is established beyond any doubt that the reasons for the arrest of the accused, Ashwani Kumar, were disclosed to him at the time of his arrest. Consequently, this demonstrates compliance with the requirements set out in Article 22(1) of the Constitution of India and Section 50 of the Criminal Procedure Code (Cr.P.C.). The relevant paragraph 16 is extracted here-in-below:-

“16. In the above case that in view of the facts contained in the general diary of the police station concerned recorded in pursuance of the aforesaid recovery memo it is establish beyond doubt that reasons for arrest of the detenue-accused Ashwani Kumar were disclosed to him when he was arrested. Consdequently, in this case the compliance of the provisions contained under Artice 22(1) of the Constitution of India and Section 50 Cr.P.C. has been made.

23. We also find it appropriate to refer again the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Sri Darshan (2025 KHC OnLine 6693)**, in which it was held that courts must always prioritize substance over form in procedural matters, holding that a mere technical

irregularity or defect in a document will not invalidate the entire proceedings if the accused has achieved the substantive benefit of the law, namely, knowledge of the factual basis of the arrest. The law as laid down in **Sri Darshan (Supra)** demolished the plea of the petitioner'. The principle empowers the Courts to focus not on the *letter* of the procedural defect (the missing grounds in the Arrest Memo), but on the *spirit* of the constitutional mandate under Article 22(1). By relying on this precedent, we conclude that the petitioner's actual knowledge—demonstrated by their signature and acknowledgment on the accompanying Recovery Memo—fully satisfies the constitutional requirement, thereby rendering the defect in the Arrest Memo a non-fatal technicality that does not warrant quashing the entire detention process. The relevant para is extracted here-in-below:-

"It is a well-settled proposition of law that procedural lapses and technical irregularities should not be used to defeat justice unless such lapse has resulted in actual prejudice to the accused. The mandate of Article 22(1) is not merely to record the grounds of arrest in a specific document but to ensure that the arrested person is informed of the grounds. Where it is demonstrably clear from surrounding circumstances, such as the accused signing a contemporaneously prepared Recovery Memo detailing the facts of the case, that the accused had substantive knowledge of the offence and the reasons for their detention, the mere failure to reproduce those details in the Arrest Memo itself becomes a curable irregularity, and not a fatal defect that vitiates the entire remand proceeding."

24. The judgment of the Hon'ble Supreme Court in **Pankaj Bansal v. Union of India (Supra)** and **Prabir Purkayastha**

v. State (NCT of Delhi) (Supra) underscore that compliance with the constitutional safeguard must be in a meaningful manner, requiring the grounds to be communicated in writing, especially when the arrest is without a warrant. The spirit of these cases suggests that ambiguity or reliance on generalized documentation should be avoided to prevent police excess and ensure that the accused can seek legal remedy effectively.

25. But, aforesaid principle laid down by the Hon'ble Supreme Court has to be read with the caveat laid down in **State of Karnataka v. Sri Darshan (Supra)** that Courts must not elevate form over substance. The Hon'ble Apex Court, in this case, held that mere delay or procedural infirmity in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for declaring the detention illegal.

26. In light of the preceding analysis, it is imperative to re-establish the principle that the preservation of individual rights and freedom is at the heart of every democratic nation's goal of a just and equitable society. As a thriving democracy, India respects these ideals by granting certain essential rights to all citizens, including those who find themselves on the wrong side of law. These rights underscore the constitutional commitment to the dignity and value of every individual, particularly when faced with the immense coercive power of the State. When a person is arrested in India, they have numerous rights which are designed to ensure justice, due process, and the preservation of human dignity. These safeguards are not mere formalities but are the bulwarks against arbitrary state action, ensuring that no one is deprived of their liberty except through the procedure established by law. The

failure to adhere to these foundational principles constitutes a challenge to the rule of law itself. The principles enshrined in Article 21 (Right to Life and Personal Liberty) serve as the paramount touchstone against which the legality of any arrest and detention must be tested, demanding strict scrutiny from the judiciary.

27. The present petition, by challenging the procedure of arrest and remand, effectively calls upon this Court to re-affirm the sanctity of these fundamental rights and to ensure that the Executive's power to curtail liberty is exercised strictly in conformity with law. This judicial review is essential to maintain the delicate balance between State security and individual freedom, which is a cornerstone of the constitutional scheme. Therefore, the determination of the issues presented here is not merely a procedural exercise but an affirmation of the constitutional morality upon which the Indian legal system is founded, necessitating a detailed examination of the arresting authority's compliance with the letter and spirit of the law, which we now proceed to undertake.

28. We have meticulously examined the simultaneous operation of the raid and the documentation. The petitioner challenges the absence of grounds in the formal Arrest Memo. However, the recovery memo, which is the foundational document of the entire criminal proceeding, specifically mentions compliance with the relevant BNSS Sections and was signed by the petitioner. The contents of the recovery memo clearly detail the recovered items and the corresponding penal provisions. We find that this act of having the accused sign the recovery memo, which was prepared on the spot and detailed the basis for arrest, constitutes substantial

compliance with the mandate of Article 22(1) and Section 50 Cr.P.C. / Section 47 BNSS.

29. We acknowledge the strict standards set in the case of **Pankaj Bansal (Supra)** and **Prabir Purkayastha (Supra)** regarding written communication. However, the present case involves a lengthy on-site operation following a search warrant, which is a distinguishing feature. The approach adopted here, where the accused signed the detailed recovery memo, harmonizes the principles laid down in **State of Karnataka v. Sri Darshan (Supra)** with the necessity of informing the accused. The argument, that the non-disclosure of grounds led to prejudice ipso facto, fails to hold ground when the accused attested to the document detailing the entire factual basis of the charges.

30. The contention that the petitioner was taken into custody on 17th May and produced after 24 hours is not supported by the official record. The raid commenced on 17.05.2025, but the formal arrest was recorded on 18.05.2025 at 4:45 AM, which is subsequent to the mid-night mark. The production before the Duty Magistrate on the same date, 18.05.2025, was thus within the statutory 24-hour period. The allegation of illegal detention beyond 24 hours is unsubstantiated by the record and is therefore rejected.

31. The record demonstrates that the Duty Magistrate passed the remand order after reviewing the prosecution papers and applying his judicial mind. The remand order is detailed, addressing the material collected during the raid. The contention that the remand order is perverse is thus unsustainable. Furthermore, in line with *Vihaan Kumar*

v. State of Haryana, even assuming a procedural irregularity in the arrest, this does not automatically vitiate the subsequent valid remand order passed by a competent Judicial Magistrate.

32. We conclude that the failure to incorporate the grounds in the Arrest Memo when the same were detailed in the simultaneously prepared and signed recovery memo is a procedural irregularity, not a fatal jurisdictional defect that would lead to the quashing of the remand order. The petitioner was apprised of his rights, and the core constitutional and statutory mandates were substantially adhered to.

33. We further observe that the orders passed in the cases of co-accused Rajesh and Mukesh Thakur were passed either at the bail stage or were specifically based on the distinct facts and legal points presented at that time. The relief granted to them essentially took the form of interim bail or the quashing of a specific order followed by interim bail. Granting similar relief to the petitioner by quashing the foundational remand order would be inappropriate when this Court has found substantial compliance by the arresting authority through the provision of the detailed Recovery Memo. The principle of parity does not extend to forcing the Court to declare a procedural document illegal when the legal requirements have been largely met, particularly when the underlying challenge to the remand order itself fails on judicial scrutiny.

34. We find that the arresting authority has substantially complied with the mandatory provisions, and the remand order is not tainted by perversity or lack

of judicial application. Consequently, the detention of the petitioner is deemed legal as per the subsisting remand order. The challenge to the legality of custody based on a procedural technicality, where the accused suffered actual prejudice, cannot succeed in the face of binding precedents.

35. The petitioner seeks to quash the remand order as a path to immediate interim bail. The Court observes that the petitioner has already pursued the statutory remedy of bail before the Sessions Court, which was dismissed. The appropriate remedy for the petitioner is to file a Regular Bail Application before this Court under Section 439 Cr.P.C. / Section 480 BNSS. This Court, under its extraordinary writ jurisdiction, will not typically entertain a petition aimed at circumventing the statutory procedure for bail. The writ petition is, therefore, not only legally unmeritorious on the challenge to the remand order but also fails on the principle of availability of an efficacious alternate remedy. The jurisdiction under Article 226, while wide, is generally not exercised to grant relief that can be obtained through the established criminal procedure.

36. The petition is devoid of merit, and the grounds urged do not justify declaring the entire custody illegal. The continuous detention of the petitioner is supported by the valid remand order passed by the Chief Judicial Magistrate/Duty Magistrate, Hapur, and the writ petition must fail.

37. We conclude that the petitioner has failed to establish a case for the exercise of the extraordinary jurisdiction conferred under Article 226 of the

Constitution of India. Although the contentions regarding the non-communication of the grounds of arrest and the resulting illegality of the remand order are serious, they do not meet the threshold required for declaring the entire detention illegal, given the clear evidence of substantial compliance by the police officers, which effectively safeguarded the spirit of Article 22(1). The arguments raised by the State, particularly concerning the detailed nature of the Recovery Memo, the subsequent valid remand order, and the application of the principle laid down in **State of Karnataka v. Sri Darshan (Supra)**, are well-founded and successfully outweigh the petitioner's reliance on mere technical defects in the document format. Consequently, the proper and efficacious remedy available to the petitioner is to pursue their application for Regular Bail before the Court of competent jurisdiction, as seeking the quashing of the foundational remand order as a measure to obtain interim bail is legally untenable when the remand order is found to be based on the proper application of the judicial mind and valid documents.

38. In view of above, the Criminal Miscellaneous Writ Petition No. 19091 of 2025 is, hereby, **dismissed**. However, it is made clear that the dismissal of this writ petition shall not be construed as an expression of opinion on the merits of the case and shall not prejudice the right of the petitioner to file a Regular Bail Application before the Court of competent jurisdiction. The Bail Court shall consider the said application, if filed, expeditiously and decide the same solely on its own merits, without being influenced by any of the observations

made in this Order, and the records shall be remitted to the court concerned forthwith to ensure formal compliance with this order by the registry.

(2025) 12 ILRA 131
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.12.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 151 of 2014

Km. Anchal Jain ...Appellant
Versus
Sahkari Ganna Union & Ors. ...Respondents

Issue for Consideration

Whether has not awarded any amount of compensation towards attendant and driver charges, towards future prospect of the claimant, future treatment expenses, non pecuniary damages, such as, loss of marriage prospect, loss of amenities, expenses of physiotherapy which is erroneous.

Head Notes

The Motor Vehicles Act, 1988-Section 173; The Uttar Pradesh Motor Vehicle Rules, 1998-Rule 220-A- As per Rule 220-A of the UP Motor Vehicle Rules, 1998 the claimant is also entitled to compensation on future prospects at the rate of 50% since she was aged about 16 years on the date of the accident- Compensation has to be assessed by applying multiplier of 18 whereas the tribunal assessed compensation by applying multiplier of 16, which is inadequate- The tort-feasor cannot take benefit of the gratuitous service rendered by the family members- Compensation payable to the claimant is redetermined- Appeal allowed, award of the tribunal modified.(E-15)

Held- The tribunal has awarded interest on compensation from the date of adducing

evidence which is erroneous. The tribunal has failed to appreciate that the claimant was severely injured who was undergoing treatment, as such, it took time to collect all the evidence. In view of this, the claimant is entitled to interest @7% per annum from the date of filing of the claim petition, till its actual payment.

(Para 21, 22, 24 & 25)

Case Law Cited

FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another, decided on 26.04.2017; Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRS. and others, (2023) 13 SCC 334; Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another (2023) 3 SCC 439; Pappu Deo Yadav vs. Naresh Kumar (2022) 13 SCC 790; Kajal vs. Jagdish Chand & Ors. (2020) 4 SCC 413 , Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr. (2022) 7 SCC 738, Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr. 2024 SCC OnLine SC 3692 and Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari & Another 2025 INSC 1070

List of Acts

The Motor Vehicles Act, 1988; The Uttar Pradesh Motor Vehicle Rules, 1998

List of Keywords

Rule 220-A, UP Motor Vehicle Rules, 1998; Claimant entitled to compensation on future prospects at the rate of 50%; Tortfeasor cannot take benefit of the gratuitous service rendered by the family members

Case Arising From

Judgment and award dated 13.11.2013 passed by the Motor Accident Claims Tribunal/Additional District Judge, E.C. Act Meerut in MACP No. 642 of 2009 whereby, for the injuries sustained by the claimant in a road accident which occurred on 29.12.2008, a compensation of Rs. 10,83,950/- along with interest at the rate of 7% per annum has been awarded to the claimant, which has been ordered to be indemnified by the insurer of the offending vehicle.

Appearances for Parties

Counsel for Appellant(s) : Ashish Gupta, Sanjay Singh, Shantanu, Siddharth

Counsel for Respondent(s) : Aditya Singh Parihar

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation has been preferred by the claimant against the impugned judgment and award dated 13.11.2013 passed by the Motor Accident Claims Tribunal/Additional District Judge, E.C. Act Meerut in MACP No. 642 of 2009 (Km. Anchal Jain vs. Sahkari Ganna Union Mawana, Meerut and others), whereby, for the injuries sustained by the claimant in a road accident which occurred on 29.12.2008, a compensation of Rs. 10,83,950/- along with interest at the rate of 7% per annum has been awarded to the claimant, which has been ordered to be indemnified by the insurer of the offending Bolero No.UP15-AF-3348.

2. Since there is no cross appeal by the owner, driver and the insurer of the offending vehicle as such, the factum of accident and negligence of the offending driver is not disputed by the respondents.

3. Learned counsel for the appellant-claimant submitted that the claimant was travelling as a pillion rider on Scooty No.UP-15-AF-4501 at the time of the accident and was returning home from her school i.e. Sofia Girls School, Meerut then the scooty was hit by the offending Bolero No.UP15-AF-3348, causing grievous injuries to the claimants due to which she has suffered 100% permanent disability, which was proved by examining ten witnesses before the tribunal, but the tribunal has awarded inadequate compensation to the claimant. He further submitted that, from the evidence of Dr.

Sandeep Sehgal PW-9, it stands proved that the claimant has suffered 100% permanent disability. She is bedridden and living in a vegetative state, unable to move her limbs or body, and will remain confined to a wheelchair for the rest of her life. She cannot speak, is undergoing regular physiotherapy and speech therapy, and requires two attendants constantly to look after her, as well as the services of a driver for attending medical treatment and hospital visits. However, despite this evidence on record, the Tribunal has failed to consider these circumstances. Learned counsel for the appellant submitted that in the light of the law laid down by the Apex Court in a catena of decisions, the claimants are at least entitled to compensation on the basis of minimum wages paid to a skilled workmen, which were prevalent at the time of the accident in the State of U.P., which was approximately Rs.4,500/- per month. He further submitted that the claimant requires life long care and attention, future treatment, her chances of marriage have vanished, she has been deprived from the loss of amenities, she has become dependent on everyone, which itself is a curse. The claimant was studying in class X at the time of the accident in a reputed English medium school of Meerut, who had a very bright future, which has become dark. Learned counsel for the appellant-claimant submitted that the claimant is also entitled to compensation on future prospects. With these submissions, it was prayed that the appeal be allowed and enhanced compensation be awarded to the claimant.

4. Per contra, learned counsel for the respondent-Insurance Company, has very fairly conceded that keeping in view the evidence on record, the tribunal has awarded compensation on the lower side,

which requires to be enhanced keeping in view the precedents of the Apex Court.

5. I have heard the learned counsel for both the sides and perused the documents submitted with the appeal. Appeal is admitted.

6. Before the Tribunal, the claimant has examined Ajay Jain as PW-1, Ayushi Mohan as PW-2, Dr. Ravindra Singh as PW-3, Sanjay Kumar as PW-4, Noren Umrav as PW-5, Deen Dayal as PW-6, Dhoop Singh as PW-7, Ankur as PW-8, Dr. Sandeep Sehgal as PW-9 and Sachin as PW-10. Besides the above oral evidence, documentary evidence of treatment, hospitalization, cash memos of medicines purchased were also filed by the claimant.

7. PW-1 Ajay Jain, who is the father of the claimant, deposed that the claimant was admitted on 29.12.2008 at 10:00 AM in Dayanand Nursing Home, Meerut and later, on the same day she was admitted to Hope Hospital, Meerut and from there, she was taken to Ram Manohar Lohiya Hospital, New Delhi where she remained admitted from 04.02.2009 to 14.02.2009. PW-1 further deposed that the treatment of the claimant was continuing. The claimant was being treated by speech therapist Dr. Pooran Singh and Physiotherapist Dr. Sanjay. The claimant was completely bedridden who was neither able to move or speak nor perform her routine work. She was totally dependent on others.

8. PW-2 Ayushi Mohan who was driving the scooty at the time of the accident, deposed that the claimant was in coma due to the injuries suffered in the accident, who was unable to speak and was completely bedridden. PW-3, Dr. Ravindra Singh, an orthopedic surgeon, deposed that

the claimant, due to the injuries sustained on her head, has suffered 100% permanent disability and was unable to sit, move, speak, or perform her routine activities. He specifically stated that there was no possibility of the claimant ever recovering from the injuries sustained by her. He further deposed that the claimant was unable to speak or walk, and although the left side of her body was normal, she has suffered disability on the right side of her body. PW-9 Dr. Sandeep Sehgal, who is a neurosurgeon, deposed that the claimant remained in his treatment, who was neither able to stand nor walk. She was incapable of holding or lifting any object with her hands. She was also unable to speak. Her treatment was still continuing. There was neither any recovery of the claimant nor there is any possibility of her recovery in future. She was only able to move her eyelids. She was unable to move her muscles and perform any work. He specifically deposed that the injury sustained by the claimant was so severe that she is in a vegetative state. PW-4 Sanjay Kumar deposed that if the claimant does not receive physiotherapy, her joints will become stiff, and therefore, she requires continuous physiotherapy, throughout her life.

9. PW-5 Noren Umrav proved that he was employed as a domestic servant by the claimant's father for taking care of claimant, who was being paid salary of Rs.4,000/- per month. Similarly, PW-7 Dhoop Singh deposed that he gives speech therapy to the claimant. PW-10 Sachin deposed that he was working as a driver with claimant's father and was being paid salary of Rs.4,000/- per month. He deposed that he takes the claimant in the car to the hospital and doctor for treatment.

10. The judgment of the tribunal specifically records that during argument, the claimant was present in the Court on wheelchair and when the court inquired her about her health then she merely moved her neck and she was unable to speak. The tribunal has specifically recorded a finding that the claimant was unable to speak and she was only able to move on a wheelchair. The tribunal was also convinced that due to the injuries sustained by the claimant in her brain, she has stopped speaking and moving and the tribunal also concluded that the claimant has become 100% permanently disabled but in spite of this, the tribunal has only awarded a meager amount of compensation to the claimant, which is a travesty of justice.

11. It is apparent that the claimant was about 16 years old at the time of the accident, who was studying in class X in a reputed college i.e. Sofia Girls School, Meerut. She had a very bright future, which has become dark due to the unfortunate accident. The tribunal has assessed the compensation by taking notional income of the claimant at Rs.15,000/- per annum, which is grossly inadequate. The tribunal has applied multiplier of 16 for assessing compensation, which is also erroneous. The claimant alleged that she has incurred an expenditure of Rs.15 lacs on her treatment but could only submit the bills and cash memos of treatment expenses amounting to Rs.7,93,950/- which was allowed by the tribunal. The tribunal only awarded Rs.50,000/- towards pain and suffering. The tribunal has not awarded any amount of compensation towards attendant and driver charges, towards future prospect of the claimant, future treatment expenses, non pecuniary damages, such as, loss of marriage prospect, loss of amenities, expenses of physiotherapy. In this way the

tribunal has not awarded any expenditure to be incurred in future on the above heads, which is erroneous.

12. The Apex Court in the case of *Kajal vs. Jagdish Chand & Ors. (2020) 4 SCC 413*, *Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr. (2022) 7 SCC 738*, *Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr. 2024 SCC OnLine SC 3692* and *Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari & Another 2025 INSC 1070* has held that where a claimant has suffered 100% permanent functional disability due to an accident, the compensation under the head of loss of income must be awarded, at the very least, on the basis of the minimum wages of a skilled workman prevailing at the time of the accident in that region and should not be assumed on a notional basis.

13. It is apparent that the tribunal has concluded that the claimant has suffered 100% permanent disability due to the injuries suffered in the accident, which has not been challenged by the insurer of the offending vehicle, as such, that finding of the tribunal, has attained finality.

14. The Apex Court in the case of *Pappu Deo Yadav vs. Naresh Kumar (2022) 13 SCC 790 (By Three Judges)* while considering the issue of awarding future prospects in cases of permanent disablement from motor accident, held as under:-

7. Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects too;

and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-Judge Bench decision in *Jagdish* [*Jagdish v. Mohan*, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in *Anant* [*Anant v. Pratap*, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of *Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases — and admits such possibility of future prospects, in case of the victim's death.

15. The Apex Court in the case of ***Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another*** (2023) 3 SCC 439, while directing that in cases of serious permanent disability, compensation for future prospects should also be awarded, held as under:-

31. It is now a well-settled position of law that even in cases of

permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases-and admits such possibility of future prospects, in case of the victim's death.

16. The Apex Court in the case of ***Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRS. and others***, (2023) 13 SCC 334 while directing that in cases of permanent disability, there should not be any deduction for personal expenses, held as under:-

15. The High Court deducted 50% of compensation towards personal expenses. The present case being not of death and the claim not being made by the dependents, but the same being by a survivor in the accident with severe injuries resulting into permanent disability, there could not be any justification for deduction of personal expenses. We do not approve the said deduction in view of the judgment of this Court in *Lalan D.* [*Lalan D. v. Oriental Insurance Co. Ltd.*, (2020) 9 SCC 805 : (2021) 1 SCC (Civ) 253 : (2021) 1 SCC (Cri) 238]

17. In the light of the above decisions of the Apex Court it is apparent that in case of permanent disability, the claimant is entitled to compensation for future prospects and there was no need to deduct 1/3rd or any other percentage from out of the income of the claimant, towards the personal and living expenses of the claimant.

18. A Division Bench of this Court in ***FAFO No.2581 of 2011, Sushil Kumar & Another vs. M/S Sampark Lojastic Pvt. Ltd. & Another***, decided on 26.04.2017 has held that even if the accident occurred prior to 26.09.2011, the claimants are entitled to compensation on future prospects as per amended Rule 220-A of the UP Motor Vehicle Rules, 1998, since it is a beneficial legislation.

19. The Apex Court in the case of ***Rahul Ganpatrao Sable (supra)*** has awarded compensation towards attendant charges, future medical expenses, loss of marriage prospects and pain and suffering.

20. ***Rule 220-A of the UP Motor Vehicle Rules, 1998*** w.e.f. 26.09.2011, mandates that when the deceased was aged below 40 years on the date of accident, the claimants are also entitled to compensation on future prospects @50% of his income.

21. In the instant case, at the time of the accident the minimum wages of skilled workman in the State of U.P. was at least Rs.4,500/- per month. Since the claimant was about 16 years old at the time of the accident who was studying in class X, who had a very bright future, as such, it will be appropriate that her income is taken as Rs.4,500/- per month, for determining compensation in this case. Besides that, as per ***Rule 220-A of the UP Motor Vehicle***

Rules, 1998 the claimant is also entitled to compensation on future prospects at the rate of 50% since she was aged about 16 years on the date of the accident. Besides that, compensation has to be assessed by applying multiplier of 18 whereas the tribunal has assessed compensation by applying multiplier of 16, which is inadequate.

22. The tribunal has disallowed the expenses incurred by the claimant towards driver and attendant on the ground that these jobs can be performed by the family members of the claimant, which is a perverse reasoning. It has been held by the Apex Court in the case of ***Kajal (supra)*** that the tortfeasor cannot take benefit of the gratuitous service rendered by the family members. The Apex Court has awarded compensation for loss of earning to family members, who remained busy in the treatment of the claimant. Accordingly, the claimant is entitled to get expenses incurred on the driver @ Rs.4,000/- per month as proved from the evidence of PW-10, Sachin.

23. In view of the above statutory law and precedents of the Apex Court, the compensation payable to the claimant is redetermined as under:-

S. No .	Compensation Heads	Amount Awarded(in Rs.)	In Accordance with.
1.	Monthly Income of the claimant on the basis of minimum	4,500/-	<i>Kajal (supra), Master Ayush (supra), Baby Sakshi Greola</i>

	wages of skilled workman		(supra) and Hitesh Nagjib hai Patel (supra)
2.	Annual income of the claimant	4,500X12=54,000/-	Kajal (supra), Master Ayush (supra), Baby Sakshi Greola (supra) and Hitesh Nagjib hai Patel (supra)
3.	Add future prospects @50% since claimant was about 16 years on the date of the accident	27,000/-	UP Motor Vehicle Rules, 1998, Pappu Deo Yadav (supra) and Sidram (supra)
4.	Total annual loss of future income	54,000+27,000=81,000/-	UP Motor Vehicle Rules, 1998, Pappu Deo Yadav (supra) and

			Sidram (supra)
5.	Multiplier applied since age of claimant was about 16 years	18	Pranay Sethi (supra)
6.	Total future loss of income due to 100% functional disability	81,000X18=14,58,000/-	Pranay Sethi (supra)
7.	Special diet & Transportation expenses during treatment	1,00,000/-	Hitesh Nagjib hai Patel (supra)
8.	Treatment expenses	7,93,950/-	As awarded by tribunal
9.	Attendant expense (1 attendant)	5,000X12X18=10,80,000/-	Rahul Ganpat rao Sable (supra) and Kajal (supra)
10.	Compensation towards	15,00,000/-	Kajal (supra)

	pain,suffering and loss of amenities		
11.	Loss of marriage prospects	3,00,000/-	<i>Kajal</i> (supra) and <i>Hitesh Nagjibhai Patel</i> (supra)
12.	Future medical expenses	Rs.5,00,000/-	<i>Kajal</i> (supra)
13.	Future expenses on driver @Rs.4,000/- per month	4,000X12X18 =8,64,000/-	<i>Kajal</i> (supra)
14.	Total compensation	65,95,950/-	

24. In this way, the claimant is entitled to total compensation of Rs.65,95,950/- alongwith interest @ 7% per annum (as awarded by the tribunal) from the date of filing of the claim petition till it's actual payment, which is to be indemnified by the insurer of the offending vehicle.

25. It is apparent that the tribunal has awarded interest on compensation from the date of adducing evidence i.e. 19.09.2011, which is erroneous. The tribunal has failed to appreciate that the claimant was severely injured who was undergoing treatment, as such, it took time to collect all the

evidence. In view of this, the claimant is entitled to interest @7% per annum from the date of filing of the claim petition, till its actual payment.

26. The appeal is allowed. The award of the tribunal is modified to the above extent.

27. If any amount has been paid by the insurance company previously, then the insurance company is entitled to adjust it accordingly. The insurance company is directed to deposit the enhanced amount of compensation before the concerned tribunal within two months.

28. The tribunal is directed to deposit the total enhanced compensation alongwith interest in a fixed deposit of a bank, bearing maximum monthly interest and the claimant through her father/mother/brother will be entitled to withdraw the accrued monthly interest regularly for sustaining her livelihood. The tribunal will be at liberty to permit withdrawal from fixed deposit in special circumstances, keeping in view the claimants' requirement.

29. The insurance company is directed to apportion interest for every financial year, from the date of accident till actual payment of compensation. The whole amount of interest payable to the claimant in a financial year be considered her income. After considering the tax free limit, rebate available under Section 87A and 80DD of the Income Tax Act, 1961, for the relevant assessment year, only then deduction of income tax on interest be made, if it is taxable, otherwise no income tax be deducted for that assessment year. The PAN of the claimant should also be considered.

(2025) 12 ILRA 139
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE ZAFEER AHMAD, J.

Habeas Corpus Writ Petition No. 572 of 2025

Smt Rohini & Anr. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the corpus is a minor and below 18 years of age, i.e., a child as defined under Section 2 (12) of the Act, 2015 and the Child Welfare Committee has the jurisdiction to take the corpus under its care and protection or in custody and order dated 30.07.2025 passed by the Child Welfare Committee is liable to be quashed?

Head Notes

The Constitution of India, 1950-Article 226; The Juvenile Justice (Care and Protection of Children) Act, 2015-Section 2(12), 27(9), 29 & 94; The Juvenile Justice (Care and Protection of Children) Rules, 2016-Rule 19(2)- That a writ of Habeas Corpus was not to be entertained when a person is put to judicial custody or police custody by the competent Court by an order which prima facie did not appear to be without jurisdiction or was not passed in an absolutely mechanical manner or was not wholly illegal. -The order of the court without jurisdiction or was passed in an absolutely mechanical manner or was wholly illegal, the petition for Habeas Corpus would be maintainable-Child Welfare Committee has not recorded any finding as to the genuineness of the school records - There is nothing on record disclosing the source of entries made in the school record- Child Welfare Committee has also not taken the evidence of the

Principal of the institution to verify the school records produced before it-Father of the corpus was also not called by the Child Welfare Committee to verify the age of the corpus-Writ petition allowed. (E-15)

Held- The order passed by the Child Welfare Committee has been passed mechanically and without any application of mind, is without jurisdiction and nullity. The detention of the petitioner in Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar is without jurisdiction.

Case Law Cited

Suresh vs. State of Uttar Pradesh and Anr. 2025 SCC OnLine SC 1579; P. Yuvaprakash vs. State Rep. by Inspector of Police 2023 SCC OnLine SC 846; Manubhai Ratilal Patel Tr.Ushaben vs. State of Gujarat (2013) 1 SCC 314; Madhu Limaye, In re, (1969) SCC 292; Ummu Sabeena vs. State of Kerala & Ors. (2011) 10 SCC 781; Rachna and Anr. vs. State of U.P. and Ors. AIR 2021 All 109 (FB)

List of Acts

The Constitution of India, 1950-Article 226; The Juvenile Justice (Care and Protection of Children) Act, 2015; The Juvenile Justice (Care and Protection of Children) Rules, 2016

List of Keywords

Writ of Habeas Corpus; Maintainable ; order of the court without jurisdiction; or absolutely mechanical manner; or was wholly illegal.

Case Arising From

The order dated 30.07.2025 passed by the Child Welfare Committee detaining the petitioner in Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar

Appearances for Parties

Counsel for Petitioner(s) : Shailendra Kumar
Tripathi
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Salil Kumar Rai, J.)

The present petition has been filed for a writ of Habeas Corpus to release the

petitioner no. 1 from Rajkiya Balgrih (Balika), Swaroop Nagar, Kanpur Nagar.

The petitioners claim to be married according to Hindu Rites and Customs and that petitioner no.2 is the husband of petitioner no. 1.

It is stated in the writ petition that the date of birth of petitioner no. 1 is 01.01.2005 and in support of the aforesaid averment, a mark-sheet allegedly issued by Rameshwar Singh, Janta Vidhyalaya, Khama Paraur, Kannauj as well as family register of petitioner no. 1 are annexed with the writ petition. The Aadhaar card of petitioner no. 1 annexed with the writ petition also discloses that the date of birth of petitioner no. 1 is 01.01.2005. The case of the petitioners is that petitioner no. 1 had gone with petitioner no. 2 and married him in 2023 voluntarily and no force or coercion was applied on her. Respondent no. 5, who is the mother of petitioner no. 1 lodged a first information report on 25.01.2024 registering Case Crime No. 15 of 2024 under Sections 147, 363, 366, 323, 506 IPC. The petitioner no. 1, after being recovered was subsequently handed over to respondent no. 5 but, it is alleged that she was again abducted by petitioner no. 2. It was claimed in the first information report that the date of birth of petitioner no. 1 was 11.05.2008. After recovery, the petitioner no. 1 was medically examined and the medical report opined that the age of petitioner no. 1 was 18 years or above. It is stated by the complainant that petitioner no. 1 had studied in Primary School Sarhati, District Kannauj and it transpires that the age of petitioner no. 1 was recorded in her school records as 11.05.2008.

In her statement recorded under Section 164 Cr.P.C., the petitioner no. 1 admitted that

she had voluntarily left her parental home and had married petitioner no. 2 and no force or coercion was applied on her. In her statement under Section 164 Cr.P.C. recorded on 13.03.2024, petitioner no.1 stated her age to be 19 years.

Subsequently, the Investigating Officer of Case Crime No. 15 of 2024 filed an application before the Special Judge (POCSO Act) / Additional Sessions Judge, Kannauj complaining that petitioner no.1 had eloped with petitioner no. 2 four times and had to be recovered every time which wasted the time of the Court and also of the administration. It was prayed that the petitioner no. 1 be kept in Naari Niketan as her date of birth was entered in school records as 11.05.2008. On the aforesaid application, the Special Judge (POCSO Act) vide his order dated 19.02.2025 directed that the matter be put up before the Child Welfare Committee. The Child Welfare Committee, initially, by its order dated 20.02.2025 sent the petitioner no. 1 in foster care of one Poonam Katiyar and Sub Inspector Ram Prakash. Subsequently, by its order dated 30.07.2025, the Child Welfare Committee directed that petitioner no. 1 be kept at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar. The copy of the order annexed with the counter affidavit filed by the Additional Government Advocate does not contain the date of the order but it has been averred in the counter affidavit that the order was passed on 30.07.2025. In the counter affidavit, the Additional Government Advocate has also annexed the transfer certificate of petitioner no. 1 issued by the Primary School, Sarhati which records the date of birth of petitioner no. 1 as 11.05.2008.

In its order dated 30.07.2025, the Child Welfare Committee notes that the petitioner no. 1 had stated that her date of

birth in the school records was noted as 11.05.2008 on the statement of her father which she did not accept and petitioner no. 1 had refused to go with her parents because her father wanted her to marry somebody else.

Petitioner no. 1 was produced before this Court on 21.08.2025, on which date, the Court examined petitioner no.1 who stated that she did not wish to stay with her parents and wanted to go with her husband, i.e., petitioner no. 2.

It has been argued by the counsel for the petitioners that petitioner no. 1 is major as would be evident from the medical report and her statement recorded under Section 164 Cr.P.C. and is not a child as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, 'Act, 2015'). It was argued that the petitioners are married according to Hindu rites and the said marriage is a valid marriage under the Hindu Marriage Act, therefore, the mother of petitioner no. 1 had no guardianship rights over petitioner no. 1 and the order of the Child Welfare Committee dated 30.07.2025 was without jurisdiction. It has been further argued that the order dated 30.07.2025 has been passed by the Child Welfare Committee mechanically and without application of mind. It has been argued that for the aforesaid reason, the detention of petitioner no. 1 at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar is illegal and without authority of law. It was further argued that the order dated 30.07.2025 passed by the Child Welfare Committee is liable to be quashed and a writ of Habeas Corpus is to be issued to release the petitioner no. 1.

Rebutting the argument of the counsel for the petitioners, the Additional

Government Advocate has mainly argued that the corpus is kept at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar on the orders of the Child Welfare Committee which is a Court, therefore, the present petition for a writ of Habeas Corpus is not maintainable and is liable to be dismissed. In support of his contention, the AGA has mainly relied on the judgment of Full Bench of this Court reported in ***Rachna and Anr. vs. State of U.P. and Ors.*** AIR 2021 All 109 (FB). It was argued that under Section 94 of Act, 2015, the school records have priority over medical report and because the corpus is below 18 years of age and minor according to school records, therefore, the order dated 30.07.2025 passed by the Child Welfare Committee is in accordance with law and there is no illegality in the aforesaid order so as to occasion interference by this Court under Article 226 of the Constitution of India. It was argued that for the aforesaid reasons, the writ petition is liable to be dismissed.

We have considered the submission of the counsel for the parties.

It would be appropriate that the objections of the AGA to the maintainability of the present Habeas Corpus petition be considered first.

The AGA argues that the Habeas Corpus petition is not maintainable because the corpus is detained at Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar on the orders of the Child Welfare Committee which is a Court. The AGA relies on Section 27 (9) of the Act, 2015 which provides that the Child Welfare Committee shall function as a bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a

Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of I Class to argue that the Child Welfare Committee is a Court. In support of his contention, the AGA has relied mainly on the judgment of the Full Bench of this Court in *Rachna and Anr.* (supra).

It has been observed by the Supreme Court in *Ummu Sabeena vs. State of Kerala & Ors. (2011) 10 SCC 781* that procedural safeguards given for protection of personal liberty must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. It was observed by the Supreme Court that the principal of Habeas Corpus has been incorporated in our Constitutional law and in a democratic republic, the Judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same was by way of exercise of power by the Court by issuing a writ of Habeas Corpus. It was further observed that the aforesaid facet of the writ of Habeas Corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizens against the most powerful authority. It has been said that the writ of Habeas Corpus is the key that unlocks the door to freedom.

It is in the above background that we shall consider the objections regarding the maintainability of the present petition.

The issue as to whether a petition for writ of Habeas Corpus was maintainable in cases of detention by an order of the Court was considered by the Supreme Court in several cases and it has been held that a writ of Habeas Corpus was not to be entertained when a person is put to judicial

custody or police custody by the competent Court by an order which prima facie did not appear to be without jurisdiction or was not passed in an absolutely mechanical manner or was not wholly illegal. The aforesaid implies that in case, the order of the court was without jurisdiction or was passed in an absolutely mechanical manner or was wholly illegal, the petition for Habeas Corpus would be maintainable and a writ directing release of the detainee would be issued. At this stage, it would be relevant to consider two decisions of the Supreme Court.

The Supreme Court in *Madhu Limaye, In re, (1969) SCC 292*, while considering the legality of the detention after a judicial remand, observed that for successfully opposing the petition for Habeas Corpus, it was necessary for the State to establish that at the stage of remand, the Magistrate directed detention in jail custody, after applying his mind to all relevant matters. Similarly, in *Manubhai Ratilal Patel Tr.Ushaben vs. State of Gujarat (2013) 1 SCC 314*, the Supreme Court considered the legality of the remand orders passed by the Magistrate and dismissed the Habeas Corpus petition after noting that there was no illegality in the order passed by the Magistrate remanding the accused to judicial custody. The observations of the Supreme Court in paragraph no. 24 and 25 of the aforesaid judgment are reproduced below:-

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him

justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

25. It is apt to note that in *Madhu Limaye, In re* [(1969) 1 SCC 292 : AIR 1969 SC 1014] it has been stated that : (SCC p. 299, para 12)

"12. Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters."

(Emphasis supplied)

It be noted that in the aforesaid paragraphs, the Supreme Court has observed that it was obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. The condition that an order shall not be passed in a mechanical manner and should be passed after application of mind is an essential feature of a judicial order. The Supreme

Court in *Manubhai Ratilal Patel*(supra) further observed in paragraph no. 31:-

"31. ... It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in *B. Ramchandra Rao* [(1972) 3 SCC 256: 1972 SCC (Cri) 481: AIR 1971 SC 2197] and *Kanu Sanyal* [(1974) SCC 141:1974 SCC (Cri) 280], the court is required to scrutinize the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.

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(Emphasis supplied)

It is apparent from the observations of the Supreme Court reproduced above that in a Habeas Corpus petition, the legality of a detention order can be examined to ascertain whether the order suffers from a lack of jurisdiction or is absolutely illegal or has been passed in a wholly mechanical manner. If the order detaining the person is without jurisdiction or is absolutely illegal or has been passed in a mechanical manner, a writ of Habeas Corpus directing the release of the detenu would be issued.

The judgment of the Full Bench of this Court in *Rachna and Anr.* (supra) which has been relied upon by the AGA does not hold that a petition for Habeas Corpus would not be maintainable even in circumstances where an order passed by the Child Welfare Committee would be without jurisdiction and a nullity or where the order has been passed mechanically and without application of mind.

In the present case, the Child Welfare Committee has passed the order detaining the corpus, i.e., petitioner no. 1, on the ground that the corpus was below 18 years of age, therefore, a child. The Child Welfare Committee has relied on the school records wherein the date of birth of petitioner no. 1 was recorded as 11.05.2008.

Child has been defined under Section 2(12) of the Act, 2015 to mean a person who has not completed 18 years of age. Under Section 29 of the Act, 2015, the Child Welfare Committee has been empowered to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. A child in need of care and protection has been defined in Section 2 (14) of the Act, 2015. The issue in the present case is as to whether the corpus, i.e., the petitioner no. 1 is a child as defined in Section 2 (12) of the Act, 2015 and thus covered by Section 2 (14) and whether the Child Welfare Committee had the jurisdiction to take the corpus, i.e., the petitioner no. 1 under its protection and custody and act in exercise of powers under Section 29 of the Act, 2015. The decision on the issue is dependent on the determination of age of the corpus, i.e., the petitioner no. 1.

Rule 19 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2016 states that in any inquiry as to whether any person produced before it was a child in need of care and protection, the Committee shall, prima facie, determine the age of child in order to ascertain its jurisdiction pending further inquiry as per Section 94 of the Act, if need be. Section 94 of the Act, 2015 is reproduced below:-

94. Presumption and determination of age.—(1) *Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

(2) *In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—*

(i) *the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

(ii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*

(iii) *and only in the absence of (i) and (ii) above, age shall be determined by*

an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

(Emphasis supplied)

A reading of Section 94 of the Act, 2015 shows that the Committee shall undertake the process of age determination by seeking evidence, first by obtaining **the date of birth certificate** from the school, if available, and in absence thereof, the birth certificate given by the local body, and in absence of birth certificates, the age shall be determined by the latest medical age determination test conducted on the orders of the Committee. Mere production of the school records would not be sufficient for the Committee to determine the age of the person produced before it. As provided in Section 27 (9) of the Act, 2015, the Child Welfare Committee has powers conferred by the Code of Criminal Procedure, 1973 on the Judicial Magistrate of I Class. The Committee, thus, has the power to take evidence on oath and to scrutinize the evidence produced before it. The Committee has to act judicially. In case the Child Welfare Committee fails to scrutinize evidence and passes a mechanical order accepting the school records produced before it without any application of mind and without the records being proved as

required in law, the order of the Child Welfare Committee would be absolutely illegal and a Habeas Corpus petition would lie before the Court for release of the person who has been taken in its custody by the Child Welfare Committee.

A reading of Section 94(2) of the Act, 2015 also shows that the school records, i.e., entries in the admission register or in the transfer certificate are not the documents stipulated in the aforesaid provision as evidence of the date of birth of the person produced before the Committee. Section 94(2) (i) provides that date of birth certificate shall be obtained from the school. A transfer certificate or entries in the admission register of the school **are not date of birth certificates**. In our aforesaid view, we are supported by the judgment of Supreme Court in *P. Yuvaprakash vs. State Rep. by Inspector of Police 2023 SCC OnLine SC 846*.

In the aforesaid case, the school transfer certificate was produced to prove the age of the child. The Supreme Court held that a school transfer certificate cannot be relied upon to determine the age of child under the Act, 2015. In this context, the observation of the Supreme Court in paragraph nos. 14, 18 and 19 of the aforesaid judgment are reproduced below:-

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any

other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.

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Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

18. Reverting to the facts of this case, the headmaster of M’s School, CW- 1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M’s name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that ‘M’ had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. **She**

conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of “the date of birth certificate from the school” or “the matriculation or equivalent certificate” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim’s age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating “that the age of the said girl would be more than 18 years and less than 20 years”. In the cross-examination, she admitted that M’s age could be taken as 19 years. However, the High Court rejected this evidence, saying that “when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor”. This finding is, in this court’s considered view, incorrect and erroneous. **As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the**

victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9."

(Emphasis supplied)

The Supreme Court in **Suresh vs. State of Uttar Pradesh and Anr.** 2025 SCC OnLine SC 1579 while considering Rule 12 (3) of the rules framed under The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'Act, 2000') held that the entries in the school records would not be acceptable to determine the age of girl on the testimony of the school's Headmaster in case the date of birth in the school records has been entered on the oral representation of the parents of the person claiming juvenility. Observations of the Supreme Court in paragraph nos. 21, 24 and 25 of the aforesaid judgment are reproduced below:-

"21. There is no dispute on the factum that Kaushik Modern Public School, Khurgaon – the first attended school – is not a Government School and thus, the records maintained by the said School would not be 'public documents'. Moreover, the Headmaster/Principal of such School cannot be said to be a 'public servant' for the purposes of the Evidence Act. The

Headmaster when examined has himself taken the stand that Kaushik Modern Public School, Khurgaon was only a State Government-recognized school.

23. Even otherwise, in the case at hand, except for the Headmaster's sole testimony, there is no material to establish that the date 18.04.1995 as Respondent No.2's date of birth, as recorded in the certificate issued by Kaushik Modern Public School, Khurgaon, was correct. As a matter of fact, the Principal in his cross-examination stated that when the Respondent No.2 was leaving the school on that day after making cutting he had written the correct date of birth. Moreover, the Principal has also stated that the birth-date entry was made on the basis of an oral representation alone by Respondent No.2's father and when he was asked for the horoscope or any other document in support of the date of birth of the Respondent No.2, nothing was submitted. This, in our view, discredits the certificate issued by the Kaushik Modern Public School, Khurgaon. As noted hereinbefore, the other school certificates were issued following this and therefore, meet the same fate inasmuch as they cannot be treated as correct, in the face of conflicting public records and public documents as also the Medical Report which state to the contrary.

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24. Rule 12(3)(a) of the Rules lays down the sequential list of certificates to be examined and the order thereof. As no 'matriculation or equivalent certificates' were available under Rule 12(3)(a)(i) of

the Rules, thus under Rule 12(3)(a)(ii) of the Rules, 'date of birth certificate from the school (other than a play school) first attended' was attracted and certificate issued by Kaushik Modern Public School, Khurgaon was taken as conclusive proof of date of birth. However, the deposition of the School's Headmaster, especially to the effect that the birth-date was noted as per an oral representation by Respondent No.2's father, makes the said certificate unreliable. Moving on, Rule 12(3)(a)(iii) and Rule 12(3)(b) of the Rules, respectively, provide for 'birth certificate given by a corporation or a municipal authority or a panchayat' and 'only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.' 18 of 21

25. *From an overall circumspection of all the facts and circumstances surrounding the case, including the Rules, the picture which emerges is that on the one hand, there is the certificate backed by the testimony of the Headmaster of the first school (which as indicated supra notes that the recordal was made on the oral say-so of Respondent No.2's father) relating to the date of birth and the three consequentially-made/issued certificates, whereas on the other hand, there exists a statutory document, being a public record and a public document, in Form (A) under Rule 2 of the Rules framed under the U.P. Panchayat Raj Act, 1947 disclosing the year of birth of Respondent No.2 as 1991 as also the entry in the Voters' List for the Legislative Assembly of the year 2012 and the Medical Report apropos the age of Respondent No.2 given by the Chief Medical Officer, Muzaffarnagar, who opined that*

Respondent No.2 was aged about 22 years on 01.12.2012. As such, the certificate issued by Kaushik Modern Public School, Khurgaon could not have been taken as conclusive proof of date of birth of Respondent No.2, discarding Form (A) under Rule 2 of the Rules under the U. P. Panchayat Raj Act, 1947; the entry in the Voters' List for the Legislative Assembly of the year 2012, and; the Medical Report. On the basis of the latter three documents, it is clear that Respondent No.2 cannot be said to have been a 'juvenile' on the date of the unfortunate incident.

(Emphasis supplied)

In the present case, the Child Welfare Committee has not recorded any finding as to the genuineness of the school records produced before it. There is nothing on record disclosing the source of entries made in the school record and the reliability of such source. The entries in school record were also not proved as required by law. The Child Welfare Committee has also not taken the evidence of the Principal of the institution to verify the school records produced before it. It would also be relevant to note that the institution in which the state respondents claim the corpus was admitted, is not a government institution, therefore, its Principal is not a public servant. The father of the corpus was also not called by the Child Welfare Committee to verify the age of the corpus. It is apparent that there is no determination of the age of the corpus by the Child Welfare Committee. The essential condition for holding that the corpus is a minor and below 18 years of age, i.e., a child as defined under Section 2 (12) of the Act, 2015 and the Child Welfare Committee has the jurisdiction to take the corpus under its care and protection or in

custody do not exist. The order passed by the Child Welfare Committee has been passed mechanically and without any application of mind. The order dated 30.07.2025 is without jurisdiction and nullity. The detention of the petitioner in Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar is without jurisdiction.

There is no other document on record except the medical report, to determine the age of the corpus. The medical test determining the age of petitioner no.1 indicates that the age of corpus, i.e., petitioner no. 1 is 18 years or above and is, therefore, not a child as defined in Section 2(12) of Act, 2015. The Child Welfare Committee has no jurisdiction to take the corpus, i.e., petitioner no. 1 under its care and protection or keep her in Government Children's Home or anywhere else. The detention of corpus, i.e., petitioner no. 1 in Rajkiya Balgrih (Balika), Swaroop Nagar, Kanpur Nagar is without jurisdiction.

For the aforesaid reasons, a writ of Habeas Corpus is to be issued to release Smt. Rohini, corpus, i.e., petitioner no. 1. Consequently, a writ of Habeas Corpus is issued directing the Superintendent, Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar and the Chairman, Child Welfare Committee, Kannauj to release forthwith Smt. Rohini, petitioner no.1. The corpus, i.e., the petitioner no. 1 is free to go wherever she likes and to stay with whomsoever she wants including the petitioner no. 2.

In view of the aforesaid, the petition is *allowed*.

A copy of this order be communicated for necessary compliance to the

Superintendent, Government Children Home (Girls), Swaroop Nagar, Kanpur Nagar and the Chairman, Child Welfare Committee, Kannauj by the Registrar (Compliance) within one week.

(2025) 12 ILRA 149
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.12.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE VIVEK KUMAR SINGH, J.

Civil Misc. Review Application Defective No. 99
of 2025

State Of U.P. & Anr. ...Applicants
Versus
Mohan Lal ...Opposite Party

Issue for Consideration

Whether the explanation given by the Review Petitioners-State for such huge delay in preferring this Review Petition is satisfactory?

Head Notes

The Code of Civil Procedure, 1908-Section 114 & Order XLVII; The Limitation Act, 1963-Section 5- Delay of 5743 days in filing the review application from the date of judgment under review- Judgment under review was earlier challenged by the State of U.P. by filing Special Leave Petition (C) No.25032 of 2014 with a delay of 1633 days and the same was dismissed on the ground of delay as well as on merit by Hon'ble Supreme Court-Whether litigants is a private party or State or Union of India when it comes to condoning the gross delay of several years. The government bodies and their agencies should be vigilant in filing the petition within time. There is no need to accept the usual explanation that the petition was kept pending for several years due to considerable degree of procedural red tape in the process. The government agencies are under a special

obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of the Government Department- Delay Condonation application rejected and review petition dismissed. (E-15)

Held-Application seeking condonation of delay reflects proverbial bureaucratic red tapism wherein the Review Petitioners-State has attempted to take shelter in the usual functioning of the administrative machinery.

(Para 8 & 21)

Case Law Cited

Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir, reported in 2024 SCC OnLine SC 489; Ajay Dabra v. Pyare Ram, reported in 2023 SCC Online SC 92; Majji Sannemma v. Reddy Sridevi, reported in 2021 SCC Online SC 1260; Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, reported in [2012 (5) SCC 157]; Pundlik Jalam Patil (dead) by LRs Vs. Executive Engineer, Jalgaon Medium Project and Another reported in (2008) 17 SCC 448; Vedabai @ Vaijayanatabai Baburao Vs. Shantaram Baburao Patil and others, reported in [JT 2001(5) SC 608]; State of Madhya Pradesh and others vs. Bherulal, reported in [(2020) 10 SCC 654]; Balwant Singh (Dead) vs. Jagdish Singh & Ors, reported in [AIR 2010 SC 3043]; Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr., reported in [(2012) 3 SCC 563]; Special Leave Petition (Civil) Diary No(s). 19846/2020, Union of India vs. Central Tibetan Schools Admin & Ors.;

List of Acts

The Code of Civil Procedure, 1908; The Limitation Act, 1963

List of Keywords

Review application; Delay; Litigant whether State or Private; vigilant in filing petition on time; Condonation of delay is an exception; should not be used as an anticipated benefit for the Government Departments

Case Arising From

Review application, seeking review of the judgment and order dated 13.11.2009 passed by this Court in Writ Petition (C) No.34974 of 2001 (Mohan Lal vs. State of U.P. and Another), whereby the writ petition was allowed in favour of the petitioner.

Appearances for Parties

Counsel for Applicant(s) : Mohan Srivastava, S.C.

Counsel for Opposite Party(s) : Santosh Kumar Pandey

(Delivered by Hon'ble Vivek Kumar Singh, J.)

Re: Delay Condonation Application No.1 of 2025 in Civil Misc. Review Petition

1. Heard Shri Mohan Srivastava, learned Standing Counsel for the Applicants and Shri R.K. Ojha, learned Senior Counsel assisted by Shri Santosh Kumar Pandey, learned counsel for the opposite party.

2. By means of this review application, the State of U.P. seeks review of the judgment and order dated 13.11.2009 passed by this Court in Writ Petition (C) No.34974 of 2001 (Mohan Lal vs. State of U.P. and Another), whereby the writ petition was allowed in favour of the petitioner.

3. There is a delay of 5743 days in filing the review application from the date of judgment under review herein.

4. The judgment and order dated 13.11.2009, which is under review before us, was earlier challenged by the State of U.P. by filing Special Leave Petition (C) No.25032 of 2014 with a delay of 1633 days and the same was dismissed on the

ground of delay as well as on merit by Hon'ble Supreme Court vide its order dated 03.05.2024. Thus, from the date, Special Leave Petition was dismissed, there is a delay of about 489 days in preferring the Review Petition. The Writ (C) No.34974 of 2009 was filed by Mohan Lal against State of U.P. wherein it was prayed that a Writ of Mandamus be issued against the Respondents and direct the Respondent no.2 to omit the name of State of Uttar Pradesh from the revenue records and mutate the name of the petitioner in the revenue records in place of State of Uttar Pradesh. After hearing both sides, this Court allowed the Writ Petition vide judgment and order dated 13.11.2009 and it was held that the petitioner was entitled to the benefit of Section 3 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (in short 'Repeal Act') and his land shall not be treated to have been declared as vacant land under the Repeal Act.

5. As noted above against the judgment and order dated 13.11.2009, which is under challenge in the Review Petition, the State of U.P. had filed Special Leave Petition No.25032 of 2014, which was dismissed by the Hon'ble Supreme Court vide order dated 03.05.2024 and the case on merit was also considered in paragraph 2.2 of the order dated 03.05.2024, however, in operative part of aforesaid order, the huge delay of 1633 days in filing the petition was not condoned by the Hon'ble Supreme Court. The Hon'ble Supreme Court further observed that to explain the delay in filing the petition, only plea taken by the State was that the matter was entrusted to the counsel and the same reasoning cannot be accepted. The case was not followed up at any stage.

6. In the affidavit filed by the Review Petitioners-State, certain explanation has been given for such huge delay in preferring this Review Petition. However, on consideration of the averments made in the application seeking condonation of delay and the affidavit filed in support thereof, what we find is that the delay has not been satisfactorily explained, rather in the facts of the case what we conclude is that there has been unjustifiable laches and callousness on the part of the State in preferring this Review Petition. It has been stated in the application seeking condonation of delay that the order dated 13.11.2009, which is under review, was challenged before the Hon'ble Supreme Court in Special Leave Petition No.25032 of 2014, which was dismissed on the ground of delay by the Hon'ble Apex Court vide order dated 03.05.2024. It has not been made clear by the Review Petitioners-State as to what prevented them to file the Review Petition after 13.11.2009 and before filing Special Leave Petition No.25032 of 2014. It has also been stated in the affidavit filed in support of the application seeking condonation of delay that once the Special Leave Petition No.25032 of 2014 was dismissed by the Hon'ble Supreme Court vide order dated 03.05.2024, the petitioner Mohan Lal submitted application dated 05.07.2024 for compliance of the Hon'ble Apex Court dated 03.05.2024 and the High Court dated 13.11.2009 for recording his name in the revenue records and thereafter on 16.07.2024 a proposal was sent to the State Government for filing Review Petition. Thereafter, an Office Memo No.230, dated 22.08.2024 was prepared and the same was sent to the Advocate on Record of the Hon'ble Supreme Court and Advocate on Record has sent his legal opinion which was received on 22.03.2025. Thereafter, the

Petitioners-State decided to file Review Petition and a meeting was invited for discussing the further steps to be taken in the matter and permission was granted for filing Review Petition on 26.07.2025.

7. Learned Standing Counsel for the Petitioners-State taking the Court to the aforementioned submissions made in the affidavit filed in support of the application seeking condonation of delay has submitted that delay is genuine, *bonafide* and unintentional. He has further submitted that Review Petition could not be filed as it took time in completing the administrative formalities by following certain norms and procedures and once they get legal opinion from Advocate on Record, it was decided in the meeting that the Review Petition would be filed and permission was granted on 26.07.2025 for filing the Review Petition against the order of this Court dated 13.11.2009.

8. We have given our conscious consideration to the submissions made by the learned Standing Counsel, however, what we find is that the delay and laches in preferring the Review Petition are not satisfactorily explained. The reasons as argued by the learned Standing Counsel rather are, in fact, manifestation of callousness and non-seriousness on the part of the officials and officers of the State Government. What has been stated in the affidavit filed in support of the application seeking condonation of delay reflects proverbial bureaucratic red tapism wherein the Review Petitioners-State has attempted to take shelter in the usual functioning of the administrative machinery.

9. The Hon'ble Supreme Court time and again has not only expressed words of caution in respect of casual manner in

which the State Authorities approach the Courts without any plausible ground for condonation of delay but has even counselled the State Authorities in this regard. Regard may be had at this juncture to the pronouncement made by Hon'ble Supreme Court on 04.02.2021 while dismissing the **Special Leave Petition (Civil) Diary No(s). 19846/2020, Union of India vs. Central Tibetan Schools Admin & Ors.** The Hon'ble Supreme Court dismissed the Special Leave Petition, which was preferred with the delay of 532 days from the date of rejection of restoration application and 6616 days from the date of original order and made certain observations are quoted below:

"We have heard learned Additional Solicitor General for some time and must note that the only error which seems to have occurred in the impugned order is of noticing that it is not an illiterate litigant because the manner in which the Government is prosecuting its appeal reflects nothing better! The mighty Government of India is manned with large legal department having numerous officers and Advocates. The excuse given for the delay is, to say the least, preposterous.

We have repeatedly being counselling through our orders various Government departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the legal department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary

effect and that the present matter should have been brought up, really takes the cake!"

10. In the case of **Central Tibetan Schools Admin & Ors. (supra)** while observing that the appellant therein had approached the Court in casual manner without any cogent ground for condonation of delay, Hon'ble Supreme Court has referred to the cases of **Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr.**, reported in [(2012) 3 SCC 563] and also the case of **Balwant Singh (Dead) vs. Jagdish Singh & Ors.**, reported in [AIR 2010 SC 3043]. Relevant extract of the said judgment in the case of **Central Tibetan Schools Admin & Ors. (supra)** runs as under:

"In this behalf, suffice to refer to our judgment in the State of Madhya Pradesh & Ors. v. Bheru Lal [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and The State of Odisha & Ors. v. Sunanda Mahakuda [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. vs. Living Media India Ltd & Anr.- (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities. "

11. In the case of **Living Media India Ltd. & Anr. (supra)** Hon'ble Supreme Court noticed the advancement in modern

technology and observed that the claim of seeking condonation of delay on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. In the said case, it was further observed by Hon'ble Apex Court that all the government bodies, their agencies and instrumentalities need to be informed that unless they have reasonable and acceptable explanation for delay, there is no need to accept usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process.

12. Paras 28 and 29 of the judgement in the case of **Living Media India Ltd. & Anr. (supra)** are extracted hereinbelow:

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept

pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

13. Similarly, the Hon'ble Apex Court in the case of State of **Madhya Pradesh and others vs. Bherulal**, reported in [(2020) 10 SCC 654] has held that the law of limitation undoubtedly binds everybody including the Government and unless the government authorities, their agencies and instrumentalities have reasonable and acceptable explanations for the delay and there was bona fide efforts on their part, there is no need to accept the usual explanation in the garb of procedural red tape of process. The condonation of delay is an exception and should not be used as anticipated benefits for the Government.

14. In **Vedabai @ Vaijayanatabai Baburao Vs. Shantaram Baburao Patil and others**, reported in [JT 2001(5) SC 608] the Hon'ble Supreme Court said that under Section 5 of Act, 1963 it should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In the former case consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard and the basic

guiding factor is advancement of substantial justice.

15. In **Pundlik Jalam Patil (dead) by LRs Vs. Executive Engineer, Jalgaon Medium Project and Another** reported in (2008) 17 SCC 448, in para 17 of the judgment, the Hon'ble Supreme Court said :

"...The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and state claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

16. In **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai**, reported in [2012 (5) SCC 157], in para 18 of the judgment, the Court said as under:

"What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by

the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

17. The legal position is that where a case has been presented in the Court beyond limitation, the Petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In **Majji Sannemma v. Reddy Sridevi**, reported in **2021 SCC Online SC 1260**, it was held by Hon'ble Supreme Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of the Hon'ble Supreme Court in **Ajay Dabra v. Pyare Ram**, reported in **2023 SCC Online SC 92** wherein, it was held as follows:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer, reported in (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present Appellant."

18. Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

19. In **Union of India v. Jahangir Byramji Jeejeebhoy (D)** through his legal

heir, reported in **2024 SCC OnLine SC 489**, wherein, after referring to various decisions on the issue, the Hon'ble Supreme Court observed that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the Respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the Respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the Appellants, it appears that they want to fix their own period of limitation for instituting the proceedings

for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The Rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the Respondent for indefinite period of time to be determined at the whims and fancies of the Appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction Under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is

not to cause prejudice to the opposite party. The Appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs."

20. In **Jahangir Byramji Jeejeebhoy (supra)** the Hon'ble Supreme Court has further observed as under:-

"Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold."

21. Coming back to the facts of the present case, we would observe that it hardly matters whether litigants is a private party or State or Union of India when it comes to condoning the gross delay of several years. The government bodies and their agencies should be vigilant in filing the petition within time. There is no need to accept the usual explanation that the petition was kept pending for several years due to considerable degree of procedural redtape in the process. The government agencies are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments. The law shelters everyone

under the same light and should not be swirled for the benefit of the Government Department. In plethora of judgments of this Court as well as Hon'ble Supreme Court it has been held that the delay should not be condoned as a matter of generosity. When we examine the explanation of delay of 5743 days in filing the Review Petition from the date of judgment dated 13.11.2009, which has been sought to be reviewed and delay of around 489 days from the date of dismissal of Special Leave Petition on 03.05.2024, what we find is that the State has once again sought shelter in usual slow pace of State machinery in preparation of office notes, movement of files, keeping legal opinion with delay. The said explanation cannot be said to be sufficient in view of the law laid by Hon'ble Apex Court in the cases mentioned hereinabove. In fact the course adopted by the State in preferring the Review Petition reflects gross negligence and inaction which is in our considered opinion cannot be said to be *bonafide*. What we notice is that the approach of the State all along has been casual and that of manifest negligence. As observed by Hon'ble Apex Court in the judgment mentioned hereinabove, the law of limitation binds everyone including the Government.

22. From the date of judgment of this Court on 13.11.2009 till dismissal of Special Leave Petition by the Hon'ble Apex Court on the ground of delay of 1633 days, the same period cannot be reconsidered by this Court for condoning the delay. From the date of dismissal of Special Leave Petition i.e. on 03.05.2024 till 26.07.2025 when it was decided by the State Government to file the Review Petition, the reasons indicating the delay for that period is not a satisfactory explanation for delay in filing this Review Petition.

23. Considering the fact that the State has grossly failed to offer any proper explanation for huge delay other than mentioning different dates on which office notes were prepared and files have been moving from one desk to other and from one officer to other, in our opinion, the explanation furnished are neither sufficient nor acceptable to condone such a huge delay.

24. We have observed that the Hon'ble Supreme Court has considered the merit of the case while passing the order dated 03.05.2024 and therefore, by allowing this Review Petition, we cannot review the judgment and order of Hon'ble Supreme Court.

25. In the light of the discussions made hereinabove, the delay condonation application is **rejected**.

26. Consequently, the Review Petition is also **dismissed** as we have refused to condone the delay in filing this Review Petition.

(2025) 12 ILRA 158
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.12.2025

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Transfer Application (Civil) No. 225 of 2025

Nagendra Sharma & Anr. ...Applicants
Versus
The State of U.P & Anr. ...Opposite Parties

Issue for consideration

Transfer of case

Headnotes

Transfer of the restoration proceeding is sought-conduct of the applicant to prefer the Family Court for instituting the proceeding - thereafter to make request for transfer of the subsequent proceeding emanating from the same to the Family Court -reflective of his ulterior motive to cause delay in the proceeding-conduct reflective of his ulterior.

Application dismissed. (E-9)

Case Law Cited

Nil

List of Acts

Code of Civil Procedure

List of Keywords

subsequent proceeding, ulterior motive to cause delay

Appearances of parties

Counsel for Applicant(s) : Anurag Singh Chauhan, Ananya Singh Chauhan, Shameem Jahan

Counsel for Opposite Party(s) : C.S.C., Amrendra Nath Tripathi, Vijay Nandan Mani Tripathi

(Delivered by Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Heard Sri Anurag Singh Chauhan, learned counsel for the Applicants; Sri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel along with Sri Mohammad Kaseem, learned Standing Counsel appearing on behalf of the State-opposite party No. 1; and Sri Amrendra Nath Tripathi, learned Senior Advocate assisted by Sri Vijaya Nandan Mani Tripathi, learned counsel for the opposite party No.2.

2. By means of the present Application filed under Section 24 of the C.P.C., the Applicants have prayed for the following relief:

"(i) Stay the all proceedings relating Miscellaneous Case No.52/2019,

'Smt. Sarla Sharma versus Nagendra Sharma' pending before the learned Principal Judge, Family Court, District-Gonda connected with the divorce petition vide Regular Suit No. 1006/2017, 'Nagendra Sharma versus Smt. Sarla Sharma' under Section 13 of Hindu Marriage Act, 1955, and moreover this Hon'ble Court may kindly be pleased to transfer the above said case to any competent and appropriate at district Lucknow having jurisdiction to entertain the same, in the larger interest of justice.

(ii) Issue any other order or direction by which this Hon'ble Court may deem fit, just and proper under the facts and circumstances of the case in favour of petitioners, in the interest of justice."

3. The contention of the learned counsel for the Applicants is that the marriage of the first Applicant namely Nagendra Sharma with the second Opposite party namely Smt. Sarla Sharma was dissolved vide ex-parte Judgment and Order dated 16.01.2019 passed by the Court of learned Principal Judge, Family Court, Gonda in Case No.1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Section 13 of the Hindu Marriage Act, 1955.

4. The second Opposite party herein preferred an application for recall of the ex-parte order dated 16.01.2019 along with an application for condonation of delay, before the learned Principal Judge, Family Court, Gonda on 29.05.2019 and for the Restoration of the Regular Case No. 1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Order IX Rule 13 read with Section 151 C.P.C.

5. It is submitted by the learned counsel for the Applicant that the said

application for Recall of Order dated 16.01.2019 was filed by the second Opposite party after a lapse of about four and half (4 ^{1/2}) months, however, the same was entertained by the learned Court and registered as Miscellaneous Case No. 52 of 2019. Since then, the said matter is pending for adjudication.

6. The learned Court of Principal Judge, Family Court, Gonda, by registering the case on 29.05.2019, issued notice to the first Applicant herein and on the same day without affording any opportunity of hearing to him, passed an order whereby the operation of the Order dated 16.01.2019 was stayed.

7. In the memo of the instant Application it is alleged that while returning from the Family Court on 18.08.2022 after attending the Court proceeding, the Applicant No. 1 was attacked by four (4) persons who not only threatened him of dire consequences but tried to snatch his belongings. It is also alleged that he was abused by the said persons and was told not to be seen in the District Court in future. The submission of the learned counsel for the applicants is that the first Applicant got scared by the said incident, however, he preferred applications to the concerned police station as well as to the Superintendent of Police, Gonda and also on the IGRS Portal, reporting the said incident to the authorities.

8. The Applicant No.1 preferred a Transfer Application before the Court of learned Principal Judge, Family Court, Gonda, which was registered as Miscellaneous Case No. 42 of 2025 on 10.04.2025 seeking transfer of the Miscellaneous Case No. 52 of 2019 from

the learned Family Court No.1 to any other Court, levelling serious allegations against the Presiding Officer hearing the aforesaid case.

9. The learned Principal Judge, Family Court, Gonda vide detailed judgment and order dated 24.07.2025 rejected the aforesaid Transfer Application. The operative portion of the Order dated 24.07.2025 is extracted herein-below for ready reference:

"प्रकीर्ण वाद सं० 52/2019 प्राचीनतम वाद है, यदि प्रार्थी को उक्त प्रकीर्ण वाद में अपर प्रधान न्यायाधीश, परिवार न्यायालय, कक्ष सं०- 1, गोंडा द्वारा पारित किसी भी आदेश से कोई क्षुब्धता है, तो वह अपीलीय न्यायालय के समक्ष अग्रेतर कार्यवाही करने के लिए स्वतंत्र है।

इसके अतिरिक्त प्रकीर्ण वाद सं०-52/2019 की पत्रावली के आदेश-पत्रक के परिशीलन से यह भी प्रकट होता है कि प्रार्थी नागेन्द्र शर्मा द्वारा प्रस्तुत मामले को विलंबित करने के लिए तरह-तरह के भरसक प्रयास किये जा रहे हैं, जिस कारण उक्त पत्रावली का निस्तारण वर्ष 2019 से लेकर अब तक नहीं हो पा रहा है तथा उक्त पत्रावली में प्रार्थी द्वारा अनावश्यक रूप से बार-बार मौका प्रार्थना-पत्र भी प्रस्तुत किये जा रहे हैं। अतः उपरोक्त तथ्य एवं परिस्थितियों से ऐसा प्रतीत होता है कि प्रार्थी द्वारा मात्र प्रस्तुत मामले को विलंबित करने के उद्देश्य से प्रार्थना-पत्र 3 ग प्रस्तुत किया गया है। ऐसे में प्रार्थना-पत्र 3 ग (स्थानान्तरण प्रार्थना-पत्र) के कथनों के आधार पर उक्त प्राचीनतम वाद/पत्रावली को अन्तरित किये जाने का उचित आधार नहीं है और तदनुसार प्रार्थना-पत्र 3 ग (स्थानान्तरण प्रार्थना-पत्र) निरस्त किये जाने योग्य है।

आदेश

प्रार्थना-पत्र 3 ग (स्थानान्तरण प्रार्थना-पत्र) निरस्त किया जाता है।"

10. It is also stated by the learned counsel appearing on behalf of the Applicants that the first applicant filed a Complaint Case No. 182 of 2013 against

the opposite party No.2 under Section 504, 506, 323, 452, 380 I.P.C., Police Station-Sarai Aquil, District- Kaushambi. It is further stated that the opposite party No.2 herein preferred a Petition under Section 482 Cr.P.C. before this Court at Allahabad. The said Petition was registered as Criminal Misc. Application U/s 482 No. 27891 of 2013. Taking into consideration the statement made by the parties therein that the parties had settled the matrimonial dispute and were living together, the Court vide Order dated 22.08.2014 allowed the said Application filed under Section 482 Cr.P.C. and quashed the proceedings of Complaint Case No. 182 of 2013.

11. It is also alleged in the present transfer petition that despite the aforesaid settlement, the opposite party No.2 did not withdraw the Criminal Case No. 142 of 2013 lodged under Section 498-A, 323, 504, 506 I.P.C., Police Station- Krishna Nagar, Lucknow and the Case No. 1812 of 2013 under Section 12 of the Domestic Violence Act, therefore, the Applicant No.1 preferred contempt application before this Court at Allahabad which is registered as Case No. 6504 of 2019. The said application is still pending for consideration.

12. The ground for seeking the transfer of the pending proceedings having Misc. Case No. 52 of 2019 from the District Gonda to Lucknow, as pressed by the learned counsel for the applicants is that since the Applicant No.1 is the resident of Lucknow and the second opposite party namely Smt. Sarla Sharma is also now residing at Lucknow and is engaged in a private job, therefore, it will be convenient for the parties to pursue the case at Lucknow. The other ground taken by the learned counsel for the applicants is that the

Applicant No.1 has reasonable apprehension that if he will go to Gonda to participate in the proceedings of the Misc. Case No. 52 of 2019, he would be harmed by the opposite party No.2.

13. It is also alleged in the instant transfer petition that the Court concerned at Gonda is favouring the opposite party No.2 in the pending proceedings.

14. Per contra, the learned Senior Advocate appearing on behalf of opposite party No.2 vehemently opposed the instant transfer application by contending that the instant transfer petition suffers from material concealment of facts and as such the same is liable to be rejected. He contended that the opposite party No.2 after coming to know of passing of the ex-parte judgment and order dated 16.01.2019, by means of which the marriage between the Applicant No.1 and opposite party No.2 was declared dissolved; preferred a Recall Application on 29.05.2019 whereby the fraudulent conduct of the applicant and the manner in which he misrepresented the facts before the Court to obtain the ex-parte order dated 16.01.2019, was placed before the Court. The learned Court after taking into consideration the factual matrix as narrated by the opposite party No.2 herein, entertained the said application under Order IX Rule 13 C.P.C and issued notice to the applicant herein and stayed the operation of the Order dated 16.01.2019.

15. It is also vehemently asserted by the learned Senior Counsel appearing on behalf of the opposite party No.2 that the applicants herein filed the instant transfer petition without disclosing the material fact that the order dated 29.05.2019 passed by the learned Family Court was challenged by the Applicants before this Court by

means of a writ petition having Writ- C No. 6354 of 2022, and the same was dismissed by this Court vide order dated 18.10.2024. He further submitted that the present applicants have not disclosed the fact with regard to the filing of the First Appeal Defective No. 83 of 2025 (Nagendra Sharma versus Smt. Sarla Sharma) on the same subject matter of dispute before the Hon'ble Division Bench of this Court, by them. However, the said appeal, on the basis of the prayer being made by the learned counsel for the applicant, was consigned to record as withdrawn, vide Order dated 11.04.2025.

16. The argument of the learned Senior Advocate is that the Regular Case No.1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Section 13 of the Hindu Marriage Act, 1955, was filed by the Applicant No.1 himself before the Court of learned Principal Judge, Family Court, Gonda and now at this stage, when the proceedings under Order IX Rule 13 C.P.C. in respect of the ex-parte judgment and order dated 16.01.2019 is almost ripe for final disposal where the learned Court at Gonda has entertained the matter and passed an interim order dated 29.05.2019; the Applicant has no occasion to pray for the transfer of the proceeding to the place of his choice. He further submits that instant Transfer Application is nothing but a delaying tactic on the part of the applicants to stall the pending proceedings of the Misc. Case No. 52 of 2019.

17. Heard the learned counsel for the parties and perused the material available on record. The ground on which the applicants have sought the transfer of the proceedings of the Misc. Case No. 52 of 2019, pending under Order IX Rule 13 read with Section 151 Civil Procedure Code, is

three-fold. Firstly, the Applicants have suspicion that they may not get unbiased trial at Gonda. Secondly, the Applicant No.1 has apprehension of some mishappening to him in pursuing the case at Gonda under the alleged threat from the side of the opposite party No.2. Thirdly, it is convenient for the parties to pursue their case at Lucknow as the applicant is the resident of Lucknow and now as per him, the opposite party No.2 has also started living at Lucknow.

18. Looking to the allegation made by the applicants herein regarding alleged inclination of the concerned Court towards the opposite party No.2; the same is found totally bald and baseless as there is nothing on record to establish any bias on the part of the learned Presiding Officer. A general statement to the effect that the concerned court is doing favour to the other side, is not sufficient for the purpose of establishing any bias. Needles to say that while dealing with the case, the Presiding Officer of the Court has to pass several orders depending upon the facts of the case and as the circumstances warrant. In that process, orders adverse to the party cannot be the reason to doubt the fairness of the Presiding Officer and the parties do have legal remedies to challenge the same before the higher forums.

19. In the instant case, the allegation of the applicants that the learned Family Court at Gonda unlawfully entertained the Application under Order IX Rule 13 read with Section 151 C.P.C. and the passing of the order dated 29.05.2019 reflects the bias on the part of the Court concerned, is not at all acceptable as the applicant challenged the said order by means of writ petition having Writ- C No. 6354 of 2022, inter alia, praying for the following relief:

"(i) To issue a writ, direction or order in the nature of Prohibition to refrain the O.P. No.1 from acting beyond jurisdiction by initiating proceedings under Order IX Rule 13 read with Section 151 C.P.C. in Case No. 52 of 2019- Smt. Sarla Sharma versus Nagendra Sharma & another for recalling the judgment dated 16.01.2019.

(ii) To issue a writ, direction or order in the nature of Certiorari to quash/ set aside the ex-parte orders dated 29.05.2019 (Annexure Nos. 1 & 2) and order dated 22.08.2022 (Annexure No.13) passed by the O.P. No.1 in Case No.52 of 2019- Smt. Sarla Sharma versus Nagendra Sharma & Another."

The Court did not accept the pleas of the Applicant/petitioner and dismissed the Writ- C No. 6354 of 2022 (Nagendra Sharma And Another versus Court Of Principal Judge Family Court Gonda And Another) by a detailed judgment and order dated 18.10.2024. Thus, with the dismissal of the said writ petition, the allegation of unlawful entertainment of the proceeding of the Misc. Case No. 52 of 2019 by the concerned Court, has been shattered.

20. The Hon'ble Supreme Court in the case of **Kumaon Mandal Vikas Nigam Ltd. Versus Girja Shankar Pant and others; reported in (2001) 1 SCC 182**, has been pleased to hold that mere general statement will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to the existence of any element of bias which has resulted in the miscarriage of justice.

21. In so far as the perception of threat from the opposite party No.2 to the

applicant is concerned, the same is not sustainable as no credible material has been placed by the applicants before this Court to substantiate the same and to justify the prayer for transfer of the proceedings on that ground. Mere allegation without any credible evidence cannot be taken as granted to transfer the proceedings from one place to another.

22. Coming to the third ground taken by the applicant for transfer of the proceeding from the Court at Gonda to Lucknow that since the applicant is the resident of Lucknow and now the opposite party No.2 is engaged in a private job at Lucknow and is residing there, therefore, it will be convenient for the parties to pursue the case at Lucknow, the same is to be seen in the light of the fact that initially it was the applicant who initiated the proceeding at Gonda by filing the case under Section 13 of the Hindu Marriage Act before the learned Principal Judge, Family Court, Gonda and obtained divorce vide ex-parte judgment and order dated 16.01.2019. Thereafter, the proceeding under Order IX Rule 13 read with Section 151 C.P.C. was instituted by the opposite party No.2 in the year 2019 that was registered as Misc. Case No. 52 of 2019, and since then the contesting parties are regularly participating in the said proceeding and the same is almost ripe up for final disposal. There is no occasion, at least at this stage to transfer the said proceeding from the learned Family Court, Gonda to Lucknow as that may cause unnecessary delay in the disposal of the case and would adversely affect the interest of justice and further, in the light of the observations made by the Hon'ble Apex in the case of **Abdul Nazar Madani versus State of T.N. and Another**; reported in (2000) 6 SCC 204, it is safe to observe that no universal or hard-

and-fast rules can be prescribed for deciding the transfer petition which has always to be decided on the basis of the facts of each case. The convenience of the parties does not necessarily mean the convenience of the applicant alone who approached the Court seeking transfer of the pending proceeding on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the parties and of course the best interest of litigation.

(emphasis supplied)

23. It is trite in law that transfer of a case can be made only when the same is reasonably required under the facts and circumstances of the case and only if the allegations made by the applicant seeking transfer of the proceedings are straightway discovered or found to be adversely affecting the interest of justice. Further, a petition seeking transfer of the case should not be based on conjectures and surmises and the onus is on the person who alleges bias to substantiate that the apprehensions are reasonable, genuine and justifiable. There must be cogent evidence available on record to infer the existence of any element of bias.

24. Furthermore, in the instant case, the applicants have come to this Court seeking transfer of the restoration proceeding filed by the second opposite party herein that emerged pursuant to the ex-parte decree passed in the suit for divorce that was filed by the applicant himself at Gonda and the opposite party No.2, although being a lady, has not expressed any inconvenience in pursuing the said proceeding at Gonda rather vehemently opposed the instant Transfer Application. It would not be out of place to

note that the Hon'ble Supreme Court in the case of **Sumita Singh versus Kumar Sanjay and another**; reported in **AIR 2002 SC 396**, has held as under:

"3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

25. The conduct of the applicant to prefer the Family Court at Gonda for instituting the proceeding and thereafter to make request for transfer of the subsequent proceeding emanating from the same to the Family Court at Lucknow, is reflective of his ulterior motive to cause delay in the proceeding.

26. In view of the facts and the discussion made hereinabove, this Court does not find any good ground to accept the prayer made by the Applicants for transfer of the proceedings of Misc. Case No.52 of 2019 (Smt. Sarla Sharma versus Nagendra Sharma) pending before the learned Family Court at Gonda to any competent Court at District Lucknow.

27. Resultantly, the present Application filed by the applicants under Section 24 of C.P.C. is hereby **dismissed**.

28. No order as to cost.

(2025) 12 ILRA 164
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.12.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE RAJEEV BHARTI, J.

Special Appeal No. 394 of 2025

Shri Colonizers And Developers Pvt. Ltd. & Anr. **...Appellants**

Versus

Abha Gupta

...Respondent

Issue for Consideration

(1) Maintainability of Special Appeal against the Judgment and order passed by Single Judge while functioning as Commercial Division under the Commercial Courts Act, 2015.

(2) Appropriate Court/forum for execution of an award passed in the context of an international commercial arbitration.

Headnotes

(A) Practice and procedure – Special Appeal – Impugned Judgment and order was passed by Single Judge while functioning as Commercial Division under the Commercial Courts Act, 2015 – Special Appeal was filed against it – Maintainability. (E-1)

Held : As the learned Single Judge in this case has passed the order impugned in exercise of his original jurisdiction under the Act, 2015 read with the Act, 1996 and not under an appellate or revisional or supervisory jurisdiction, nor under Article 226 or 227 of Constitution of India, therefore, the said exclusion clause not being applicable, this appeal is found to be maintainable. [Para 6]

(B) Arbitration law – Award – Enforceability – Nature of award, not being a foreign award, but a domestic award albeit in an international commercial arbitration – The facts about the arbitration, being an international commercial arbitration and its seat was within India are not in dispute – Commercial Courts established at the district level or Commercial Division of the High Court, which has jurisdiction to execute this kind of award. (E-1)

Held : So far as domestic award in a domestic arbitration is concerned, it is executed through the commercial courts at the district level. As regards, foreign awards rendered in the context of international commercial arbitration also there is no dispute that in view of the explanation to section 47, such awards are

executable/enforceable through the High Court as referred in the said explanation – In either eventuality, where it is the Act 1996 or the Act 2015, it is the High Court which is the 'Court' for filing an application under Section 36 of the Arbitration and Conciliation Act, 1996 for enforcement of a domestic award pertaining to an international commercial arbitration. [Para 15 and 44]

Case Law Cited

Sundaram Finance Limited vs. Abdul Samad and another, AIR 2018 SC 965; Paramjeet Singh Patheja vs. ICDS Ltd., (2006) 13 SCC 322; ITI Limited vs. Alphion Corporation, United States of America and Another, 2022 SCC OnLine Kar 1631 (Karnataka High Court); M/s. OCI Corporation vs. Kandla Export Corporation & 2; 2016 SCC OnLine Guj 5981 (Gujarat High Court); Lucknow Agencies Lko vs. U.P. Avas Vikas Parishad; AIR OnLine 2019 All 3138; Civil Misc. Arbitration Application No. 100 of 2023; M/s Deep Distributors Pvt. Ltd. Thru Director Ashok Kumar Jaiswal vs. Tigers Brewery Industries Pvt. Ltd. Thru M.D. Ishwari Khadka decided on 20.03.2024; Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 (BALCO Case); PASL Wind Solutions Private Limited vs GE Power Conversion India Private Limited, (2021) 7 SCC 1 – referred to.

List of Acts

Arbitration and Conciliation Act, 1996 (hereinafter referred as the 'Act 1996 – Ss. 2(1)(e)(ii), 3, 36, 47 (Explanation); Commercial Courts Act, 2015 – S. 10; Allahabad High Court Rules, 1952 – Chapter VIII, Rules 5; Code of Civil Procedure, 1908 – Order XXI

List of Keywords

Execution case; Award; Foreign award; Domestic award; International commercial arbitration; Jurisdiction; Decree of Court; Arbitral proceeding; District Commercial Courts; Commercial Division of the High Court; Domestic arbitration; Seat of arbitration in India; Domestic arbitration; Party-centric; Place-centric; Original civil jurisdiction; Procedural law

Case Arising From

Judgment and order dated 09.10.2025 of the learned Single Judge functioning as Commercial

Division under the Commercial Courts Act, 2015 passed in Execution Case No. 1 of 2025

Appearances for Parties

Advs. for the Appellant : Pritish Kumar, learned Senior Advocate, Rajeev Sharan, Amal Rastogi, Devesh Bahadur Singh

Advs. for the Respondents : Utkarsh Srivastava, Pankaj Kumar Singh, Anurag Tyagi

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Pritish Kumar, learned Senior Advocate assisted by Shri Rajeev Sharan, Advocate, Shri Amal Rastogi Advocate, Shri Devesh Bahadur Singh, Advocate, Shri Utkarsh Srivastava, Advocate for appellants and Shri Pankaj Kumar Singh, Advocate along with Shri Anurag Tyagi, learned counsel for respondents.

2. Counsel for parties have argued the matter finally at the stage of admission itself, therefore, we proceed to dispose of the appeal.

3. By means of this appeal filed under Chapter-VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred as 'Rules of the Court') judgment and order of the learned Single Judge of this Court functioning as Commercial Division under the Commercial Courts Act, 2015 (hereinafter referred as the 'Act 2015') dated 09.10.2025 passed in Execution Case No.1 of 2025 has been challenged.

4. The Parties counsel are *ad idem* that against such an order no further remedy is prescribed either under the Arbitration and Conciliation Act, 1996 (hereinafter referred as the 'Act 1996') or the Act 2015, therefore, this Special Appeal has been filed.

5. We have gone through Chapter VIII Rule 5 of the Rules of the Court which reads as under:-

"5. Special appeal.—*An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award - (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.*"

6. An appeal under the said provision shall lie to the Court from a judgment of one Judge subject to the exclusionary clause contained therein. We have gone through the exclusionary clause and as the learned Single Judge in this case has passed the order impugned in exercise of his original jurisdiction under the Act 2015 read with the Act 1996 and not under an appellate or revisional or supervisory jurisdiction, nor under Article 226 or 227 of Constitution of India, therefore, the said exclusion clause not being applicable, this appeal is found to be maintainable.

7. At the very outset, it needs to be mentioned that the appellant herein does not dispute the fact that the award in question is

not a foreign award, but is a domestic award albeit in an international commercial arbitration. The fact that the arbitration in question is also an international commercial arbitration is not in dispute. It is also not in dispute that the seat of arbitration was within India.

8. Now, the question before us is as to whether such an award is to be enforced through the Commercial Courts established at the district level or the Commercial Division of the High Court.

9. In this context, we may refer to section 36 of the Act 1996 which contains the substantive law. It reads as under:-

"36. Enforcement--(1) *Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) *Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*

(3) *Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

Provided that the Court shall, while considering the application for grant

of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a prima facie case is made out that,--

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.--For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015."

10. Section 36 does not specifically provide the Forum or Court for execution of an award including an award passed in the context of an international commercial arbitration. What it says is that it shall be enforced in accordance with provisions of the the Code of Civil Procedure, 1908, in the same manner as if it were a decree of Court. An award is not a decree of Court but it is to be executed and enforced as a decree of Court. The provisions pertaining to execution of a decree of Court are contained in Section 36 read with order XXI C.P.C.

11. The parties are also not in dispute nor was it canvassed before us to the contrary that an award whether it be a domestic award or a foreign award is to be executed through the Court. The question is if it is a domestic award pertaining to an international commercial arbitration, which Court?

12. Learned counsel for the appellant laid great emphasis upon the provisions of Section 10 of the Act 2015 as also the explanation to Section 47 of the Act of 1996 to impress upon the Court that it is the District Commercial Court which would have jurisdiction to consider an application under Section 36 for enforcement of a domestic award even if rendered in an international commercial arbitration. His contention was; firstly, that in view of the language used in Section 36, as the award is to be executed as a decree of the court in terms of the Code of Civil Procedure and such execution is done before the District Court, therefore, in this case, application should have been filed before the District Commercial Court. Secondly, his submission was that Legislature in its wisdom consciously amended Section 47 by the Act No. 3 of 2016 to make it clear that such international commercial arbitration where the award is a foreign award would be enforced or executed before the High court. It being so, the logical inference from that is that other awards pertaining to international commercial arbitration would be enforceable/executable by the District Commercial Courts, otherwise why would the Legislature make such an amendment in Section 47.

13. It was also his contention that arbitral proceedings terminated on rendering of the award in view of Section

32 of the Act of 1996, therefore, for execution of the said award as it is deemed to be a decree, proceedings have to be initiated before the District Commercial Court. He relied upon the decision reported in *AIR 2018 SC 965; Sundaram Finance Limited vs. Abdul Samad and another*. He also referred to Section 10 of the Act 2015 to contend that there is distinction between an international commercial arbitration which is place-centric and one which is party-centric. According to him, an international commercial arbitration where the award is place-centric, the execution would be under Section 47 before the High court, but, one which is party-centric, the execution will be before the District Commercial court.

14. On the other hand, learned counsel for the respondents submitted that the provisions contained in Section 36 read with Section 2(1)(e)(ii) of the Act 1996 are explicit and leave no doubt that the Court which is to enforce/execute the award even if a domestic award, but in the context of international commercial arbitration, has to be the High Court irrespective of the fact that it has original civil jurisdiction or not. There is no such provision in the entire Act 1996 which bestows jurisdiction upon the district commercial court to entertain an application for enforcement/execution of such an award. He, in this context, invited our attention to several decisions such as *Paramjeet Singh Patheja vs. ICDS Ltd.; (2006) 13 SCC 322 and Sundaran Finance Limited vs. Abdul Samad and another; AIR 2018 SC 965*. In addition to the decisions of Hon'ble the Supreme Court referred hereinabove, he also relied upon the decisions of the Division Bench of the Karnataka High Court (*ITI Limited vs. Alphion Corporation, United States of America and Another; 2022 SCC OnLine*

Kar 1631), Gujarat High Court (*M/s. OCI Corporation vs. Kandla Export Corporation & 2; 2016 SCC OnLine Guj 5981*) and a Single Judge Bench decision of this High Court (*Lucknow Agencies Lko vs. U.P. Avas Vikas Parishad; AIR OnLine 2019 All 3138* and judgment dated 20.03.2024 passed in *Civil Misc. Arbitration Application No. 100 of 2023; M/s Deep Distributors Pvt. Ltd. Thru Director Ashok Kumar Jaiswal vs. Tigers Brewery Industries Pvt. Ltd. Thru M.D. Ishwari Khadka*) wherein, according to him, this very aspect was dealt with extensively especially in the Division Bench decision of the Karnataka High Court and it was expressly held that an application for execution/enforcement of an award under Section 36 of Act 1996 pertaining to international commercial arbitration would lie only before the Commercial division of the High court. He also impressed upon us the provisions of Section 10(1) which has been considered in the said decisions.

15. It is not in dispute that so far as domestic award in a domestic arbitration is concerned, it is executed through the commercial courts at the district level. As regards, foreign awards rendered in the context of international commercial arbitration also there is no dispute that in view of the explanation to section 47, such awards are executable/enforceable through the High Court as referred in the said explanation.

16. The question here is, what if, though the arbitration is an international commercial arbitration, but the seat of arbitration is in India and the award is a domestic arbitration? Which Court shall execute it?

17. In this regard, the law is clear that the definition of international commercial arbitration as available in Section 2(1)(f)

would apply in such a case. We may in this regard refer to the Constitution Bench decision of ***Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc.***; (2012) 9 SCC 552 (BALCO Case) and the Three Judge bench of Hon'ble the Supreme Court in Case of ***PASL Wind Solutions Private Limited vs GE Power Conversion India Private Limited***; (2021) 7 SCC 1.

18. Section 2(1)(f) act of the 1996 reads as under:-

"(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country."

19. As already stated, it is not in dispute that the arbitration at hand is an international commercial arbitration within the meaning of Section 2(1)(f) of the Act 1996.

20. In view of the decision referred above, International Commercial

Arbitration referred in Section 2 (2) does not apply in this case.

21. On facts, the respondents herein initially filed an application under Section 36 for enforcement of the award before the District commercial court but finding it as not maintainable, they withdrew it from the district commercial court and filed an application under Section 36, before the commercial division of the High Court at Lucknow.

22. It is not in dispute that an award though it has not been rendered by a Court, has to be enforced/executed through a Court under Section 36 in the same manner as if it were a decree of the Court, but Section 36 does not specify the Court which is to execute it, therefore, we have to take recourse to the definition of Court as contained in Section 2(1)(e) of the Act, 1996. Section 2(1)(e) of the Act 1996 reads as under:-

"2 (1) Definitions. (1) In this Part, unless the context otherwise requires, —

(a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(b) "arbitration agreement" means an agreement referred to in section 7;

(c) "arbitral award" includes an interim award;

(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(e) "Court" means— (i) in the case of an arbitration other than

international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

*(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, **and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.**"*

Above quoted provision draws a distinction between an International Commercial Arbitration and other Arbitration. The term 'Court' has different meaning for these two categories of Arbitration.

23. Section 2(1)(e)(i) applies to a case of arbitration 'other than an international commercial arbitration', therefore, the said provision is not applicable to the case at hand.

24. What is applicable is Section 2(1)(e)(ii). According to Section 2(1)(e)(ii), Court means 'in the case of international commercial arbitration, the High court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the question forming the subject matter of the arbitration if the same had been the subject matter of a suit, and in other cases,

a High court having jurisdiction to hear the appeals from decrees of Courts subordinate to that High Court'.

25. Section 2(1)(e) (ii) itself can be split into two parts. As per the first part, the High Court having jurisdiction to decide the question forming subject matter of the arbitration if the same had been the subject matter of a suit, will be the Court in the case of international commercial arbitration. As per the second part - in other cases i.e. where the High Court does not have original jurisdiction as referred in part one, if it has jurisdiction to hear appeals from decrees of Courts subordinate to that High Court, such High Court would be the Court in case of International Commercial Arbitration.

26. Now, based on the aforesaid definition, as regards Allahabad High Court, it does not have original civil jurisdiction to decide the questions forming the subject matter of the arbitral award which is to be enforced in this case, therefore, the first part of 2(1)(e)(ii) does not apply, but, it does have jurisdiction to hear appeals from decrees of Courts subordinate to it under the Code of Civil Procedure, etc., therefore, it is the second part which applies. This has not been disputed by Shri Pritish Kumar, learned Senior Counsel for the appellant.

27. We have therefore to be guided by the definition of Court as contained in Section 2 (1)(e)(ii) of the Act, 1996 in this regard, especially as, both Section 2(1)(e)(ii) and Section 36 fall in part I of the Act 1996.

28. On a bare reading of the aforesaid provision, the Court which has to execute/enforce the award under Section

36, which falls in part I of the Act of 1996 which is the part applicable in the case at hand on account of the fact that the seat of arbitration in this case was within India, is the High Court and, in this case, the Allahabad High Court. We may in this regard refer to Section 2(2) which says that this part i.e. part I shall apply where the arbitration is in India.

Of course, proviso thereto does not apply so far as the reference to international commercial arbitration is concerned as already dealt with in the case of *BALCO* (supra) and *PASL Wind Solutions Pvt. Limited* (supra).

29. As stated earlier, Section 36 does not specifically indicate the Court which has to execute/enforce the award; whether it be a domestic award pertaining to an international commercial arbitration or a domestic arbitration, it only provides the manner in which the award is to be enforced/executed. It has, therefore, to be read conjointly with Section 2(1)(e) to determine the Court which is competent to enforce it.

30. Merely because it has to be enforced in accordance with the provisions of Code of Civil Procedure in the same manner as if it were a decree of the Court cannot lead us to conclude that such enforcement is to be done through the Commercial Court at the District level because decrees of Courts are executable in U.P. by District Court as Allahabad High Court does not have original jurisdiction as suggested by Shri Prithvi Kumar, as, we cannot ignore Section 2(1)(e)(ii) of the Act 1996 referred earlier.

31. The words '*in other case, a High Court having jurisdiction to hear appeals*

from decrees of courts subordinate to that High Court' occurring in second part of Section 2(1)(e)(ii) of the Act 1996 clinches the issue in the facts of this case.

32. We cannot read Section 36 of the Act 1996 in isolation. It has to be read with Section 2(1)(e)(i) and (ii) which defines 'Court'. High Courts which have original jurisdiction referred in part one of Section 2(i)(e)(ii) will be Courts for International Commercial Arbitration in the context of Part I of the Act 1996, whereas, 'in other cases' a High Court having jurisdiction to hear appeals against decrees of Courts subordinate to it, will be such Courts, for Part I of the Act 1996. Within Part I of the Act 1996, Section 2(1)(e) does not make any distinction between International Commercial Arbitration based on whether it is party-centric or place-centric. To put it differently, wherever Part I of Act 1996 applies, the definition of Court contained in Section 2(1)(e) will apply. It will not apply to Part II of the Act 1996.

33. As stated earlier, this court does not have original civil jurisdiction to decide questions forming the subject matter of the arbitration award at hand, but, it is a High Court having jurisdiction to hear appeals from decree of courts subordinate to it, therefore, and application for enforcement of an award governed by Part I such as the one at hand, Allahabad High Court is the Court for filing it.

34. So far as the 'foreign awards' in the context of international commercial arbitration are concerned, their enforcement has been dealt separately in part-II of the Act 1996, therefore, in view of Section 2(2) definition of the 'Court' as contained in Section 2(1)(e) could not be read into or applied to Part II of the Act 1996 and

Section 47 thereof. It applies only to part-I of the Act 1996 which includes Section 36 meant for enforcement of a domestic award including those rendered in the context of international commercial arbitration.

35. Section 47 is a separate provision contained in part-II of the Act 1996 for enforcement of Foreign award and it is in this provision that an explanation was added by Act No. 3 of 2016 according to which 'Court' was defined for the purposes of the said section and the sections which were to follow in that chapter i.e Chapter-I of part-II as there was no definition of 'Court' in part-II separately, and such definition contained in Part I of the Act 1996 cannot be applied to it.

36. Merely because of amendment/addition of Explanation in Section 47 of Part II of the Act 1996 no inference can be drawn that for enforcement of a domestic award in an international commercial arbitration, the Commercial Court at the District level will be the competent forum as these two issues are separate and are governed by different parts/provisions of the Act 1996, especially in view of definition of 'Court' contained in Section 2(1)(e)(ii) which is in Part I of the Act 1996, just as Section 36 of the Act 1996. Section 2(1)(e)(ii) does not carve out any such exception.

37. As there was no definition of Court pertaining to Part-II, therefore, an explanation was added by Act No. 3 of 2016. There was already a definition of Court existing in Part-I which obviously was not applicable to part-II, hence this amendment was made in Section 47 of the Act 1996.

38. In this view of the matter, the contention of Shri Prithish Kumar, learned

Senior Counsel that because of this amendment in Section 47 contained in Part II of the Act 1996, the inference logically to be drawn is that other awards, that is, other than foreign awards i.e. domestic awards, even if they relate to international commercial arbitration, would be enforceable and executable by the District Commercial Courts and this is the logical conclusion according to him, cannot be accepted by us.

39. Part-II of the Act 1996 is separate from part-I and there is no interplay of the provisions of the two parts of the Act 1996 in view of what has been dealt with in the Constitutional Bench Judgment in the case of **BALCO** (supra) and three-Judge Bench decision in the case of **PASL Wind Solutions Private Limited** (supra).

40. Having gone through the scheme of the Act 1996 and the Act 2015, we do not find any other provision which could persuade us to take any other view of the matter nor do we find anything there in the scheme of the two Acts or the intent as was canvassed by Shri Prithish Kumar that the Court in the context of the case at hand should be the District Commercial Court and not the commercial division of the High Court.

41. We may in this very context refer to Section 10 of the Act 2015, which is primarily a procedural law, as already observed by Hon'ble the Supreme Court in **PASL Wind Solutions Private Limited** (supra). Section 10 of the Act of 2015 reads as under:-

"10. Jurisdiction in respect of arbitration matters. —Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted"

42. Sub-Section 2 and Sub-section 3 of Section 10 of the Act 2015 relate to arbitration other than international commercial arbitration, therefore, apparently, they are not applicable to the case at hand.

43. The provision which is applicable is Sub-section 1 of Section 10 of the Act 2015 which itself indicates that in matters of international commercial arbitration all applications or appeals arising out of such arbitration will lie before the High Court. This provision is in sync with Section 2(1)(e)(ii) and Explanation to Section 47 of the Act 1996. Act 2015 was amended subsequent to Act 1996 and the Legislature is presumed to know the earlier enactment especially definition of 'Court' contained in Section 2(1)(e) thereof and explanation to Section 47 contained therein.

44. Thus, in either eventuality, where it is the Act 1996 or the Act 2015, it is the High Court which is the 'Court' for filing an application under Section 36 of the Arbitration and Conciliation Act, 1996 for enforcement of a domestic award pertaining to an international commercial arbitration.

45. For all these reasons, none of the contentions on behalf of the appellant are tenable and we are of the opinion that the judgment of the learned Single Judge does not suffer from any error in so far as it rejects the objections of the appellants regarding maintainability of the application of the respondents under Section 36 of the Act 1996. None of the arguments on behalf of the appellants has any force nor does the decision in **Sundaram Finance Limited** (supra) have any application to the facts and issues involved in this case.

46. We accordingly **dismiss** the special appeal.

Interlocutory order; Special Appeal;
Maintainability; Trappings of finality; Judgment;
Letters Patent.

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Case Arising From

The order dated 26.11.2025 passed by Single Judge in Writ - A No. 13339 of 2025.

Appearances for Parties

Advs. for the Appellant : Alok Mishra

Advs. for the Respondents : Additional Chief Standing Counsel

Special Appeal No. 431 of 2025

Ashish Yadav **...Appellant**
Versus
State Of U.P. & Ors. **...Respondents**

(Delivered by Hon'ble Rajan Roy, J.
&

Hon'ble Indrajeet Shukla, J.)

Issue for Consideration

(1) Maintainability of Special Appeal against an interlocutory order of a procedural nature.

Headnotes

(A) Practice and procedure – Special Appeal – Interlocutory order – Vide impugned order two weeks time was granted to file response to the short counter affidavit – Special Appeal was filed against it – Maintainability. (E-1)

1. Heard Shri Alok Mishra, learned counsel for the appellant and learned Additional Chief Standing Counsel for the State.

2. By means of this special appeal an order passed on 26.11.2025 by learned Single Judge in Writ - A No. 13339 of 2025 has been challenged. The said order reads as under:-

Held : The order impugned is purely an interlocutory order of a procedural nature which does not decide any issue whatsoever – Special Appeal is maintainable against a judgment or final order or an order having the trappings of finality. The nature of the order which is impugned herein does not fall in any of these categories – No appeal lies under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the order impugned herein. This appeal is not maintainable. [Paras 3, 4 and 5]

"Short affidavit filed today on behalf of State is taken on record.

*Learned counsel for petitioner
prays for and is granted two weeks time to
file response thereto.*

List this case in 2nd week of January, 2026 as fresh."

Case Law Cited
Midnapore Peoples' Coop. Bank Ltd. and Ors. Vs. Chunilal Nanda and Ors., (2006) 5 SCC 399; Ashutosh Shrotriya and Ors. Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and Ors., (2015) 4 UPLBEC 2673; Deoraj Vs. State of Maharashtra and Ors., AIR 2004 SC 1975; – **referred to.**

3. The order impugned is purely an interlocutory order of a procedural nature which does not decide any issue whatsoever. Two weeks time was sought by the learned counsel for the appellant himself which was granted and the matter was posted in the 2nd week of January, 2026 as fresh.

List of Acts

Allahabad High Court Rules, 1952 – Chapter VIII, Rule 5.

4. The Special Appeal has been filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. The appeal under aforesaid provision is maintainable against a judgment or final order or an order having the trappings of finality. The nature of the order which is impugned herein does not fall in any of these categories. We may in this regard rely upon a judgment of Hon'ble the Supreme Court in the case of **Midnapore Peoples' Coop. Bank Ltd. Vs. Chunilal Nanda and Ors. reported in (2006) 5 SCC 399**, wherein term 'judgment' occurring in Clause 15 of the Letters Patent pertaining to another High Court was taken into consideration. The principle laid down in the said judgment applies in this case on all its fours. Para 15 and 16 of the said judgment reads as under:-

"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties."

16. The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for purpose of filing appeals provided under the Letters Patent.

5. The orders impugned herein falls in the category of Clause (iv) of Para 15 of the said judgment and does not fall in category (i) to (iii) of the above quoted Paragraph 15 and 16 of the judgment in **Midnapore' case** (supra). Likewise, is the law propounded by a Full Bench of this Court in a case reported in **(2015) 4 UPLBEC 2673; Ashutosh Shrotriya and Ors. Vs. Vice-Chancellor, Dr. B.R. Ambedkar University and Ors.**, para 27 of which is relevant. In view of the above discussion, no appeal lies under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the order impugned herein. This appeal is not maintainable.

6. As regards reliance placed by the learned counsel for the appellant on para 12 of a decision reported in **AIR 2004 SC 1975; Deoraj Vs. State of Maharashtra and Ors.**, firstly, when the appeal itself is not maintainable there is no question of considering the application of the said judgment. Even otherwise, as, the learned

counsel for the appellant insists that we consider the application of the said judgment, we are of the opinion that the same has no application to the case at hand for the reason, in the said case it has been observed - "Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case -- of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent."

7. As would be evident from the observations of Hon'ble the Supreme Court the aforesaid recitals apply to a case where withholding of an interim relief

would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner. The case at hand is not such a case as the order which is impugned in the writ petition is one of suspension and according to the learned counsel for the appellant the said suspension order states that a charge sheet will be served subsequently but it has not been issued nor served upon the appellant, meaning thereby, there are no chances of disciplinary proceedings being completed before the 2nd week of January, 2026 when the writ petition has been posted.

8. As regards the contention of learned counsel for the appellant that charge sheets issued to the appellant-petitioner prior to his suspension have also been challenged and as they are veritably no charge sheet in the eyes of law, therefore, if the stay is not granted and disciplinary proceedings are concluded, then, the aforesaid observations of Hon'ble the Supreme Court in the case of *Deoraj* (supra) will apply, we wish to disagree for the reasons already given. We are almost in the midst of December, 2025. The Writ Court has posted the writ petition in the 2nd week of January, 2026. There are no chances of the disciplinary proceedings being over by then in view of what has been noticed hereinabove.

9. In view of the aforesaid, we are of the considered opinion that against such an order an appeal would not lie under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. It is open for the appellant to press all the grounds for seeking interim relief on the next date fixed in 2nd week of January, 2026, but, the special appeal is not maintainable.

10. Accordingly, the special appeal is **dismissed as not maintainable.**

(2025) 12 ILRA 177
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.12.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE SWARUPAMA CHATURVEDI, J.

Special Appeal No. 530 of 2025

Singasan Sharma ...Appellant
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Legality of IInd stage enquiry of re-opening the issue regarding validation of an appointment, the validity of which was earlier adjudicated by the High Court and affirmed upto the Supreme Court.

(2) Entitlement of the employee or their legal representative to get salary and consequential retiral benefits, in case the IIInd stage enquiry of re-opening the issue of validity of appointment was found impermissible.

Headnotes

(A) Service law – Stoppage of salary – Appellants were appointed as Assistant Teachers in 1970s and continuously discharged duties and paid salary for several decades – Validity of their appointments and entitlement to salary was conclusively adjudicated vide judgment dated 26.11.1998, which was affirmed in Special Appeal by Division Bench and further in Special Leave Petition by the Supreme Court – Issue of validity of appointment attained finality – However, approval letter was found doubtful in later enquiry held in pursuance of an order passed in Public Interest Litigation – Legality of stoppage of salary challenged in writ petition, which was dismissed by writ court – Validity of writ order challenged – Entitlement of employee to get salary and consequential

retiral benefits felt into consideration. (E-1)

Held : Subsequent administrative inquiries, including those arising out of a Public Interest Litigation, could not have the effect of reopening issues already settled by binding judicial pronouncements. Once judicial finality had been reached, the Director of Education lacked jurisdiction to negate the appointments or to stop salary on the basis of a general inquiry report – Any doubt on their appointment letter, even if got raised in the report after decades of their service, is not attributable to the appellants but arose due to a dispute in the management. In such circumstances, denial of salary and retiral benefits to the appellants is wholly unsustainable in law – Equity, good conscience, and settled service jurisprudence mandates that salary dues, pension and gratuity benefits for services of Singasan, Girija and Ram Kumar Ram is required to be considered as they have completed more than 3 years continuous service for gratuity and more than 25 years of service for pension benefits as per Rule. [Paras 16, 19 and 28]

Case Law Cited

Radhey Shyam Yadav vs. State of Uttar Pradesh and Others, (2024) 11 SCC 770; Kunhayammed and others Vs State of Kerala and another, (2000) 6 SCC 359; Usha Rani vs. State of U.P. and 6 Others, Neutral Citation No.-2019:AHC:180910; Guru Charan vs. State of U.P. and Others, 2022 SCC OnLine All 515 – **referred to.**

List of Acts

Constitution of India – Article 136; U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978; Rules for Grant of Gratuity to the Teachers of Aided Educational Institutions, 1960 – Rule 17; U.P. School and College Teachers Gratuity Fund – Rule 5 and 6; Uttar Pradesh State Aided-educational Institution Employee's Contributory Provident Fund-Insurance-Pension Rules – Rule 17 and 19.

List of Keywords

Subsequent administrative enquiry; Stoppage of salary; Grant of gratuity; Died in harness; Termination; Suspension; Conclusive adjudication; Procedural lapse; Rival Committee

of Management; Equity, fairness and good conscience; Consequential service and retiral benefit; Ex gratia; Matter of charity; Long and continuous service.

Case Arising From

Judgment and order dated 28.04.2025 passed by the Single Judge dismissing the writ petitions arising out of stoppage of salary of the petitioners.

Appearances for Parties

Advs. for the Appellant : Om Prakash Ojha, Hritudhwaj Pratap Sahi, Prabhakar Awasthi, Sr. Advs.

Advs. for the Respondents : Tej Bhan Pandey, Prashant Shukla, Rahul Dubey.

(Delivered by Hon'ble Swarupama Chaturvedi, J.)

1. Heard Sri Om Prakash Ojha, learned counsel for the petitioner and Sri Tej Bhan Pandey, learned Standing Counsel for the State respondents.

2. All three appeals being Special Appeal No. 530 of 2025, Special Appeal No. 608 of 2025 and Special Appeal (Defective) No. 656 of 2025, have been preferred against the common judgment and order dated 28.04.2025 passed by the learned Single Judge in Writ-A No. 49901 of 2016, Savitri Devi and 2 Others vs. State of U.P. and 3 Others, and the connected Writ-A No. 50483 of 2016, Girija Shankar Pandey vs. State of U.P. and 3 Others, whereby writ petitions filed by appellants here got dismissed.

3. Since common questions of law and fact arise in all appeals, all the appeals were heard together and are being decided by this common judgment. For the sake of clarity, the factual matrix of all connected matters has been considered conjointly, as

the dispute emanates from rival groups within the management of the same institution and the facts are inextricably intertwined. While the common background has been narrated together, the cases of the individual teachers have been examined with reference to their respective dates of appointment, approvals, and service particulars. The present common judgment shall, therefore, govern all the connected matters, however, its application to each case shall operate independently and subject to the decision rendered on the individual merits of each matter.

4. The Junior High School in question was established in 1962-63 under the aegis of Shiksha Pracharani Sabha, Srinagar, Ballia, a society registered on 22.04.1963. The institution initially had temporary recognition up to 1976 and was granted permanent recognition in 1977. Singasan Sharma, Ram Kumar Ram and Girja Shankar Pandey, all three were appointed as Assistant Teachers in 1972, possessing the requisite qualifications. The appointment of Singasan Sharma was approved by the District Basic Education Officer on 20.12.1978, while the appointments of Ram Kumar Ram and Girja Shankar Pandey were approved on 18.04.1983. The institution was brought under the U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 in July 1984, and thereafter salary was paid from the State exchequer.

5. In the year 1982, disputes arose between rival Committees of Management, leading to various petitions being filed regarding the validity of the management and entitlement of teachers appointed by rival committees. The controversy culminated in Civil Misc. Writ Petition

Nos. 44607 of 1993, 15032 of 1995 and 25438 of 1996, which were decided by this Court by a detailed judgment dated 26.11.1998, holding one set of appointments to be valid and issuing specific directions for payment of salary from the State exchequer. The judgment was affirmed by dismissal of Special Appeal No. 1082 of 1998 on 21.05.2003, and the Special Leave Petition (C) No. 902 of 2007 was also dismissed by the Hon'ble Supreme Court on 05.02.2007. Despite this, salary was again withheld, leading to contempt proceedings and further administrative inquiries. Meanwhile, the recognition of the institution was withdrawn in March 2014, which got challenged separately.

6. In the year 2014, Public Interest Litigation No. 25033 of 2014 was filed. This PIL was related to scholarship and mid-day meal distribution. Pursuant to the PIL, an inquiry was conducted by a six-member committee. The committee also examined appointment-related documents and submitted its report dated 25.03.2015. On the basis of the report, the Director, Basic Education passed an order dated 27.03.2015, directing stoppage of salary. Being aggrieved by the order, the appellants filed Writ-A No. 49901 of 2016 and Writ-A No. 50483 of 2016. Both the writ petitions were dismissed by the learned Single Judge by judgment dated 28.04.2025.

7. In the impugned order, the learned Single Judge noted that the petitioners relied upon Rule 17 of the Rules for Grant of Gratuity to the Teachers of Aided Educational Institutions, 1960, contending that since the husband of original petitioner no.1 died in harness and petitioner no.3 retired after rendering service, their salary

prior to withdrawal of recognition was payable and they were also entitled to family pension or pension. However, the learned Single Judge, relying upon the submissions of the State and the impleaded respondent no.5 in writ petition, found that the appointments of the petitioners and other employees were doubtful, as no appointment or approval documents were produced by the Committee of Management. It was observed that after withdrawal of recognition, its consequences would also fall upon the employees and the State exchequer could not be burdened with payment of pension or family pension to employees of a non-existent institution. The learned Single Judge further held that the approval letters issued by the concerned Basic Shiksha Adhikari in favour of the husband of Savitri Devi and other employees were found to be doubtful in later enquiry report, and therefore, learned Single Judge concluded that the petitioners were not entitled to any relief.

8. In Special Appeal No. 1082 of 1998, the fact was that Shri Lallan Tiwari, was appointed on 01.07.1977, which was approved on 22.05.1980. Since the institution was brought under the grant-in-aid scheme in 1984, and the respondent received salary from the State from 01.07.1984 to 21.01.1985. His services were terminated on 22.01.1985, and the termination was approved on 28th August 1985. Aggrieved, by this, he filed Writ Petition No. 11013 of 1985, wherein interim orders dated 10.09.1985 and 12.02.1988 directed payment of salary. Thereafter, Writ Petition No. 36951 of 1994 was decided on 21.11.1994, directing the District Basic Education Officer to decide the dispute relating to termination. Pursuant thereto, the DBEO passed an order dated 19.07.1995 revoking the

respondent's suspension. Meanwhile, the dispute regarding the Committee of Management was finally decided by this Hon'ble Court by order dated 26.11.1998. The Special Appeal No. 1082 of 1998 filed against the said order was dismissed, and the challenge thereto was also rejected on 21.05.2003. The respondent has now sought recall of the orders dated 26.11.1998 and 21.05.2003, alleging that his termination was illegal.

9. In the background of aforesaid facts, learned counsel for appellants submits that once the validity of appointments and entitlement to salary had been conclusively adjudicated by this Court in its judgment dated 26.11.1998, affirmed in Special Appeal and further upheld by dismissal of the Special Leave Petition on merits, the issue attained finality and could not be reopened by administrative authorities or by the learned Single Judge.

10. To further support his contention, learned counsel for the appellants relies on the decision of the Supreme Court in ***Radhey Shyam Yadav v. State of Uttar Pradesh and Others*, (2024) 11 SCC 770**, wherein Supreme Court examined the question whether a teacher, whose appointment had been approved by the competent authority and who had discharged duties for a considerable length of time, could be denied salary and service benefits on the ground of alleged irregularities in appointment. In this case the Supreme Court held that once an appointment is approved and the teacher has worked for years, salary cannot be withheld merely on the basis of procedural lapses or alleged irregularities attributable to the management or the authorities. It was further held that the State cannot be permitted to take advantage of its own

lapse, or that of its officers, in granting approval and thereafter deny salary and service benefits. The Court emphasised that a teacher who is not at fault cannot be penalised for alleged mistakes of the management, especially when the employee has in fact rendered service and the employer has enjoyed the benefit thereof.

11. Learned Standing Counsel appearing for the respondent State, on the other hand, supports the impugned judgment and submits that subsequent inquiries and findings justified the action taken by the authorities. He further submits that the dismissal of Special leave petition cannot be seen as finality of the issue to opine that the High Court cannot review it.

12. Further, learned counsel for respondents placed reliance upon judgement of the Apex Court in ***Kunhayammed and others Vs State of Kerala and another*, (2000) 6 SCC 359**, where Supreme Court has examined the legal implications and the impact of an order rejecting a petition seeking grant of special leave to appeal under Article 136 of the Constitution of India has arisen. It was held by the Supreme Court that the jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

13. After hearing parties, following issues arise for consideration:

(i) *Whether the issue of validity of appointment and entitlement to salary could be reopened after dismissal of*

special leave petition by the Supreme Court? And

(ii) Whether the appellants or their legal representatives are entitled to salary and consequential retiral benefits like gratuity and pension in the facts and circumstances of the case?

14. After going through pleadings and careful perusal of records, it appears that the appellant in Special Appeal No. 530 of 2025, Singasan Sharma, was appointed as Assistant Teacher on 10.07.1972 and joined on 15.07.1972, and his appointment was approved on 20.12.1978. Ram Kumar Ram (who died on 11.02.2013), are represented by his widow Savitri Devi, and one Girja Shankar Pandey, represented by his son Vineet Pandey, were both appointed on 11.08.1972, and their appointments were approved on 18.04.1983. Upon the institution being brought under the Payment of Salaries Act, all three were paid salary from the State exchequer. Salary was stopped intermittently between September 1992 to August 2007, and again after February 2009.

15. The disputes originated solely due to rival Committees of Management formed in 1982, which led to competing claims and multiple rounds of litigation. The controversy was finally adjudicated by this Court by judgment dated 26.11.1998, which upheld the appointments of one set of teachers and directed payment of salary. The said judgment was affirmed in Special Appeal on 21.05.2003, and the Special Leave Petition was dismissed on 05.02.2007. Thus, the issue of validity of appointment and entitlement to salary attained finality.

16. Subsequent administrative inquiries, including those arising out of a

Public Interest Litigation, could not have the effect of reopening issues already settled by binding judicial pronouncements. Once judicial finality had been reached, the Director of Education lacked jurisdiction to negate the appointments or to stop salary on the basis of a general inquiry report although High Court having jurisdiction can examine all such actions which was required to be seen for the adjudication.

17. We considered the judgement of Supreme Court in **Kunhayammed and others (supra)** where Supreme Court has examined the effect of dismissal of the special leave petition at different stages and held that:

“A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected

(i) as barred by time, or (ii) being a defective presentation,

(iii) the petitioner having no locus standi to file the petition,

(iv) the conduct of the petitioner disintitling him to any indulgence by the Court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the apex court of the country and so on. The expression often employed by this Court while disposing of such petitions are - heard and dismissed, dismissed, dismissed as barred by time and so on.

May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court

may apply its mind to the meritworthiness of the petitioners prayer seeking leave to file an appeal and having formed an opinion may say dismissed on merits. Such an order may be passed even ex-parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 of the C.P.C. or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 of the C.P.C. act as guidelines) are not necessarily the same on which this court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist."

18. In **Kunhayammed and others (supra)** Supreme Court has thoroughly examined all possible stages of hearing and consequently passed orders in the special leave petition and after detail deliberation, it was held that:

"To merge means to sink or disappear in something else; to become

absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See Corpus Juris Secundum, Vol. LVII, pp. 1067-1068) We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage."

19. After perusal of the records, and after hearing learned counsel representing all parties, and upon giving anxious consideration to the facts of the present case, we are of the view that the appointments of the appellants were approved by the competent authority and that they continued to discharge their duties for decades, during which period their salaries were paid from the State exchequer after the institution was brought within the purview of the Payment of Salaries Act. The record further establishes that the appellants actually worked and the State derived the benefit of their services for a substantial length of time. Any doubt on their appointment letter, even if got raised in the report after decades of their service, is not attributable to the appellants but arose due to a dispute in the management. In such circumstances, denial of salary and retiral benefits to the appellants is wholly

unsustainable in law and runs contrary to the principles laid down by the Supreme Court in **Radhey Shyam Yadav (supra)**. The State, having accepted their services and paid them for decades, cannot now be permitted to deny retiral benefits by reopening settled issues or by placing reliance on subsequent administrative inquiries. Equity, fairness and good conscience clearly demand that the appellants are held entitled to their consequential service and retiral benefits.

20. After going through Supreme Court judgement in **Radhey Shyam Yadav (supra)**, and examining complete facts and circumstances of the appeals, we find the judgement is applicable of the facts of these appeals. Following paragraph demonstrates it clearer:

“19. In the inquiry, the appellants were not given any opportunity. Even in the inquiry held behind the back of the appellants, there were no findings of collusion or blameworthiness against them for the alleged manipulation. Even as on date, the appointment order dated 25.06.1999 and the approval order of 09.06.1999 have not been revoked. With no finding of guilt against the appellants and with no material against them, their salaries had been stopped and they have been prevented to sign on the regular attendance register, admittedly from October, 2005. The contention of the appellants is that they continued with their teaching work up till 30.03.2016 entering their names on a separate attendance register.”

21. For the reasons discussed hereinabove, this Court is of the considered view that the learned Single Judge was not legally precluded from examining the

issues raised before him merely on the ground that the Special Leave Petition against the earlier judgment stood dismissed. Dismissal of a Special Leave Petition, particularly by a non-speaking order, does not by itself operate as a declaration of law, nor does it completely denude the High Court of its jurisdiction to examine subsequent actions, especially where such actions arise from fresh causes, administrative orders, or statutory inquiries. To that extent, the learned Single Judge was justified in examining the legality of the subsequent administrative orders and the material placed before him.

22. However, having regard to the undisputed factual position that the appellants were appointed in the early 1970s, their appointments were duly approved by the competent authority, and that they continuously discharged duties and were paid salary from the State exchequer for several decades, the denial of retiral benefits cannot be sustained. The long and uninterrupted service rendered by the appellants, coupled with payment of salary under the Payment of Salaries Act, constitutes a substantial and settled service record, which could not have been ignored while adjudicating their salary dues and entitlement to retiral benefits.

23. Even assuming that the authorities were entitled to scrutinize the validity of appointments at a certain stage, such scrutiny could not have the effect of effacing decades of service already rendered and accepted by the State, nor could it retrospectively deprive the appellants or their legal representatives of retiral benefits that flow from such service. Following table demonstrate service duration of three appellants in these appeals:

Particulars	Singasan Sharma	Ram Kumar Ram (Pradeep Kumar)	Girija Shakar Pandey (Vineet Pandey)
Date of Appointment	10.07.1972	11.08.1972	11.08.1972
Date of Approval by DBEO	20.12.1978	18.04.1972	18.04.1983
1st Salary Stop	September, 1992 till 02.08.2007	September, 1992 till 02.08.2007	September 1992 till 02.08.2007
2nd Salary Stop	1st March 2009	1st March 2009	1st March 2009
End of service	21.03.2014 (when recognition was withdrawn)	11.02.2013 (death)	21.03.2014 (when recognition was withdrawn)
Total time for which service recorded	41 years; 8 months and 11 days	40 years and 6 months	41 years: 7 months and 10 days
(i) From date of appointment	30 years and 20 days.	28 years; 7 months and 10 days	29 years; 8 months and 20 days.
(ii) From Grant in Aid			

24. It is well settled principle in law that pension and other retiral benefits are neither ex gratia nor a matter of charity, but constitute deferred compensation for long and continuous service rendered by an employee. Once the employee has served till minimum years of eligibility for such benefits, denial of retiral benefits would be arbitrary and unjust. For the determination of gratuity of appellants, Rule 5 and 6 of the U.P. School and College Teachers Gratuity Fund' is required to be examined.

For ready reference Rule 5 is reproduced below:

“5. A gratuity equal to six times of pay any last drawn by a teacher at the time of his death while in service provided he has put in not less than three years continuous service before his death.

Notes (1) No gratuity will, however, be admissible to the family of a teacher whose death takes place after retirement or of a re-employed pensioner.

(2) 'Continuous Service' means all whole-time service whether temporary, officiating or permanent, rendered either in one or more of the State aided educational institutions of any of the categories mentioned in Rule 3 and includes all periods spent on leave on average pay, or on medical certificate, but it does not include leave without pay.”

25. Rule 6 of the U.P. School and College Teachers Gratuity Fund, makes the provision for the nomination for the gratuity by employee who fulfils the criteria for the same. Rule 6 provides as follows:

“6. A teacher covered by these rules, shall on completion of three years' continuous service make a nomination conferring on one or more members of his family, the right to receive any gratuity that may be admissible under these rules. The nomination shall be made in one of the attached forms as may be appropriated in the circumstances of the case.”

26. The law is to be interpreted in a way that it protects legitimate expectations of an employee who has served the institution for considerable time period. To

determine pension eligibility in the facts of these appeals, Rule 17 of the 'Uttar Pradesh State Aided-educational Institution Employee's Contributory Provident Fund-Insurance-Pension Rules' provides that:

“17. An employee shall be eligible for pension on-

(i) retirement on attaining the age of superannuation or on the expiry of extension granted beyond the superannuation age.

(ii) voluntary retirement after completing 25 years of qualifying services;

(ii) retirement before the age of superannuation under a medical certificate of permanent incapacity for further service; and

(iv) discharge due to abolition of post or closure of an institution due to withdrawal of recognition or other valid causes.

Note (1) The age of compulsory retirement of an employee shall be such a prescribed in the relevant rules applicable to him.

The date of superannuation shall be reckoned from the date of birth of an employee as entered in his Service Book or other records. In case the year of birth only is known, but not the month, the first July of the year shall be taken as the date of birth, similarly when both the year and the month of birth are known, but not the date, the 16th of the month shall be taken as the date of birth.

(2) An employee may retire from service volunarily any time after

completing 25 years of qualifying service, provided that he shall give in this behalf a notice in writing to the management at least 3 months before the date on which he wishes to retire.”

27. Rule 19 explains the conditions under which the employee would not be entitled for pension.

“19 (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. (See also C.S.R. Para 422).

(c) Leave without allowance, suspension allowed to stand as a specific penalty, overstayed of joining time or leave not subsequently regularised, and period of breaks in service shall not be reckoned as qualifying service.

(d) Period of breaks between 2 periods of service due to termination of service, for no fault of the employee shall not be treated as interruption involving forfeiture of post qualifying service. In other cases breaks due to other causes shall result in forfeiture of past service unless condoned by Government.

(e) Time passed on earned leave shall fully count as qualifying service, but time passed on other kinds leave with allowances shall count as qualifying service as follows:

(i) If the total service is not less than 13 years, but less than 30 years, one

year of such leave shall count as qualifying service;

(ii) If the total service is not less than 30 years, two years of such leave shall counts as qualifying service.

Notes (1) The term 'Earned Leave' means leave on full average pay.

(2) In case of a married woman employee time passed on maternity leave may be allowed to count as qualifying service, provided that the period covered by such leave and also earned leave shall not exceed what would have been admissible had she availed of the whole of the earned leave to which she was entitled under the rules.

(3) Total Service' means total service reckoning from the date of commencement of service qualifying for pension and includes periods of leave referred to above.

(4) The service put in by an employee before he has completed 18 years of age or after attaining the age of superannuation unless extended by competent authority or on re-employment after retirement shall not qualify for pension.

(5) The entry relating to confirmation of an employee in the service book shall be countersigned.

(6) In cases not covered by these rules qualifying service shall be determined by Government and its decision shall be final."

28. Therefore, equity, good conscience, and settled service

jurisprudence mandates that salary dues, pension and gratuity benefits for services of Singasan, Girija and Ram Kumar Ram is required to be considered as they have completed more than 3 years continuous service for gratuity and more than 25 years of service for pension benefits as per Rule, should principles of the Gratuity Act apply, otherwise gratuity if payable under the service rule and where options are exercised and if not for any special circumstances, such teachers would be entitled to gratuity in the light of the judgment of this Court in the case of **Usha Rani vs. State of U.P. and 6 Others (Neutral Citation No.- 2019:AHC:180910)** and **Guru Charan vs. State of U.P. and Others, 2022 SCC OnLine All 515**. The situation of the appellants in the present case is no different from the individuals whose appointments were protected by Supreme Court in referred case. They were bona fide applicants who have got selected and served for decades. It will be a travesty of justice if relief is denied to the appellants for something which is done by rival groups in management committee at some point of time.

29. The impugned judgment dated 28.04.2025, therefore, is unsustainable upto the extent it upholds denial of retiral benefits, as the same has not considered the judgment of the Supreme Court in **Radhey Shyam Yadav (supra)** and also the admitted fact of long and continuous service over a prolonged period, which is much more than minimum required service years required as per Rules.

30. Accordingly, the conclusion of learned single judge denying retiral benefits is held to be not sustainable and require interference in these appeals and therefore,

the impugned common judgment and order dated 28.04.2025 passed by learned Single Judge in Writ A No. 49901 of 2016 and connected case is set aside and consequently the special appeals no. 530 of 2025, 608 of 2025 and Special Appeal Defective No. 656 of 2025 are allowed and respondents are directed to release all admissible salary arrears to the appellants for the period they actually discharged duties.

31. The respondents are further directed to compute and pay all consequential retiral benefits, including gratuity and pension, as may be admissible in law along with interest, as may be applicable to the appellants, and in cases where an employee has died, to their legal heirs. The entire exercise shall be completed expeditiously, preferably within a period of three months from the date of production of a certified copy of this judgment.

32. In the matter of Special Appeal preferred by Lallan Tiwari, the controversy stood finally concluded as we have recorded above in the earlier part of the judgment that his termination of service. Order came to be finally approved by the authority and against which writ petition filed by the petitioner came to be dismissed on 26.11.1998 which stood further affirmed in the Special Appeal under the order of the coordinate Bench on 21.05.2003, review of which was also dismissed by the Bench vide order dated 16.12.2005.

33. In the circumstances, therefore, the case of Lallan Tiwari does not rest on the same footing as that of other appellants and hence we find no justification to now allow highly time barred recall application filed on 05.09.2012 in respect of the final judgment of coordinate Bench of this Court

on 21.05.2003. We may further hold that once the judgment has attained finality and review application has also been dismissed by the Division Bench, neither any recall in respect of the judgment and order of the learned single judge was maintainable for the said judgment having been affirmed in the appeal, nor any recall application in respect of the order passed by the Division Bench would be maintainable in view of the fact that the review application had stood dismissed.

34. In the circumstances, therefore, we see neither any justification to condone the delay after more than nine years inasmuch as recall itself is not maintainable, hence, both the applications stand dismissed.

35. Thus all the other intra-court appeals and miscellaneous applications therein are disposed of accordingly. There will be no order as to cost.

(2025) 12 ILRA 187
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 05.12.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ A No. 1020 of 2006

Prabhu Nath Yadav	...Petitioner
Versus	
Union Of India	...Respondent

Issue for Consideration

(1) Effect of two minor punishment for the incident not occurred at the work place or during the working hours on the entitlement of petitioner to cross the efficiency bar.

Headnotes

(A) Service law – Constable in Central Industrial Security Force (CISF) – Non

award of efficiency bar – Entitlement – Minor Punishment of withholding of annual increment for two consecutive years without cumulative effect for the misconduct that having witnessed a quarrel between two persons, which is not said to have taken place at the work place and Seven day's pay fine was awarded in 1988 and 1989 – Petitioner was declared NYF (not yet fit) and not 'unfit' – Effect – Efficiency Bar Board denied the petitioner crossing efficiency bar in 1991, 1992 and 1993 – Legality challenged. (E-1)

Held : The petitioner could not have been denied crossing efficiency bar for reasons which do not reflect adversely upon his efficiency to perform his official duties. Although the efficiency bar board was entitled to take a decision on the basis of the petitioner's service record, it could have denied the petitioner crossing the efficiency bar only if the record revealed that the petitioner was not efficient in performance of his duties – The use of the expression 'NYF' (not yet fit) indicates that the board was of the view that the unfitness of the petitioner was continuing since prior to the subject year. Had the petitioner been declared 'unfit', it would have reflected that the board had found the petitioner unfit during the subject year for crossing the efficiency bar on the basis of his performance in the subject year – None of the incidents show that the petitioner was not efficient in performance of his official duties. Therefore, the aforesaid incidents of the years 1988 and 1999 and punishments recorded in the service record of the petitioner do not give rise to a ground for denial to let the petitioner cross the efficiency bar during the subsequent years 1991, 1992 and 1993. [Paras 14 and 15]

List of Keywords

Minor punishment; Withholding of annual increment for two consecutive years without cumulative effect; Efficiency bar; NYF (Not yet fit); Superannuation; Pension.

Case Arising From

Order of Efficiency Bar Board denying the petitioner crossing the efficiency bar.

Appearances for Parties

Adv. for the Petitioner : Manish Misra, Namit Sharma

Adv. for the Respondents : Dipak Seth, Dinesh Kumar Pandey, Krishna Kumar Pandey, Raj Kumar Singh

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Manish Misra, the learned counsel for the petitioner and Shri Raj Kumar Singh, learned counsel for Union of India.

2. By means of the present writ petition, the petitioner has sought issuance of a Writ of Certiorari challenging the validity of Efficiency Bar Board proceedings published on 24.06.1993, so far as, the same relate to the petitioner. The petitioner had given representations against the order holding that the petitioner could not cross the efficiency bar and those representations have been rejected by means of orders dated 18.01.2005 & 31.02.2005 and the petitioner has challenged the validity of those orders also. The petitioner has sought issuance of a Writ of Mandamus commanding the respondents to pay all the dues of the petitioner as if, the petitioner had crossed the efficiency bar in the years 1991, 1992 & 1993.

3. The brief facts of the case are that the petitioner was appointed as a constable in Central Industrial Security Force (CISF) on 25.06.1987 in the pay-scale of ₹825-15-900-20, Efficiency Bar (EB)?20. After an increment given w.e.f. 01.06.1988, the petitioner's basic pay was increased to ₹870/- per month.

4. By means of an order dated 13.12.1988 (published on 07.02.1989), the petitioner was awarded a minor punishment of withholding of annual increment for two

consecutive years without cumulative effect. Again, by means of an order dated 23.09.1991, the petitioner was awarded a punishment of seven days' pay fine. Due to withholding of annual increment for two consecutive years without cumulative effect, the increments due in the years, 1989 & 1990 were released on 01.06.1991 raising the petitioner's pay-scale to ? 900/-.

5. The increment payable upon crossing the efficiency bar was not granted to the petitioner as he was found "NYF" (not yet fit) by the Efficiency Bar Board in the proceedings conducted in the years 1991, 1992 and 1993 and, therefore, he was not granted the increments of Rs.20/- payable upon crossing the efficiency bar in the aforesaid years. Ultimately, the petitioner was declared 'fit' by Efficiency Bar Board in the year 1994 and thereupon, his basic salary was fixed as ₹920/- per month w.e.f. 01.06.1994. Subsequent increments were granted to the petitioner but due to non-crossing of efficiency bar for three consecutive years, the petitioner's salary became less than other similarly situated persons and this had a cumulative effect on the pension being paid to him.

6. The representations submitted by the petitioner against all non-award of efficiency bar raised to him, have been rejected.

7. Assailing the validity of the aforesaid orders, the learned counsel for the petitioner has submitted that the effect of punishment of withholding of two annual increments with non-cumulative effect got washed away in the year, 1990 when the annual increments were granted to him. The minor punishment of imposition of seven days' pay fine imposed on 04.11.1991, which would not have any

other effect on the emoluments of the petitioner.

8. The respondents have filed a counter affidavit *inter alia* stating that in the year 1990?91, the petitioner was rated 'an average employee'. In the year 1992, he was rated 'good'. For this reason, the Efficiency Bar Board held on 02.06.1992 and 14.07.1993 that the petitioner was 'NYF' to cross the efficiency bar.

9. The orders dated 02.06.1992 & 14.07.1993 (copies whereof have been annexed with the counter affidavit filed by the respondents) merely state that the persons named in the orders, including the petitioner, had not been found fit to cross the efficiency bar by the competent authority. These orders do not assign any reason, as to why, the competent authority has not found the petitioner fit to cross the efficiency bar.

10. The learned counsel for the respondents has submitted that the Efficiency Bar Board has found the petitioner unfit for crossing the efficiency bar keeping in view his poor service record.

11. Replying to the aforesaid submission advanced by learned counsel for the respondents, the learned counsel for the petitioner has submitted that the chart, annexed with the counter affidavit, shows that in the year 1990, the petitioner was rated 'average' but no punishment was awarded to him. The petitioner was rated 'good' in the year, 1992. No adverse material has been brought on record to show that the petitioner was rated poorly in the year, 1993.

12. The learned counsel for the respondents has submitted that the

Efficiency Bar Board has examined service record of the petitioner and due to his poor track record, the Board formed an opinion that the petitioner was 'NYF' to cross the efficiency bar.

13. The poor service record of the petitioner is relatable to award of two minor punishments to the petitioner in the year 1988 & 1989. "Efficiency bar" apparently relates to efficiency of an employee in performance of official duties. The petitioner had previously been imposed a minor punishment of stoppage of two annual increments without cumulative effect in the year 1988, for having witnessed a quarrel between two persons and, thereafter, having denied to have witnessed the same. Allegation against him was that he did not speak the truth. This allegation does not in any manner reflect badly on efficiency of the petitioner in performance of official duties. On the second occasion, the petitioner was said to have indulged into a quarrel outside the work place for which, a punishment of seven days' pay fine was imposed upon him and it also does not reflect poorly upon the efficiency of the petitioner to perform his official duties. Moreover, the petitioner has already been punished for both the alleged incidents.

14. Firstly, this Court is of the considered view that the petitioner could not have been denied crossing efficiency bar for reasons which do not reflect adversely upon his efficiency to perform his official duties. Although the efficiency bar board was entitled to take a decision on the basis of the petitioner's service record, it could have denied the petitioner crossing the efficiency bar only if the record revealed that the petitioner was not efficient in performance of his duties.

15. In the present case, the petitioner has not been allowed to cross the efficiency bar in the years 1991, 1992 and 1993, when he was declared NYF (not yet fit) and not 'unfit'. The use of the expression 'NYF' (not yet fit) indicates that the board was of the view that the unfitness of the petitioner was continuing since prior to the subject year. Had the petitioner been declared unfit, it would have reflected that the board had found the petitioner unfit during the subject year for crossing the efficiency bar on the basis of his performance in the subject year. The only adverse material available on the service record of the petitioner is two minor punishments, the first being stoppage of two annual increments without cumulative effect imposed in the year 1988 for the misconduct that having witnessed a quarrel between two persons, which is not said to have taken place at the work place or during the working hours, the petitioner declined having witnessed the incident and the second being entering into a quarrel for which 7 days' pay fine was imposed on the petitioner in the year 1999. None of the incidents show that the petitioner was not efficient in performance of his official duties. Therefore, the aforesaid incidents of the years 1988 and 1999 and punishments recorded in the service record of the petitioner do not give rise to a ground for denial to let the petitioner cross the efficiency bar during the subsequent years 1991, 1992 and 1993.

16. Secondly, for the aforesaid incidents of the years 1988 and 1999, the petitioner had already been punished. No person can be punished more than once for the same misconduct. Having already suffered the punishment of withholding of two annual increments with non-cumulative effects and seven days' pay fine, denial of crossing efficiency bar for the

same reason has resulted in the salary of the petitioner being diminished with cumulative effect which effect is still continuing when the petitioner has attained the age of superannuation, as he is getting a lesser amount as pension. Thus, the denial of crossing efficiency bar has in effect resulted in a major punishment being awarded to the petitioner, for misconducts for which he had already been awarded two minor punishments.

17. In view of the aforementioned facts, I am of the considered view that the denial of crossing of efficiency bar to the petitioner was illegal and so was the rejection of his representations against the order denying crossing the efficiency bar.

18. Accordingly, the writ petition stands **allowed**. The Efficiency Bar Board proceedings published on 24.06.1993, so far as same relate to the petitioner, are quashed. A Writ of Mandamus is issued directing the respondents to treat the petitioner as having been crossed efficiency bar in the years 1991, 1992 & 1993 and they shall re-calculate the salary/pension payable to him accordingly and also pay the amount of arrears to him within a period of four months from the date, the certified copy of this order is produced before them.

(2025) 12 ILRA 191
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.12.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SWARUPAMA CHATURVEDI, J.

Special Appeal No. 1233 of 2025

The State Of U.P. & Ors. ...Appellants

Versus

Vinay & Ors.

...Respondents

Issue for Consideration

(1) Constitutional validity of treating the candidates of the same selected list, as different class on the basis of the date of their respective appointment letters and the date mentioned for their training, on the touchstone of Article 14 of the Constitution of India.

Headnotes

(A) Service law – Constitution of India – Article 14 – Intelligible differentia – Reasonable classification – Benefit of pay protection – The candidates selected for the post of Police Constable through direct recruitment were divided into four batches for training for different periods – Appointment letters were also issued on different dates – The candidates of first batch were extended the benefit of pay protection treating them differently from other batches – Validity challenged – Contended on behalf of State that the different treatment accorded to candidates belonging to different batches, which are selected from the same list, is within the scope of Article 14 of the Constitution – Permissibility. (E-1)

Held : The training to be conducted in phases was necessitated solely by the infrastructural limitations faced by the appellant State and exigencies arising from the Covid-19 pandemic and not due to any *intelligible differentia* amongst the candidates in the select list. Therefore, depriving candidates placed under training on later batches, is grossly arbitrary and suffers the vice of hostile discrimination – While this Court accepts the existence of pandemic-related exigencies and infrastructural limitations but such external and temporary administrative compulsions cannot justify differential treatment among candidates belonging to a homogeneous class. The legal position governing permissible classification under Article 14 is too well settled to require elaboration and when tested on settled parameters, the justification offered by the appellant State does not withstand scrutiny. [Paras 17 and 19]

Case Law Cited

Manilal vs. State of Rajasthan, AIR 2024 SC 4404; Writ A No. 55606 of 2008, Mahesh Narayan and others vs. State of U.P. and others decided on 19.12.2019; The State of West Bengal vs. Anwar Ali Sarkar, (1952) 1 SCC 1; Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra, (1990) 2 SCC 715 – **referred to.**

List of Acts

Constitution of India – Article 14; Uttar Pradesh Police Constable and Head Constable Services Rules, 2015 – Rules 18 and 19.

List of Keywords

Recruitment; Selection list; Process of appointment; Different phases of training; Homogeneous class; Benefit of last pay protection; Fundamental right to equality; Discrimination; Infrastructural limitation; Classification; Intelligible differentia; Constitutionally permissible differentia.

Case Arising From

Judgment and Order dated 09.04.2025 passed by Single Judge allowing the writ petition.

Appearances for Parties

Advs. for the Appellant : Manish Goyal, Additional Advocate General; Tej Bhanu Pandey, S.C.

Advs. for the Respondents : R. K. Ojha, Sr. Advs.; Satyendra Chandra Tripathi, Aditya Prakash Verma, Ranjana Verma, Shailesh Verma

(Delivered by Hon'ble Swarupama Chaturvedi, J.)

1. Heard Sri Manish Goyal, learned Additional Advocate General, assisted by Sri Tej Bhanu Pandey, learned Standing Counsel, for the appellants in all the appeals, and Sri R.K. Ojha, learned Senior Advocate, assisted by Sri Satyendra Chandra Tripathi and Sri Aditya Prakash Verma, learned counsel for the respondents in their respective appeals.

2. All these appeals have been preferred against the common judgment and order

dated 09.04.2025 passed by learned single-judge in connected writ petitions decided along with Writ A No. 10689 of 2024, Sita Ram Sharma & 13 Others Vs. State of U.P. and 3 Others, whereby the writ petitions filed by respondents herein were allowed and the Appellant no. 3 (herein) has been directed to surrender benefit of last pay protection to the petitioners therein, as the same has been given to the first batch of trainees, pursuant to U.P. Police Constable Recruitment 2018 and appropriate order shall be passed and consequential benefit of maximum 30 days from the date of presentation of certified copy of the said order.

3. The appellant State of Uttar Pradesh has raised identical issue in all these appeals, and therefore, they were heard together and are being decided by this common order. The core question involved in all appeals is that whether candidates placed in the same selected list, could be treated as different class, based on the date of their respective appointment letters and the date mentioned for their training. The factual details regarding candidates in each appeal, such as their past service details, the date of appointment letter and date mentioned in the letter for their training period, may differ.

4. For convenience, the factual details are being taken from Special Appeal No. 1240 of 2025, as the same was leading petition in the judgment and order dated 09.04.2025 passed by the learned single-judge, however, the outcome of the present common order shall apply to all connected matters. Only factual difference being the number of respondents/candidates in the connected appeals.

5. After perusal of records in this consolidated group of Special Appeal matters, it appears that all respondents

herein are former members of the Indian Armed Forces, having been enrolled at different points in time in various regiments. It further appears that each respondent was discharged or retired upon due completion of his term of engagement. Notwithstanding differences in their individual periods of service, the common fact emerges across these matters is that all respondents had concluded their military service and got selected after following due procedure and secured their place in the same selection list, which is the subject of these batch of appeals.

6. Learned Additional Advocate General, appearing for the State, submits that the select list prepared pursuant to the direct recruitment of October 2018 did not conclude the process of appointment, as training forms an integral component of the process. He submits that, owing to the restrictions imposed during the Covid-19 pandemic, it became necessary for the State to conduct the training of selected candidates in phased manner, and therefore, appointment letters were issued on different dates corresponding to the respective training phases of the candidates. It is further submitted that the U.P. Directorate of Police Training, by its order dated 25.07.2020, divided the selected candidates into four batches for training on separate dates and for different periods. Thereafter, the first batch commenced training in August 2020 for a period of six months. The second batch commenced in March 2021 for six months. The third batch commenced in October 2021 for six months, and the fourth batch commenced in May 2022, also for a period of six months.

7. According to the learned Additional Advocate General, the State was well within its authority to prescribe different

pay structure for candidates scheduled to go for training in different batches, at different point in time, and appellant State was further justified in giving appointment letter to candidates in other batches without offering same pay protection, which was granted to members who went for training in the first batch. It is also submitted that the select list cannot be regarded as a homogeneous class for all purposes, and that the State is justified in placing the later three batches on a distinct footing from the first batch, which had already completed training earlier to other batches

8. It is undisputed that the first batch, which completed its training in January 2021, was extended the benefit of pay protection. The principal contention advanced by the learned Additional Advocate General is that the differential treatment accorded to candidates belonging to different batches, which are selected from the same list, is within the permissible scope of Article 14 of the Constitution of India, and therefore the State is entitled to prescribe distinct pay structures for the four batches that commenced training at different points in time.

9. In support of his submission, learned Additional Advocate General has placed reliance upon Rules 19 of the Uttar Pradesh Police Constable and Head Constable Services Rules, 2015, which is reproduced below for easy reference:

“Rule - 19. Training.

(1) (a) The candidates finally selected to the posts of constable under Rules 15 and 16 shall be required to pass the training prescribed by the Head of the Department. Provisions of Police Training College Manual shall be effective on the

cadets during the basic training. If the candidate finally selected for basic training does not report for training within the prescribed time limit then his selection/candidature shall be cancelled.

(b) Re-examination of the cadets failing in basic training shall be organized by the Head of the Department after doing supplementary training. The proceeding for termination of service of candidates failing in examination of training after supplementary training shall be done by the Appointing Authority.

(2) The candidates appointed by promotion under Rule 17 shall be required to complete the training prescribed by the Head of the Department."

10. Learned Additional Advocate General, contends that candidates finally selected to the post of Constable are mandatorily required to undergo and pass the basic training prescribed by the Head of the Department, failing which their selection is liable to be cancelled. It is submitted that the Rule also empowers the authorities to conduct supplementary training and re-examination, and to terminate the services of candidates who fail even thereafter, while candidates appointed by promotion are likewise required to complete the prescribed training and therefore, until training is complete, the State is at liberty to provide changes in the salary structure because the selection process is not complete.

11. Per contra, learned counsel appearing for the respondents submits that the action of the State is in violation of fundamental right to equality guaranteed under Article 14 of the Constitution of India. He further submits that the

respondents were selected pursuant to the recruitment process initiated in 2018 for the posts of Constables in the Civil Police and PAC and were duly placed in the ex-servicemen category in the result declared in March 2020. He further contends that the Government Order dated 23.12.2020, insofar as it provides that all appointments made after the said date shall not be entitled to pay protection, are not acceptable, being contrary to the settled principles of law, particularly when all candidates are placed in the same select list. It is further submitted that candidates appointed in the first phase were extended the benefit of pay protection, which fact has been consistently admitted by the State Government.

12. Learned counsel for respondents further relies upon ***Manilal vs. State of Rajasthan, AIR 2024 SC 4404***, and submits that all the candidates who were selected pursuant to a common selection would constitute a single homogeneous group and discrimination inter se among this homogeneous group is in violation of Article 14 of the Constitution. He also relies upon ***Mahesh Narayan and others v. State of U.P. and others, Writ A No. 55606 of 2008*** decided on 19.12.2019 decided by this High Court. Relying upon above judgments, learned counsel contends that such a distinct treatment can only be justified on some intelligible differentia, which does not exist in facts of these cases.

13. Learned counsel appearing for the respondents also responds to the argument advanced by the Learned Additional Advocate General regarding training i.e., Rule 19 of the U.P. Police Constables and Head Constables Rules, 2015. According to him, the learned single-judge has rightly observed that the training is an exercise for

selected candidates and no more stage of selection remained to be attended, once selected list was prepared for the candidate to be sent for training for appointment purposes. He further relies upon Rule 18 of the U.P. Police Constables and Head Constables Rules, 2015, which is reproduced below for easy reference:

“Rule - 18. Appointment.

(1) Subject to the provisions of Rules 15 and 16 the appointing authority shall make appointment by taking the names of candidates in the same order in which they stand in the list prepared under clause (g) of Rule 15. The appointing authority shall issue the appointment letter to the candidates with the direction that they should report for service/training within one month of the date of issue of the letter or any date specified for this purpose in the appointment letter. If he does not do so his selection/appointment shall be cancelled:

Provided that any person appointed to a post in the service prior to the commencement of these rules and is working on the post, shall be deemed to have been substantively appointed under these rules.

(2) If more than one order of appointments are issued in respect of any one selection under Rule 17, then a combined order shall also be issued, mentioning the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted:

Provided that any person appointed before the commencement of these rules to a post in the service and

working on that post shall be deemed to have been substantively appointed under these rules and such substantive appointment shall be deemed to have been made under these rules.”

14. Placing reliance on the aforesaid provision, learned counsel for the respondents submits that Rule 18 contemplates issuance of the appointment letter to candidates selected under Rules 15 and 16, and only then Rule 19 requires such candidates to report for training. Learned counsel for the respondents submits that the scheme of the Rules clearly demonstrates that the appointment letter precedes the training, and therefore, the training cannot be treated as a part of the selection process, as has been rightly held by the learned single-judge, since the training is to be conducted after the appointment.

15. We have heard learned counsel for the appellants/State as well as learned counsel for the respondents and have perused the record, including the findings recorded by the learned single-judge. Certain foundational facts are not in dispute. All candidates, irrespective of the batch in which they were subsequently deputed for training, were selected pursuant to the same recruitment advertisement issued in October 2018. The select list was common, the selection process uniform, and the appointments were inseparably linked to the same recruitment exercise.

16. From simple perusal of records, it appears that all appointment letters pertain to appointments made pursuant to the same direct recruitment of October 2018, originating from a single advertisement and selection process. It is also not the case of any party that the advertisement led to the select list has stipulated any such

classification or category-wise distinction. Moreover, the State has not demonstrated that placing candidates to be sent in four different phases for training were attributable to any rational classification.

17. In the light of aforesaid discussion, we are of the considered view that the training to be conducted in phases was necessitated solely by the infrastructural limitations faced by the appellant State and exigencies arising from the Covid-19 pandemic and not due to any *intelligible differentia* amongst the candidates in the select list. Therefore, depriving candidates placed under training on later batches, is grossly arbitrary and suffers the vice of hostile discrimination.

18. Complete basis of the argument of the learned Additional Advocate General is that the phased training itself created four different categories, thereby enabling the State to prescribe different pay structures to withhold pay protection from the respondents who formed part of the later batches.

19. While this Court accepts the existence of pandemic-related exigencies and infrastructural limitations but such external and temporary administrative compulsions cannot justify differential treatment among candidates belonging to a homogeneous class. The legal position governing permissible classification under Article 14 is too well settled to require elaboration and when tested on settled parameters, the justification offered by the appellant State does not withstand scrutiny.

20. In *The State of West Bengal Vs. Anwar Ali Sarkar (1952) 1 SCC 1*, Supreme Court has held that the classification should not be vague,

uncertain or elusive. To pass the test of equality as per Article 14 of the Constitution of India, the classification must be based upon an *intelligible differentia* because the purpose of the Article 14 is to protect every person from arbitrary discrimination, whether occasioned by the express terms of a statute or by the improper application of a statute. Any classification must rest upon an *intelligible differentia* having a rational nexus with the object sought to be achieved, failing which, such classification results in impermissible discrimination.

21. In *Direct Recruit Class II Engineering Officers? Association v. State of Maharashtra (1990) 2 SCC 715*, Supreme Court has held that candidates forming part of the same recruitment notification and selection process constitute a single class for the purpose of service benefits. Regarding determination of seniority the Apex Court has held that once the incumbent is appointed to a post according to rule, his seniority must be counted from the date of his appointment and not according to the date of his confirmation. Applying this principle, the completion of training cannot be considered as a point to be considered for creating a sub-class amongst candidates placed in same select list.

22. The appellants have not pointed to any statutory rule which authorizes the State to create sub-categories within a select list for the purpose of pay fixation or pay protection. Indeed, the State's own stand is that the phased dispatch for training was compelled solely by administrative necessity. Administrative exigency, even when *bona fide*, cannot be elevated to a constitutionally permissible *differentia* under Article 14. To permit such

a course would enable the State to fragment uniform entitlements on the basis of arbitrary or accidental circumstances, a practice repeatedly disapproved by the Supreme Court.

23. The learned single-judge was therefore, correct in holding that the respondents and other similarly situated candidates, who were selected through the same recruitment process of October 2018, could not be deprived of pay protection and service benefits extended to the first batch of candidates, sent for the training, earlier. Upon independent application of constitutional standards, we find no infirmity in the conclusion recorded by learned single-judge.

24. For the reasons recorded herein above, we are of the view that the differentiation made by the appellants State among candidates placed in the same select list, based solely on the dates on which they were sent for training, constitutes an impermissible classification in violation of Article 14 of the Constitution of India.

25. The benefit of pay protection and the corresponding pay structure, extended by the State to the first batch, cannot be withheld from candidates of the second, third, and fourth batches who were part of the same recruitment process and placed in the same selection list.

26. We, therefore, find no ground to interfere with the judgment of the learned single-judge. The batch of special appeals accordingly fails and is **dismissed**. The direction issued by the learned single-judge to extend pay protection and consequential benefits to the respondents and all other similarly placed candidates is affirmed. The State shall ensure compliance within twelve

weeks from the date of this order. No order as to costs.

27. Pending applications, if any, stands disposed of.

(2025) 12 ILRA 197
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.12.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE JASPREET SINGH, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ A No. 4460 of 2013
 &
 Connected With Other Cases

Jai Prakash Sharma & Ors. ...Petitioners
Versus
State Of U.P. & Anr. ...Respondents

Issue for Consideration

- (1) Entitlement of Statistical Assistant to get IInd promotional pay scale in the light of G.O. dated 02.12.2000, 03.09.2001 and 20.08.2004.
- (2) Binding effect of Judgment and order of the Supreme Court dismissing the SLP against the decision of R.P. Shukla's case.
- (3) Correctness of R. P. Shukla's case entitling the Statistical Assistant to get IInd promotional pay scale.

Headnotes

(A) Service law – Post of Statistical Assistant – IInd promotional pay scale – Entitlement – Petitioner sought benefits of R.P. Shukla's case, in which the entitlement of second promotional pay scale on the post of Statistical Assistant had been decided – Matter was referred to larger Bench looking into two conflicting views expressed by two different Division Bench in R. P. Shukla's case and Ashok Tomar's case – Effect of G.O. dated 02.12.2000, 03.09.2001 and 20.08.2004 as well as the applicability of Rules of 1994 felt into consideration. (E-1)

Held : Where the system of promotion is on the basis of seniority-cum-fitness as well as merit/ higher qualification/ merit, those posts will not be considered as promotional posts for admissibility of time scale pay scale. In such cases, subject to fulfillment of other conditions, the next higher pay scale as explained in Para 4(1) of Government Order dated December 2, 2000, would be payable – In view of above and the aforesaid applicability of the Rules of the U.P. Town and Country Planning Service Rules, 1987, the criteria for promotion to the next post of the petitioners is merit, therefore, it will not qualify as next promotional post for the purpose of grant of time scale/second promotional pay scale in view of Paragraph No. 6 of the Government Order dated 20.08.2004. [Para 25 and 29]

Held further : The order dated 10.04.2006 was passed by a Division Bench of this Court in the case of R.P. Shukla, in regard to a similarly situated employee on the basis of Government Order dated 02.12.2000 and the Government Order dated 03.09.2001 but without considering the Government Order dated 20.08.2004, by means of which the Government Order dated 02.12.2000 was clarified and in-operation at the time of passing of the aforesaid judgment holding that the Government Orders issued under Article 162 of the Constitution of India on 02.12.2000 and 03.09.2001 have full force of law and they hold the field, whereas by that time the Government Order dated 20.08.2004, clarifying the said Government Orders had come into force and was also holding the field – Division Bench in the case of R.P. Shukla had proceeded in deciding the case of the similarly situated employee in that case on misreading of the Rule and without considering the Government Order dated 20.08.2004, which had come into force, therefore, the petitioners are not entitled for any benefit of the said judgment. [Para 31 and 32]

(B) Interpretation of Statute – Meaning of word 'kept' – Binding effect of dismissal of SLP by the Supreme Court – The Civil Appeal filed against the decision of the Division Bench passed in the R.P. Shukla's case under Article 136 of the Constitution was dismissed by Supreme Court vide Judgment and order dated 13.07.2011 and kept question of law open – How far, dismissal of SLP against R.P. Shukla's

decision came in the way of deciding the reference made to Larger Bench. (E-1)

Held : The dictionary meaning of 'kept' is 'to retain in once possession or power' or 'to have control' as per Merriam Webster Dictionary and as per Oxford Dictionary, 'kept' means 'actively to hold in possession'. Thus, the Hon'ble Supreme Court kept the question of law involved in Civil Appeal open, while dismissing the petition under Article 136 of the Constitution of India, which is a discretionary power of the Hon'ble Supreme Court and in view of above, we are of the view that the issue stands decided by Division Bench of this Court in the case of R.P. Shukla (Supra) and the question of law kept open by the Hon'ble Supreme Court, may be considered and decided by the Hon'ble Supreme Court in an appropriate case and not by the Court/Bench, who has decided the issue. However, since the Civil Appeal has been dismissed by the Hon'ble Supreme Court without exercising discretionary power under Article 136 of the Constitution of India, therefore, other remedies may be available, such as, Review or the decision as may be taken by the Larger Bench in case of reference to Larger Bench as per law laid down by the Hon'ble Supreme Court. [Para 12]

Case Law Cited

Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, 1992 (3) SCC 1; Commissioner of Income Tax vs. Itegra Engineering India Ltd., 2013 SCC OnLine Guj 7389; Khoday Distilleries Limited (Now Known as Khoday India Limited) and Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator, (2019) 4 SCC 376; Kunhayammed & Ors. vs. State Of Kerala & Anr., (2000) 5 SCC 359; Union of India vs. M.V.S. Mohanan Nair, (2020) 5 SCC 421 – referred to.

List of Acts

Constitution of India – Article 136 and 162; U.P. Town and Country Planning Service Rules, 1987 – Rule 16; U.P. Government Servants (Criterion for Recruitment by Promotion) Rules, 1994; Government Order dated 02.12.2000, Government Order dated 03.09.2001 and Government Order 20.08.2004

List of Keywords

IInd Promotional pay scale; Entitlement; Conflicting views; Reference; Kept the question of law open; Discretionary power; Review; Non-obstacle clause; Appellate jurisdiction; Time bound financial benefit; Recommendation of Pay Commission; Personal promotional pay scale.

Case Arising From

Reference made to the Larger Bench looking into two conflicting views expressed by two different Division Bench in R. P. Shukla's case and Ashok Tomar's case.

Appearances for Parties

Advs. for the Petitioners : Ram Pragat Shukla, S. R. Shukla, Sudhir Chandra Srivastava

Advs. for the Respondents : Vimal Kumar Srivastava, Additional Advocate General, Prafulla Yadav, A.C.S.C., Pratul Kumar Srivastava, S. C.

(Delivered by Hon'ble Rajnish Kumar, J.)

(1) The following question has been referred to be decided by the larger Bench:-

"Whether the petitioners are entitled for the promotional pay scale or for the next pay scale as per the Service Rules applicable on them and Government Order dated 2.12.2000 as clarified by the Government Orders dated 3.9.2001 and 20.8.2004 or any other Government Orders issued thereafter"

(2) The petitioner, Jai Prakash Sharma and others, approached this Court by means of Writ Petition No.99 (SS) of 2013; *Jai Prakash Sharma and Others Vs. State of U.P. and Others*, claiming second promotional pay scale of Rs.8000-13500/- on completion of 24 years of service on the ground that the entitlement of second promotional pay scale on the post of Statistical Assistant had been decided by the Court vide judgment and order dated 10.04.2006 passed in Special Appeal No.1011/2005; *R.P. Shukla Vs. State of*

U.P. and another and the Special Leave Petition preferred against the said judgment before the Apex Court had been dismissed. The Court, by means of the order dated 22.01.2013, disposed of the writ petition with direction to the State of U.P. through Principal Secretary, Housing & Urban Planning, Lucknow to take appropriate decision in accordance with law. Similar order was passed in Writ Petition No.439(SS) of 2013; *Narain Prasad Gupta and Others Vs. State of U.P. and Another* on 30.01.2013 and another similar Writ Petition No.896(SS) of 2013; *Vijay Singh Tomar Vs. State of U.P. and Another* was decided in aforesaid terms by means of order dated 20.02.2013.

(3) In compliance of the aforesaid orders, the representations of the petitioners therein were decided by means of the Office Memorandums dated 23.07.2013, 19.08.2013 and 16.08.2013 respectively in reference to the orders passed in the respective writ petitions. Jai Prakash Sharma and Others challenged the orders passed on the representations before this Court in Writ Petition No.4460(SS) of 2013; *Jai Prakash Sharma and Others Vs. State of U.P. and Another*, which was partly allowed and a writ of certiorari was issued quashing the order dated 23.07.2013 with a direction to consider the case of the petitioners for grant of promotional pay scale of Rs.8000-13500/- with effect from the date the same became due to the petitioners in terms of the Government Order dated 02.12.2000 and considering the Division Bench judgment of this Court in the case of R.P. Shukla (Supra). Similarly Narain Prasad Gupta and others challenged the order passed on their representation in Writ Petition No.5469 (SS) of 2013, which was also allowed by means of the order dated 28.08.2019 in identical terms as

passed in case of Jai Prakash Sharma and Others (Supra). Vijay Singh Tomer also challenged the order passed on his representation in Writ Petition No.5483 (SS) of 2013; *Vijay Singh Tomar Vs. State of U.P. and Another*, which was also allowed by means of the order dated 28.08.2019 in identical terms as passed in the case of Jai Prakash Sharma and Others (Supra).

(4) The State of Uttar Pradesh challenged the orders passed by the learned Single Judge in intra-court appeals bearing Special Appeal No.250 of 2020; *State of U.P. and Another Vs. Ashok Tomar and Another*, Special Appeal No.271 of 2020; *State of U.P. and Another vs. Narain Prasad Gupta and Others* and Special Appeal No.273 of 2020; *State of U.P. and Another vs. Jai Prakash Sharma and Others*.

(5) The Division Bench in Special Appeal No.250 of 2020; *State of U.P. and Anr. Vs. Ashok Tomar and Another* alongwith other connected appeals, after considering the Government Order dated 02.12.2000, which was clarified by means of Government Orders dated 03.09.2001 and 20.08.2004 and noticing Rule 16 of the U.P. Town and Country Planning Service Rules, 1987 held that the persons, who have completed the requisite qualifying service for the benefits claimed, would be entitled for the next pay scale and not the promotional pay scale of the post of Statistical Officer. The relevant paragraph is extracted here-in-below:-

"According to the said rule recruitment by promotion in the case of Statistical Officer shall be made on the basis of merit. In view of this rule and also the non-applicability of the Rule 1994 as

referred above on account of the post of Statistical Officer falling within the purview of U.P.S.C. as per the provisions contained in Rule 5 (1) (11) of the aforesaid rules, 1987, there is no doubt that the criteria for promotion to the said post is merit and therefore, it will not qualify as a next promotional post for the purpose of grant of time scale/promotional pay scale in view of part no. 5 of G.O. dated 20.08.2004, as already referred. It being so what would be available to the persons who have completed the requisite qualifying service for the aforesaid benefits would be the next pay scale and not the promotional pay scale of the post of Statistical Officer. This aspect has not been considered by the writ court."

(6) Thereafter, the Division Bench considered as to whether and how far the decision rendered in the case of R.P. Shukla (Supra) in Special Appeal No.1011 of 2005 would apply to the case at hand and observed as under:-

"Now the question to be considered is as to whether and how far the decision of a Division Bench rendered in the case of R.P. Shukla Vs. State of U.P. and others Special Appeal No. 1011 of 2005 will apply to the case at hand. In the said case which also pertains to a Statistical Officer of the same service, who had claimed a similar benefit as claimed by respondent(s) herein there is an observation as pointed out by learned counsel for opposite party to the effect - "certain regular promotions are being made in accordance with service rules as per seniority-cum-merit". We have perused the rules of 1987, which are referred in the immediately preceding line wherein the aforesaid observations have been made by the Division Bench but we do not find any

such provision in the rules 1987. The criteria for promotion is merit and not seniority or seniority-cum-rejection of unfit or seniority-cum-merit. The preparation of eligibility list for consideration for promotion under the U.P. Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 1970 is a different matter and said rules do not lay down the criteria for promotion which remains as merit. Therefore, we are unable to persuade ourselves to take a view contrary to the clear provision Rule 16 of the Rules, 1987. Learned counsel for opposite party also invited our attention to another portion of the said judgment wherein the stand of the opposite party therein in the counter affidavit that "such promotion is based on the basis of merit (as per provision of service rules) not on the basis of seniority, so as per the time scale of government order, he is not entitled for the promotional scale as claimed by him have been referred by the Division Bench of this Court in R.P. Shukla's case'. After referring to the said stand in the counter affidavit, the Division Bench thereafter proceeded to consider that other similarly placed with the petitioner had been granted the benefit as claimed by R.P. Shukla based on paragraph 1 (2) and 1 (4) of the Government Order dated 02.12.2000 and in this context it is also observed that on being questioned to clarify the situation referred to above no details could be furnished by the opposite party to justify their action as to why it could not be made available to the appellant while similarly situated Statistical Officer got the benefit of the Government order (supra). The Court relied on Article 14 of the Constitution of India to grant same benefit to R.P. Shukla as had been granted to others. With respect, Rule 16 of the Rules, 1987 very clearly provides that the promotion to the

post of Statistical Officer shall be based on merit. It nowhere says that it shall be based on seniority-cum-merit or seniority-cum-rejection of unfit. Therefore, so far as the legal question is concerned, in the light of the policy decision already referred in above, whenever the next promotional post is to be filled on the basis of criteria of merit then while granting the time scale/promotional pay scale the pay scale of such promotional post shall not be available as the next promotional pay scale/time scale to the person who has fulfilled requisite qualifying service, instead, it is the next pay scale, which would be available. We also find from the judgment of R.P. Shukla's case that government order dated 20.08.2004 wherein this position has been clarified has neither been referred nor considered. The Government Order dated 20.08.2004 and the clarification therein with respect to point no. 6 has not been considered nor referred in the said judgment. Now in this context as we have been informed that the judgment in R.P. Shukla's case was the subject matter of challenge before the Supreme Court and special leave petition, after being converted into Civil Appeal, was dismissed on 13.07.2011, therefore, we have perused the said order. The order dated 13.07.2011 passed by Supreme Court of India reads as under:-

"We have heard learned counsel for the appellants and the respondent in person.

On the facts of the case and without going into the merits, particularly, the respondent is a retired person, we are of the opinion that this is not a fit case to exercise our discretion under Article 136 of the Constitution of India. The appeal is

dismissed with no orders as to costs. However, the question of law is kept open."

The Supreme Court even while dismissing the civil appeal has kept the question of law open for consideration meaning thereby in subsequent cases this question of law as to what is the policy of the government and whether the pay scale of the Statistical officer would be available to the Statistical Assistants as a matter of right in the light of the policy dated 02.12.2000 and the clarifications issued thereafter or not, is open for reconsideration, which we have done as aforesaid and on such consideration we find that legal position in this regard is as has been clarified/declared here-in-above, therefore, no benefit accrues to the respondent(s) merely because the special leave petition of the State of U.P. filed against the judgment in R.P. Shukla's case was dismissed after being converted into civil appeal as the question of law in this regard was left open for our consideration."

(7) It was further observed that 22 similarly placed persons are said to have been granted the next promotional pay scale of the Statistical Officer as time scale/promotional pay scale under the aforesaid policy, but upon consideration as to whether they have been granted the said benefit under the aforesaid policy or not and if they have been granted, what would be its effect on the rights of the respondent, if any, and found that there is no specific assertion in the memo of writ petition as to who are the 22 persons and when they were granted the aforesaid benefit nor the circumstances in which they were so granted and remitted the matter to the learned Single Judge for considering accordingly.

(8) Upon remand, the learned Single Judge, upon hearing the aforesaid writ petitions, observed that the question of law had been kept open by the Hon'ble Supreme Court but the same does not amount to setting aside of the order of the Division Bench. It considered the law in this regard as settled by the Hon'ble Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras; 1992 (3) SCC 1***, wherein it was held that unless a judgment is set aside by a superior Court, law settled by it remains in force. In this backdrop, the learned Single Judge noticing divergent views taken by the two Division Benches i.e. in R.P. Shukla (Supra) and Jai Prakash Sharma (Supra), referred the aforesaid question for decision by a Larger Bench. The relevant paragraph No.5 is extracted here-in-below:-

*"5. The question of law is left open by the Supreme Court, but the same does not amount to setting aside of the order of the Division Bench. Law in this regard is settled by the Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, 1992 (3) SCC 1***, that unless a judgment is set aside by a superior Court, law settled by it remains in force. This Court is expected to maintain judicial discipline and once the decision of the earlier Division Bench was not disturbed by the Supreme Court and question of law was left open to be decided by the appropriate Court and later Division Bench has taken a different view, judicial discipline expects that the matter ought to be decided by a Larger Bench instead by a Single Judge accepting any one of the aforesaid views....."*

(9) In pursuance of above order passed by learned Single Judge, a Division Bench was constituted. The Division Bench passed an order in Writ A No.4460 of 2013; *Jai Prakash Sharma and Others Vs. State of U.P. and Another* considering the Allahabad High Court Rules and directed to place the matter before the Hon'ble Chief Justice in view of the fact that the learned Single Judge has referred the matter to the Larger Bench noticing two conflicting views expressed by two different Division Benches of this Court, therefore, it would be more appropriate that the matter be sent to the Hon'ble Chief Justice for considering formation of Larger Bench i.e. the Bench comprising of more than two Hon'ble Judges. Consequently, the Larger Bench has been constituted by the Hon'ble Chief Justice.

(10) At this stage, it will be relevant to notice that the Hon'ble Supreme Court, in the case of **Shree Chamundi Mopeds Ltd. (Supra)**, observed that a distinction has to be made between quashing of an order and stay of operation of an order and held that quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed and the stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. Thus, it is only after quashing of the order, the same would stand wiped out, otherwise not and if it has not been quashed by the Superior Court, it would hold the field and binding on the Court, who passed the order. The relevant portion of paragraph No.10 is extracted here-in-below:-

"10. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending....."

(11) The Hon'ble Supreme Court, in the Civil Appeal filed against the order passed by the Division Bench in the case of R.P. Shukla (Supra), dismissed the Special Leave Petition by means of order dated 13.07.2011 and kept question of law open, which is reproduced in the order of Division Bench, which has been quoted in paragraph No.6 above.

(12) In view of above, the Civil Appeal against the Division Bench order, passed by this Court in the case of R.P. Shukla (Supra) has been dismissed by the Hon'ble Supreme Court i.e. the Superior Court. However, while dismissing the Civil Appeal, the Hon'ble Supreme Court kept the question of law open. The dictionary meaning of 'kept' is 'to retain in once possession or power' or 'to have control' as per Merriam Webster Dictionary and as per Oxford Dictionary, 'kept' means 'actively to hold in possession'. Thus, the Hon'ble Supreme Court kept the question of law involved in Civil Appeal open, while dismissing the petition under Article 136 of the Constitution of India, which is a discretionary power of the Hon'ble Supreme Court and in view of above, we are of the view that the issue stands decided by Division Bench of this Court in the case of R.P. Shukla (Supra) and the question of law kept open by the Hon'ble Supreme Court, may be considered and decided by the Hon'ble Supreme Court in an appropriate case and not by the Court/Bench, who has decided the issue. However, since the Civil Appeal has been dismissed by the Hon'ble Supreme Court without exercising discretionary power under Article 136 of the Constitution of India, therefore, other remedies may be available, such as, Review or the decision as may be taken by the Larger Bench in case of reference to Larger Bench as per law laid down by the Hon'ble Supreme Court.

(13) A Division Bench, in the case of **Commissioner of Income Tax Vs. Itegra Engineering India Ltd.**; 2013 SCC OnLine Guj 7389, in an identical case, held that where the Hon'ble Supreme Court kept the question of law open, it cannot be said that the said question of law is kept

open by the Hon'ble Supreme Court to consider subsequently by this Court / Co-ordinate Bench. It can be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently in other cases by the Hon'ble Supreme Court. Thus, the decision of the Division Bench of the said Court found to be bounded unless a contrary view is taken and the matter is referred to the Larger Bench. The relevant paragraph No.10 is extracted herein below:-

"10. Now so far as the submission made by learned counsel appearing on behalf of the revenue that though against the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax (supra), as such, Special Leave to Appeal was preferred before the Hon'ble Supreme Court and the same came to be dismissed by the Hon'ble Supreme Court on the ground of delay and kept the question of law open, this Court may consider the question of law raised on merits is concerned, the same cannot be accepted. It is required to be noted that as such, consideration of the question raised with respect to set off of unabsorbed depreciation on merits, there is a direct decision of the Division Bench of this Court in the case of General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax (supra). Against the said decision, the Special Leave to Appeal was preferred and the same came to be dismissed on the ground of delay and the Hon'ble Supreme Court kept the question of law open. Therefore, it can not be said that the said question of law is kept open by the Hon'ble Supreme Court to consider subsequently by this Court-Coordinate Bench. It can be said that the said question of law is kept open by the Hon'ble Supreme Court to consider

subsequently in other cases by the Hon'ble Supreme Court. So far as this Court is concerned, the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax (supra) is binding unless a contrary view is taken and the matter is referred to the Larger Bench. In view of the decision of the Division Bench of this Court in the case of General Motors India (P) Ltd. v. Deputy Commissioner of Income Tax (supra) which has been relied upon by the learned ITAT while passing the impugned judgment and order, as such, no question of law much less any substantial question of law arises now."

(14) The Hon'ble Supreme Court, in the case of **Khoday Distilleries Limited (Now Known a Khoday India Limited) and Others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (Under Liquidation) Represented by the Liquidator; (2019) 4 SCC 376**, has held that Article 136 of the Constitution of India opens with a non-obstante clause and conveys a message that even in the field covered by the preceding articles, jurisdiction conferred by Article 136 is available to be exercised in an appropriate case. It has further been held that no right of appeal is conferred upon any party; only a discretion is vested in the Supreme Court to interfere by granting leave to an applicant to enter in its appellate jurisdiction not open otherwise and as of right and enumerated legal position in the subsequent part of paragraph 19 and reiterated the conclusions recorded in the case of **Kunhayammed & Ors. Vs. State Of Kerala & Anr.; (2000) S SCC 359**, in which it has been held that an order refusing special leave to appeal does not stand substituted in place of order under

challenge. Thus, in case the appeal is dismissed in limine, the Review would be maintainable and the issue may also be considered by a Larger Bench on reference.

(15) Heard Sri Ram Pragat Shukla, learned counsel for the petitioners, Sri Vimal Kumar Srivastava, learned Additional Advocate General assisted by Sri Prafulla Yadav, learned Additional Chief Standing Counsel and Sri Pratul Kumar Srivastava, learned Standing Counsel for the State.

(16) Learned counsel for the petitioners submitted that the petitioners are entitled for the second promotional pay scale of Rs.8000-13500/- on completion of 24 years of service under the Government Order dated 02.12.2000 as the claim of the petitioners has wrongly and illegally been rejected on the ground that subsequent to Government Order dated 02.12.2000, a clarificatory Government Order dated 20.08.2004 was issued, in which at Serial No.6, it has been clarified that those posts, which are to be filled on the basis of seniority-cum-suitability or on the basis of merit, the pay scale of the said posts would not be extended for the purpose of grant of benefit in terms of the Government Order dated 02.12.2000 rather the next pay scale would be given in case the employee fulfills the conditions stipulated under the said Government Order because 22 similarly situated employees have been granted benefit of the second promotional pay scale. Considering it, a Division Bench of this Court, in the case of R.P. Shukla (Supra), by means of order dated 20.04.2006, directed the respondents to grant benefit of the second promotional pay scale of Rs.8000-13500/- to the appellant/petitioner therein with all consequential benefits. The said judgment

passed by this Court was put to challenge before the Hon'ble Supreme Court in Civil Appeal No.272/2007 by the State Government, which has been dismissed by means of the order dated 13.07.2011. Thus, the submission is that once the Division Bench of this Court has decided the issue and directed for extending the benefit of promotional pay scale to a person, similarly situated, challenge to which came to be dismissed by the Hon'ble Supreme Court, the respondents cannot adopt a different yardstick so far as the case of the petitioners is concerned. Thus, it has been submitted that the petitioners are fully entitled for grant of promotional pay scale of Rs.8000-13500/- with effect from the date, they completed 24 years of service.

(17) He further submitted that even otherwise except the petitioners, all the employees of the cadre of the petitioners have been given benefit of second promotional pay scale either by the Government itself or on the direction issued by this Court in the case of R.P. Shukla (Supra), therefore, also the petitioners are entitled for benefit of the second promotional pay scale on the basis of parity. It has also been submitted that now the cadre has changed, therefore, after the petitioners, no other employee would be eligible or entitled for the aforesaid claim. Thus, submission is that the petitioners are entitled for benefit of the second promotional pay scale.

(18) Per contra, learned Additional Advocate General vehemently opposed the submissions of learned counsel for the petitioners. He submitted that the petitioners are not entitled for the benefit of second promotional pay scale under the Government Order dated 02.12.2000, as it was clarified by means of the Government

Order dated 20.08.2004. He further submitted that though the Government Order dated 20.08.2004 had come into existence but the same was not considered by the Division Bench of this Court in the case of R.P. Shukla (Supra), therefore, the petitioners are not entitled for any benefit of the Division Bench judgment and the dismissal of challenge to the Division Bench judgment by the Hon'ble Supreme Court. He further submitted that on account of the Government Order dated 20.08.2004, the petitioners are not entitled for any parity of the other employees, to whom the benefits have been given by the Government or under the order passed by this Court. He also submitted that except the second promotional pay scale, all the admissible benefits accrued to the petitioners have been extended by the Government. Thus, the submission is that the petitioners are not entitled for the second promotional pay scale and the benefit of the judgment rendered in the case of R.P. Shukla (Supra). It has also been submitted that none of the similarly situated employee was given benefit of the Government Order dated 02.12.2000 by the Government as they had retired prior to the said date. Thus, the reference is liable to be answered accordingly and the petitions are liable to be dismissed.

(19) We have considered the submissions of learned counsel for the parties and gone through the records, Government Orders and relevant Rules.

(20) The petitioners were working as Statistical Assistant. They claimed that on account of the said working, they are entitled for second promotional pay scale of Rs.8000-13500/- in terms of the Government Order dated 02.12.2000, considering which the Division Bench of

this Court, in the case of R.P. Shukla (Supra), has also extended the benefit to the similarly situated employee, whereas they have been given pay scale of Rs.5500-9000/- only.

(21) In view of the question referred to the Larger Bench, it is to be considered by this Bench as to whether the petitioners are entitled for the promotional pay scale or for the next promotional pay scale as per Service Rules applicable on them and Government Order dated 02.12.2000 as clarified by Government Orders dated 03.09.2001 and 20.08.2004 or any other Government Orders issued thereafter.

(22) The Government, for resolving the problem of stagnation at different levels in service and the hardship faced by the employees on account of the same and lack of adequate promotional avenues, introduced the provision for providing time bound financial benefits and the scheme for time bound pay scale at different levels on the recommendation of the Pay Commission. Consequently, the aforesaid Government Orders were issued in continuance of the earlier Government Orders, which were clarified time to time as demanded and required. The criteria for said financial benefits were fixed by the Government Orders keeping in view the Service Rules applicable on the employees so that employees may not have any financial loss on account of stagnation in service for various reasons.

(23) The Government Order dated 02.12.2000 has been issued providing time bound pay-scales on the recommendation of pay-committee (1997-99). It provides in paragraph No.1(4) that the second promotional/next pay scale will be admissible individually to each regular

employee on minimum 24 years of service including continuous satisfactory service of 5 years from the date of admissibility of one increment as per Para-1(3) mentioned in personal promotional/next pay scale. The relevant paragraph 1(4) in Hindi alongwith it's translation in English, as submitted by State, is quoted herein below:-

Government Order dated 02.12.2000 (In Hindi)	Government Order dated 02.12.2000 (In English)
द्वितीय वैयक्तिक प्रोन्नतीय / अगला वेतनमान:- प्रत्येक नियमित कर्मचारी को वैयक्तिक प्रोन्नतीय / अगले वेतनमान में उपर्युक्त प्रस्तर-1(3) के अनुसार एक वेतनवृद्धि का लाभ अनुमन्य होने की तिथि से 5 वर्ष की अनवरत संतोषजनक सेवा सहित न्यूनतम 24 वर्ष की सेवा पर वैयक्तिक रूप से द्वितीय प्रोन्नतीय / अगला वेतनमान अनुमन्य होगा। ऐसे कर्मचारी जिनके संवर्ग में प्रोन्नति के पद उपलब्ध नहीं हैं उनको उस वेतनमान का अगला वेतनमान वैयक्तिक रूप से देय होगा।	Second personal promotional/next pay scale:- Second promotional/next pay scale will be admissible individually to each regular employee on minimum 24 years of service including continuous satisfactory service of 5 years from the date of admissibility of one increment as per Para-1(3) mentioned in personal promotional/ next pay scale. Such employees in whose cadre the post of promotion is not available, the next pay scale of that pay scale will be paid individually.

(24) The aforesaid Government Order was clarified by the Government Order dated 03.09.2001. The relevant paragraph

No.2(ka) of the said Government Order provides that the employees who have not been allowed two promotional/next pay scale (or two promotions) in respect of direct recruitment post till the date of completion of 24 years of service, but who have received a promotion and they are regular on the post of direct recruitment, they should be allowed individually second promotional/next pay scale in respect of the post of direct recruitment from the date of completion of 24 years of satisfactory service or dated 1.3.2000, which ever is later. The relevant paragraph No.2(ka) in Hindi alongwith it's translation in English, as submitted by State, is quoted herein below:-

Government Order dated 03.09.2001 (In Hindi)	Government Order dated 03.09.2001 (In English)
उपर्युक्त श्रेणी के पदधारक जिन्हें 24 वर्ष की सेवा पूर्ण करने की तिथि तक सीधी भर्ती के पद के सन्दर्भ में दो प्रोन्नतीय / अगला वेतनमान अथवा दो पदोन्नतियां अनुमन्य नहीं हुई हों, परन्तु जिन्हें एक पदोन्नति प्राप्त हो चुकी हो और वे सीधी भर्ती के पद पर नियमित हों उनकी 24 वर्ष की संतोषजनक सेवा पूर्ण करने की तिथि अथवा दिनांक 1.3.2000 जो भी बाद में हो, से सीधी भर्ती के पद के संदर्भ में द्वितीय प्रोन्नति / अगला वेतनमान वैयक्तिक रूप से अनुमन्य करा दिया जाय।	(a) Post holders of the above category who have not been allowed two promotional/next pay scale (or two promotions) in respect of direct recruitment post till the date of completion of 24 years of service, but who have received a promotion and they are regular on the post of direct recruitment, they should be allowed individually second promotion/next pay scale in respect of the post of direct recruitment from the date of completion of 24 years of satisfactory service or

	dated 1.3.2000, which ever is later.

(25) The Government Orders dated 02.12.2000 and 03.09.2001 were further clarified by means of the Government Order dated 20.08.2004. The relevant paragraph No.6 of which provides that promotional post for a post holder for admissibility of personal promotional pay scale under time scale pay scale system means that post, on the basis of Service Rules or executive orders, the concerned employee is promoted on the basis of seniority-cum-suitability. In such a situation, where the system of promotion is on the basis of seniority-cum-fitness as well as merit/ higher qualification/ merit, those posts will not be considered as promotional posts for admissibility of time scale pay scale. In such cases, subject to fulfillment of other conditions, the next higher pay scale as explained in Para-4(1) of Government Order dated December 2, 2000, would be payable. The relevant paragraph No.6 in Hindi alongwith it's translation in English, as submitted by State, is quoted herein below:-

Government Order dated 20.08.2004 (In Hindi)	Government Order dated 20.08.2004 (In English)
पदोन्नति का पद योग्यता पर आधारित होने पर समयमान वेतनमान की अनुमन्यता कैसे होगी?	How will the post of promotion be admissible on merit but time scale pay scale?
समयमान वेतनमान व्यवस्था के अन्तर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिये प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी	Promotional post for a post holder for admissibility of personal promotional pay scale under time scale pay scale

आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता - कम- उपयुक्तता के आधार पर की जाती हो। ऐसी स्थिति में जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता- कम - उपयुक्तता के साथ ही साथ योग्यता / उच्च अर्हता / मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान जैसा कि शासनादेश दिनांक 2 दिसम्बर, 2000 के प्रस्तर-4(1) में स्पष्ट किया गया है, देय होगा।	system means that post on the basis of service rules or executive orders, the concerned employee is promoted on the basis of seniority-cum-suitability. In such a situation, where the system of promotion is on the basis of seniority-cum-fitness as well as merit/ higher qualification/ merit, those posts will not be considered as promotional posts for admissibility of time scale pay scale. In such cases, subject to fulfillment of other conditions, the next higher pay scale as explained in Para-4(1) of Government Order dated December 2, 2000, will be payable.

(26) In view of above, in terms of paragraphs No.1(4) of the Government Order dated 02.12.2000, as clarified by means of the Government Order dated 03.09.2001 and the Government Order dated 20.08.2004, benefit of second promotional pay scale would be admissible to a regular employee on minimum 24 years of service including continuous satisfactory service of 5 years from the date of admissibility of one increment as per Para-1(3) mentioned in personal/promotional/next pay scale, in case, he has received a promotion and is

regular on the post of direct recruitment on the basis of Service Rules or executive orders on the criteria of seniority-cum-suitability but where the system of promotion is based on the criteria of seniority-cum-fitness as well as merit/higher qualification/merit, those posts will not be considered as promotional posts for admissibility of time scale pay scale and in such cases, subject to fulfillment of other conditions, the next higher pay scale as explained in Para-4(1) of the Government Order dated 02.12.2000 would be payable.

(27) Adverting to the facts of the present case, the next promotional post of the petitioners was Statistical Officer. The provisions of U.P. Town and Country Planning Service Rules, 1987 are applicable on the service of the petitioners. The Rule 16, thereof, provides that the promotion on the post of Statistical Officer shall be made on the basis of merit. Rule 16 is extracted herein below:-

"16. Recruitment by promotion in the case of Assistant Town Planner, Assistant Planner, Personal Assistant (Technical), Assistant Architect, Assistant Engineer, Statistical Officer and Research Officer shall be made on the basis of merit and in the case of Town Planner, Associate Planner, Senior Planner, Senior Architect, Executive Engineering on the basis of seniority subject to the rejection of the unfit from amongst the eligible candidates in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rule 1970 as amended from time to time."

(28) The U.P. Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 is not applicable on the service

of the petitioners as amended time to time in view of the provisions made therein, in which the next promotional post of Statistical Officer falls within the purview of U.P.P.S.C., therefore, the criteria for promotion mentioned therein will not prevail or apply over the criteria, which is mentioned in the Statistical Service Rules pertaining to the service/cadre in question.

(29) In view of above and the aforesaid applicability of the Rules of the U.P. Town and Country Planning Service Rules, 1987, the criteria for promotion to the next post of the petitioners is merit, therefore, it will not qualify as next promotional post for the purpose of grant of time scale/second promotional pay scale in view of Paragraph No.6 of the Government Order dated 20.08.2004. It may also not be good in the interest of service and may create heart burning among the officers because the persons, who could not be promoted on the promotional post on the criteria of merit, may get the promotional benefits, which may have been acquired by the promotees on the criteria of merit. Even otherwise it does not seem to be just and proper that an employee may get the promotional pay scale of a post of merit without being judged on merit and without the responsibilities of the said post.

(30) The aforesaid Government Orders have also not been challenged by any of the parties. Even otherwise the provision for time bound pay scale on completion of certain period, subject to fulfillment of certain conditions, was made only to provide the relief on account of stagnation at various levels. However, the promotional pay scale without assuming the responsibility of promotional posts and discharging the same cannot be granted because, if it is granted, it may adversely affect the efficiency of

administration. The Hon'ble Supreme, in the case of **Union of India Vs. M.V. Mohanan Nair; (2020) 5 SCC 421**, has held that the object behind the MACP Scheme is to provide relief against the stagnation. If the arguments of the respondents are to be accepted, they would be entitled to be paid in accordance with the grade pay offered to a promotee; but yet not assume the responsibilities of a promotee.

(31) The order dated 10.04.2006 was passed by a Division Bench of this Court in the case of R.P. Shukla (Supra), in regard to a similarly situated employee on the basis of Government Order dated 02.12.2000 and the Government Order dated 03.09.2001 but without considering the Government Order dated 20.08.2004, by means of which the Government Order dated 02.12.2000 was clarified and in-operation at the time of passing of the aforesaid judgment holding that the Government Orders issued under Article 162 of the Constitution of India on 02.12.2000 and 03.09.2001 have full force of law and they hold the field, whereas by that time the Government Order dated 20.08.2004, clarifying the said Government Orders had come into force and was also holding the field. The relevant portion is reproduced as under :-

"Keeping in mind the view of the Hon'ble Apex Court, we are of the view that the Government Orders issued under Article 162 of the Constitution of India on 2.12.2000 and 3.9.2001 have full force of law and they hold the field. Thus appellant can successfully claim the benefit of the Government Orders. Appellant is entitled to next promotional pay scale in accordance with para 1(2) of the Government Order dated 2.12.2000 and para 1(4) of the Government Order dated 3.9.2001. Thus, on this count we are in respectful disagreement with the finding of the learned Single Judge that appellant is not entitled to next promotional pay scale."

(32) The Division Bench also observed that the petitioner's services is regulated by the Service Rules of 1994 and he is entitled for promotional avenues as per Rules of 1987 and certain regular promotions are being made in accordance with Service Rules and as per seniority-cum-merit. Thus, the avenues of promotion is available to the petitioner and other similarly situated officers as per Service Rules and there is no denial from the side of the appellant about the same, whereas the Service Rules of 1994 are not applicable on the services of the petitioners and the criteria in the Service Rules of 1987 for promotion on the next post of Statistical Officer is merit and not seniority-cum-merit or seniority subject to rejection of unfit. Therefore, we are of the view that the Division Bench in the case of R.P. Shukla (Supra) had proceeded in deciding the case of the similarly situated employee in that case on misreading of the Rule and without considering the Government Order dated 20.08.2004, which had come into force, therefore, the petitioners are not entitled for any benefit of the said judgment.

(33) In view of above, we are of the view that the petitioners are not entitled for the promotional pay scale as per the Service Rules applicable on them and the Government Order dated 02.12.2000 as clarified by means of the Government Orders dated 03.09.2001 and 20.08.2004. No Government Orders issued subsequent thereto has been pointed out by learned counsel for the petitioners, on the basis of which, the petitioners may be entitled for the promotional pay scale, as claimed.

(34) One of the argument of learned counsel for the petitioners was that now the cadre has changed, therefore, after the present petitioners, no other employee in the cadre of the petitioners would be eligible or entitled for the aforesaid claim. This submission is based on the principle of parity with the employees, who

have been granted the benefit under the aforesaid Government Orders by the Government or on the orders passed by this Court, which can be considered by the learned Single Judge only subject to the pleading in this regard of the petitioners and considering the law on the issue. However, it is noticed that the respondents had argued that none of the similarly situated employee was given benefit by the Government under the Government Order dated 02.12.2000 and they had retired prior to that also, therefore, if the petitioners had completed 24 years of service prior to the said Government Order and eligible under any prior Government Order or scheme, it can also be considered by learned Single Judge subject to pleading and not by this Bench.

(35) The reference is answered accordingly.

(36) Let the matter be placed before the learned Single Judge within next two weeks for appropriate decision in the matter.

(2025) 12 ILRA 211
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.

Writ A No. 8734 of 2025
 &
 Writ A No. 8766 of 2025

Awadhesh Kumar Chaudhary ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

- (1) Legality of termination order obtained by mentioning higher marks in application forms.
- (2) Applicability of doctrine of estoppels, where a candidate misrepresented material particulars.

Headnotes

(A) Service law – Termination – Assistant teacher – Charge of mentioning higher marks in application forms to get selection and appointment – Though the petitioners had efficiently discharged their duties for almost five years and were holding regular and permanent appointments, but their services were dispensed with – Not following the procedure as specified under the Rules of 1973 and 1999 was claimed – Permissibility – Doctrine of estoppels – Applicability – Issue of categorization of advantageous and disadvantageous positions felt into consideration. (E-1)

Held : Submission of false or incorrect information with the intent of securing an undue benefit amounts to misrepresentation and fraud, and any appointment or advantage obtained on the basis of such false information is liable to be cancelled – Entering higher marks than actually obtained is not a mere clerical lapse but a deliberate act capable of altering the merit position, therefore it cannot be regularised under the guise of 'human error'. Any undue advantage so obtained is illegal and vitiates the selection itself – It is a cardinal principle of service jurisprudence that fraud vitiates every solemn act. A candidate who enters the selection process by misrepresenting material particulars, such as academic marks that constitute the very basis of merit-based recruitment, cannot invoke the equitable doctrine of estoppel. [Paras 29, 31 and 32]

Held further : The issue of categorization of advantageous and disadvantageous positions has been considered by the Apex Court in the case of Jyoti Yadav – Wherever mistakes committed by the candidates actually put them at a disadvantage as against their original entitlement or the variation could be one attributable to the University or issuing authority, an exception was made by said Communication. The reason for treating these two categories of candidates differently cannot thus be called irrational – Admittedly, case of the petitioners nos. 5, 6 & 7 in Writ-A No. 8734 of 2025, namely, Preeti, Manish Kumar Mahaur and Rinku Singh and petitioner no. 1 – Sweetie Shokeen in Writ-A No. 8766 of 2025 fall within the criteria of disadvantage, thus, their appointments are based on the merit criteria they possess. [Para 27 and 38]

Case Law Cited

Radhey Shyam Yadav and another vs State of U.P. and others, (2024) 11 SCC 770; Ajay Kumar and others vs. State of U.P. and others, Neutral Citation No- 2024: AHC: 13031; Civil Appeal No. 3707 of 2020, Ram Sharan Maurya and Others vs. State of U.P. and Others; Special Leave to Appeal (C) No. 6687 of 2020, Subedar Singh and Others vs. State of U.P.; Writ Petition (Civil) No. 322 of 2021, Jyoti yadav & Anr. vs. The State of Uttar Pradesh & Ors. decided on 08.04.2021; Writ Petition (s) (Civil) No(s). 378/2021, Rahul Kumar vs. State of Uttar Pradesh & Ors. decided on 29.06.2021; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another vs. M. Tripura Sundari Devi, (1990) 3 SCC 655; Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav, (2003) 3 SCC 437; Union of India vs. M. Bhaskaran, 1995 Supp 4 SCC 100; State of Bihar and others vs. Kirti Narayan Prasad, (2019) 13 SCC 250; Meghmala and others vs. G. Narasimha Reddy and others, (2010) 8 SCC 383 – **referred to.**

List of Acts

U.P. Basic Education Staff Rules, 1973; U.P. Government Servant (Discipline and Appeal) Rules, 1999.

List of Keywords

Termination; Regular appointment; Misrepresentation; Discriminatory; Principle of estoppels; Mentioning higher marks than actually possess; Advertent mistake; Categorization of advantageous and disadvantageous positions; Service jurisprudence; Equitable principle; Public appointments; Procedural indulgence; Vested right to continue.

Case Arising From

Impugned order dated 21.05.2025 passed by the respondent no. 3 terminating the service of petitioner.

Appearances for Parties

Adv. for the Petitioner : Ashok Khare, Senior Advocate, Yatindra, Siddharth Khare, Kamlesh Kumar Tiwari

Adv. for the Respondents : Standing Counsel, Mrs. Archana Singh

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. The petitioners have preferred instant writ petitions challenging orders dated 09.05.2025 and 21.05.2025 passed by respondent no. 3¹ and respondent no. 4² respectively, whereby services of the petitioners have been terminated on the ground of mentioning increased marks in the application forms submitted by them while applying for the posts of Assistant teachers.

2. Facts of the case, in brief, are that the State Government issued a Government Order dated 01.12.2018 notifying the holding of Assistant Teachers Recruitment Examination 2019³ for the appointment against 69000 posts of Assistant Teachers. The petitioners, being eligible for the posts of Assistant Teachers, applied pursuant to the said advertisement. They were issued admit cards for appearing in the ATRE 2019. Pursuant thereto, the petitioners participated in the said examination conducted on 06.01.2019. The result of ATRE 2019 was declared on 12.05.2020, wherein names of the petitioners were shown as qualified candidates.

3. After being declared qualified in ATRE 2019, the State Government issued a Government Order on 13.05.2020 for consideration of the appointments of selected candidates as Assistant Teachers. In pursuance thereof, petitioners applied for the appointment. Thereafter, a final select list was published on 01.06.2020. In the said list, the petitioners were shown to have been duly selected and they were allotted District Kushinagar. The petitioners participated in the counseling conducted by the BSA, Kushinagar. Initially some objections stood against the petitioners'

appointment, therefore, the BSA published a list of 39 candidates, whose cases were kept pending on account of such objections. For rectification of said discrepancies, the matter was considered at the level of the State Government, whereafter Government Orders dated 04.12.2020 and 15.01.2021 were issued. Pursuant to the said orders, the candidates were required to furnish individual affidavits before the BSA. After consideration of petitioners' cases, appointment orders were issued by the BSA in favour of the petitioners.

4. The petitioners joined their services in the office of District Basic Education Officer, Kushinagar. Thereafter, they were given postings on 08.09.2021 in their respective schools run by the U.P. Board of Basic Education. Since the date of their joining, the petitioners had been performing their duties with due diligence and sincerity, however, the respondent no. 3 terminated their services by the order impugned dated 21.05.2025 in compliance with the instructions issued by respondent no. 2 in its order dated 09.05.2025, on the ground that the petitioners had filled up higher marks in their application forms than they actually secured. The said orders are being assailed by means of present writ petition.

5. Learned counsel for the petitioners submits that the petitioners possess the requisite qualifications as required for the post of Assistant Teacher. They were fulfilling all required eligibility criteria as on the date of submission of their respective application forms. It is contended that a number of candidates were denied appointment on account of non-fulfillment of required eligibility criteria as on 22.12.2018, which was the last date for submission of application

forms. Such candidates preferred writ petition before this Court which was dismissed by order dated 24.03.2025. Said order was subject matter of challenge in **Special Appeal Nos. 350 of 2025⁴ and Special Appeal Defective No. 336 of 2025⁵**. Learned Counsel for the petitioners further contends that the aforementioned special appeals were decided vide judgement and order dated 15.05.2025, however, the observations so made therein have no applicability regarding petitioners' appointment.

6. It has been argued by learned counsel for the petitioners that the petitioners had efficiently discharged their duties for almost five years and they were holding regular and permanent appointments, thus, their services cannot be dispensed with without following the procedure as specified under the U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal) Rules, 1999.

7. Learned counsel for the petitioners next submits that non-existent objections have been cited in the orders impugned as the respondent authorities were duly aware of the minor discrepancies and they had taken remedial measures for rectification of alleged discrepancies in accordance with the Government orders/ and circulars issued in that regard.

8. Learned counsel for the petitioners further contends that the petitioners have served for five years and there has been no complaint regarding their functioning, thus, action of the respondent authorities terminating the petitioners' services is of extreme nature that too without following the due procedure as prescribed under the relevant Rules, which is liable to be set aside by this Court.

9. Learned counsel for the petitioners next submits that the list detailing 39 applicants, whose cases were kept pending on account of objections, was published. For example, in the case of petitioner - Preeti, it has been mentioned that she did not participate in the re-counseling. Likewise, in the case of petitioner - Manish Kumar Mahaur, the variation in marks was on account of revised marks issued by the University. Though, said objections were not in existence.

10. Despite minor discrepancies, that existed with regard to a large number of candidates, all over the State, for rectification of the same, the matter was accorded consideration at the level of the State Government and the educational authority based on the relevant Government Orders dated 04.12.2020, 15.01.2021 and circulars dated 16.12.2020, 18.01.2021 and 19.01.2021. Pursuant to which, the district authorities proceeded to take remedial measures. During the course of said proceedings, the petitioners were required to furnish their individual affidavits before the District Basic Education Officer, Kushinagar. After full consideration of individual cases, on the basis of individual affidavits as furnished, the petitioners were issued appointment letters and they joined accordingly.

11. Learned counsel for the petitioners contends that once the correct information was furnished by way of individual affidavits and appointment letters were issued after scrutiny, there was no occasion to cancel the petitioners' appointments on non-existent grounds. Thus, the impugned orders are arbitrary, illegal and discriminatory. He further submits that once an opportunity was given to rectify the mistake of entering enhanced marks in the application forms and the same was duly rectified, and the petitioners were

offered appointments, therefore, passing of the impugned orders is barred by the 'principle of estoppel'.

12. It is further argued that services of the petitioners cannot be dispensed with in a manner as adopted in the present case that too after a lapse of five years from the date of appointment and without following proper procedure as prescribed under law. Learned counsel for the petitioners further submits that as per the settled legal position the remedial power can be exercised only within a reasonable period. Such an exercise after a lapse of five years, during which the petitioners have been continuously working, is arbitrary and unreasonable. There has been no concealment or misrepresentation of facts on the part of the petitioners while filling up application forms and it must be taken as human error which could have been ignored.

13. Challenging the orders impugned, learned counsel for the petitioners further contends that neither any malpractice on the part of the petitioners has been proved nor there is any fraud or misrepresentation has been established against them, therefore, the order impugned is unsustainable. In support of his submissions, relying upon a judgment of Apex Court in the case of **Radhey Shyam Yadav and another vs State of U.P. and others**⁶, he further submits that the petitioners cannot be held responsible for an irregularity committed by the authorities in computation of marks that too after the petitioners were appointed following detailed scrutiny of the records.

14. Learned counsel for the petitioners has also relied upon a judgment of a Coordinate Bench of this Court in the case

of **Ajay Kumar and others vs. State of U.P. and others**⁷, wherein the petitioners had wrongly disclosed in their application forms that they had passed B.T.C. Course and incorrectly mentioned the marks obtained in the said course, although they had passed B.T.C after few days of the registration and, later on, made corrections in this regard when opportunity was granted to them, could not be said to have misrepresented before the authorities, thus, their appointments could not have been declared void ab initio. The Court, while entertaining the plea in the said case, observed that pursuant to subsequent circulars issued by the respondents, as the petitioners had already cured the bonafide mistake committed by them by rectifying the errors and disclosing the correct results, the impugned order therein declaring the appointments void ab initio, was no more in existence, therefore, they were entitled to continue in service. The petitioners in the present case, on similar circumstances, who had rectified their discrepancies by placing correct marks, are also entitled for the same relief.

15. Learned counsel for respondent nos. 3 & 4 submits that the impugned orders were passed after due verification of the petitioners' records, wherein the entries made by them in their application forms were found to be incorrect during the course of verification of their original records. She further submits that the discrepancies cannot be ignored because the said wrongful information had affected the entire fate of the examination, on the basis of which the petitioners secured appointment though they were not eligible for it. She further submits that the petitioners' claim is barred by the ratio of the judgement dated 21.05.2020 passed in the case of **Ram Sharan Maurya and**

Others v. State of U.P. and Others⁸, wherein it has been held that the candidates who placed themselves in an advantageous position by furnishing incorrect information in the online application forms, cannot be permitted to derive any benefit, as it would be violative of the doctrine of fairness and equality.

16. It has been further argued by learned counsel appearing for respondent nos. 3 & 4 that in view of the judgement of the Apex Court in the case of **Subedar Singh and Others v. State of U.P.**⁹, the petitioners are not entitled for any consideration. Only those candidates who, on account of inadvertent error, placed themselves in a disadvantageous position could be granted benefit of rectification. The appointments of candidates who had placed themselves in an advantageous position, by filling incorrect information, were rightly cancelled.

17. Learned counsel for respondent nos. 3 & 4 has drawn attention of the Court to Clause-2 of the Government Order dated 04.12.2020, which has been brought on record at Page-44 of short counter affidavit. She submits that as per the said Government Order, only those who are in disadvantageous position, due to inadvertent error, were permitted for rectification as per rules. In case of such candidates, who have filled incorrect details in the online application form which resulted their placement in an advantageous position, their candidature be cancelled forthwith.

18. It has further been contended by learned counsel for respondent nos. 3 & 4 that the petitioners cannot claim equity as cancellation of their candidature was on the basis of incorrect information regarding

marks, based upon which they secured appointments. She has tried to demonstrate the anomalies found during verification of records, drawing attention of the Court to the following details mentioned in tabulated form:

Sl. No.	Registration Number	Name of Petitioner	Marks filled in online application form	Actual marks obtained as per record
1.	5500031603	Awadhesh Kumar Chaudhary	(Intermediate) 384/500	(Intermediate) 348/500
2.	3500472823	Sunit Kumar Yadav	(Graduation) 1371/2200	(Graduation) 1341/2200
3.	5500009747	Arjun Singh	(Training Qualification) Theory-241/245 Practical-175/176	(Training Qualification) Theory-486/800 Practical-351/400
4.	3100075048	Priyamvda Pusker	(Training Qualification) Theory-1000/1000 Practical-722/722	(Training Qualification) Theory-328/600 Practical-394/400
5.	2400119521	Preeti	(Training Qualification) Theory-651/1110 Practical-253/340	(Training Qualification) Theory-464/750 Practical-440/700
6.	0300060177	Manish Kumar Mahaur	(Graduation) 743/1350	(Graduation) 733/1350
7.	1400043696	Rinku Singh	(Training Qualification) Theory-298/560 Practical-126/140	(Training Qualification) Theory-540/900 Practical-395/500

8.	2400136 448	Sweety Shokee n	(Training Qualificat ion) Theory- 865/1175 Practical- 780/825	(Training Qualificat ion) Theory- 755/1050 Practical- 890/950
9.	3500191 277	Priyank a Srivast ava	(Graduati on) 1133/180 0	(Graduati on) 1113/180 0
10 .	0800106 015	Pinky	(Training Qualificat ion) Theory 650/650 Practical- 461/477	(Training Qualificat ion) Theory- 499/780 Practical- 439/520
11 .	5000071 389	Km. Pushpa	(Graduati on) 1269/180 0	(Graduati on) 1209/180 0

19. Learned counsel for respondent nos. 3 & 4 has relied upon various orders passed in the matters of incorrectly filled application forms by the candidates at the time of filling up application forms. In such cases the Courts have dealt with the issue of inadvertent mistakes and the deliberate attempt to place himself/herself in advantageous position. Observations of the Courts passed in few cases, upon which learned counsel for the respondent nos. 3 & 4, has relied upon, are as follows:

i. Special Appeal No. 834 of 2013¹⁰:

If prospective teacher can not even correctly fill up the simple on line application form for his employment, it is obvious what he is going to teach if appointed. There are certain decisions cited on this issue. But none of them deal with this aspect whether under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India such

incompetent persons should be allowed to play with the future of the next generation.

Therefore, we are of the opinion that the petitioner/appellant should wait till he attains sufficient maturity and learns to be more careful in filling up the applications for jobs. The appeal is therefore, dismissed.

ii. Writ-A No. 4070 of 2020¹¹:

20. The error committed by the candidates cannot be said to be human in nature. The petitioners should have read the instructions that were issued time and again and should have correctly filled the entries relating to the marks obtained by them in their previous examinations. The contention that this was an error committed by the Computer Operator cannot simply be accepted. If the Courts were to accept such a plea of the petitioners, then this would result in a situation where the petitioners would get the benefit of a wrong if the wrong claim went unnoticed and if noticed the petitioners could always turn around and claim that this was a result of a human error. Each candidate necessarily must bear the consequences of his failure to fill up the application form correctly. From perusal of the record, I am of the opinion that the error/errors committed by the petitioners are neither minor nor are human error/errors.

21. In view of the facts as narrated above as well as the law laid down by the different Division Bench of this Court from time to time as well as by the Apex Court, no relief could be granted to the petitioners.

22. The writ petition is dismissed.”

iii. **Writ-A No. 11079 of 2020¹²:**

“On an overall conspectus of the aforesaid discussion the Court comes to the following conclusions. A permission to rectify and amend entries made in the online applications would be clearly impermissible in light of the caveats carried in the advertisements and notices issued by the respondents as well as the declarations made by the candidates themselves while participating in the recruitment process. It would not only be iniquitous but also detrimental to public interest to command the respondents to permit rectifications at the fag end of a recruitment exercise which commenced in December 2018. The stipulations contained in the advertisements and notices issued were never assailed by the petitioners prior to participating in the recruitment process. It would be unfair not just to the respondents but to the other selected candidates to now accord them such permission which would necessarily result in the selection process being stalled and derailed. This Court as well as the Supreme Court has consistently taken the view that such a course being tread would be wholly unfair and unwarranted. The Court repels the challenge to the Government Order of 4 December 2020 being contrary to the mandate of Rule 14. It also negatives its challenge on the ground of being discriminatory or unfair.

These petitions shall consequently stand disposed of with liberty to the State respondents to evaluate the case of each of the petitioners before this Court in light of the Government Order dated 4 December 2020.”

20. Learned counsel for respondent nos. 3 & 4 contends that the applicants have deliberately shown their marks higher

than they actually secured in their academics, which is evident from their academic records, thus, they are not entitled to be considered for being granted benefit of any ignorance in view of the observations made in **Subedar Singh (supra)**.

21. I have heard Sri Ashok Khare, learned Senior Advocate, assisted by Sri Yatindra, learned counsel for the petitioners, learned Standing Counsel for the State and Mrs. Archana Singh, learned counsel for respondent nos. 3 and 4.

22. The petitioners applied against 69000 posts of Assistant Teachers. They were selected and joined their services. By the impugned order dated 21.05.2025 issued pursuant to the order of respondent no. 2 dated 09.05.2025 appointments of all teachers who have been placed in an advantageous position by mentioning higher marks than they actually secured, were directed to be cancelled.

23. Questioning the termination of petitioners’ services, learned counsel for the petitioners contended that the petitioners have served for about five years, thus, their services cannot be dispensed with without following the procedure as provided under the U.P. Basic Education Staff Rules, 1973 read with U.P. Government Servant (Discipline and Appeal) Rules, 1999, however, he has failed to satisfactorily respond the objections raised by learned counsel for respondent nos. 3 & 4 that the petitioners have mentioned higher marks than those actually secured except the petitioner nos. 5, 6 & 7, in Writ-A No. 8734 of 2025, namely, Preeti, Manish Kumar Mahaur and Rinku Singh and petitioner no. 1 Sweetey Shokeen in Writ-A No. 8766 of 2025.

24. Perusal of the record shows that petitioner nos. 5, 6 & 7 in Writ-A No. 8734 of 2025, namely, Preeti, Manish Kumar Mahaur and Rinku Singh did not mention higher marks than they actually possess, though, the mistake occurred at their end is bonafide. Petitioner – Preeti mentioned her marks in the application form separately i.e. marks of B.Ed. in Practical and Theory examinations instead of aggregate of the duo. The petitioner – Manish Kumar Mahaur mentioned the marks 743/1350 in his application form according to the marks obtained by him in Graduation (B.Sc.) which were shown in his old mark-sheet (Sl. No. 13176008)¹³, however, after re-examination in the revised mark-sheet (Sl. No. 13618783)¹⁴, his marks are shown as 733/1350. Thus, no inflation of marks has been done by him while filling up the application form. The marks disclosed by Rinku Singh in his application form are also not higher than the marks he actually possesses in his academic records, as he secured higher marks i.e. 935/1400 (66.78%) in the training qualification, which exceed the marks mentioned in the application form i.e. 424/700 (60.57%). Insofar as petitioner no. 1 – Sweety Shokeen in Writ-A No. 8766 of 2025 is concerned, she did not mention higher marks in the application form, as the aggregate of marks obtained out of total marks, disclosed in the application form, comes to same figure which she actually secured i.e. 1645/2000 marks in D.Ed.

25. The respondent no. 2, while passing the order impugned dated 09.05.2025, has referred to various judgements and orders passed by this Court as well as the Apex Court on the issue of bonafide human error committed by the candidates while filling up their

application forms and the advertent mistakes committed in order to secure appointments on the basis of projecting higher marks than they actually possessed in their academic records. It would be apt to refer the relevant extracts of those judgement and orders of this Court and the Apex Court, which are being reproduced herein below:

i. Writ-A No. 4677 of 2020¹⁵:

“63. I had occasion to consider the issue about rectification to an application form relating to the present examination, where the error sought to be corrected was about an unclaimed reservation category, in Writ - A No.4552 of 2020, Deepti Singh vs. State of U.P. and 2 others, decided on 23.06.2020. In Deepti Singh (supra), it was held:

"This Court has keenly considered the matter. It is true that the mistake on the petitioner's part of not mentioning her horizontal reservation category may be inadvertent but the terms and conditions in the form do not permit the petitioner to reform the same lateron, once she has filled up and submitted the examination form, without claiming something as important as a reservation category. A reservation category is one that places the petitioner in a special selection pool of 2% candidates. Once the recruitment process has gone ahead, a selectee in that pool whose result has been declared or on way would be disturbed because the petitioner now makes her claim, if permitted. This kind of a late reform of the petitioner's candidature entitling her to seek selection under a reservation category cannot be permitted in the opinion of this Court."

64. In view of what has been said above, this Court does not find any good ground to interfere.

65. In the result, these writ petitions fail and are dismissed. There shall be no order as to costs.”

ii. Writ-A No. 8697 of 2020¹⁶:

“:As is evident from the extracted part of that decision, the Supreme Court in the peculiar facts of that case had permitted the appellant to rectify the mistake. Archana Chauhan cannot therefore be recognized as a precedent of universal application. In any case this Court is bound by the decisions rendered by the Full Bench and the Division Bench noted above, where this issue was dealt with in extenso and ruled upon on merits.

The writ petition is consequently dismissed.”

iii. Special Appeal Defective No. 467 of 2021¹⁷:

“It is not in dispute that subsequent to the judgment aforesaid, individual case of the petitioner was considered by the appellant herein with a detailed order cancelling their selection. The said order was passed subsequent to the judgment. Thus, counsel for the petitioner/non-appellant prays for liberty to challenge the individual order. The judgment of the learned Single Judge is not sustainable in the light of the judgment of the Supreme Court dated 08th April, 2021, in Writ Petition (Civil) No.322 of 2021 (Jyoti Yadav and another vs. State of U.P. and others).

Learned counsel for the appellant has no objection, if the judgment of the

learned Single Judge be set aside with liberty to the petitioner to challenge subsequent order.

In view of the above, the judgment of the learned Single Judge is set aside, however, with the liberty to the petitioner/non-appellant to challenge the subsequent order passed against the petitioner.

The appeal is disposed of with the aforesaid.

iv. Writ Petition (s) (Civil) No (s). 378 of 2021¹⁸:

“7. We need not consider individual fact situation as the reading of the G.O. and the Circular as stated above is quite clear that wherever a candidate had put himself in a disadvantaged position as stated above, his candidature shall not be cancelled but will be reckoned with such disadvantage as projected; but if the candidate had projected an advantaged position which was beyond his rightful due or entitlement, his candidature will stand cancelled. The rigour of the G.O. and the Circular is clear that wherever undue advantage can enure to the candidate if the discrepancy were to go unnoticed, regardless whether the percentage of advantage was greater or lesser, the candidature of such candidate must stand cancelled. However, wherever the candidate was not claiming any advantage and as a matter of fact, had put himself in a disadvantaged position, his candidature will not stand cancelled but the candidate will have to remain satisfied with what was quoted or projected in the application form. These petitions are, therefore, disposed of in the light of what is stated above.

8. It must however be stated here that the authorities are not strictly following the intent of the G.O. and the Circular. For example, the Office Order dated 28.03.2021 issued by the Basic Teacher Education Officer, District Hardoi, shows cancellation of the candidature of one Raghav Sharan Singh at Serial No.4, though the projection of marks by way of mistake by said candidate was to his disadvantage. Logically, said candidate would be entitled to have his candidature considered and reckoned at the disadvantaged level. The record shows that even with such disadvantage, the candidate was entitled to be selected.”

26. With respect to the anomalies in application forms of the candidates, who applied against the 69000 posts of Assistant Teachers, the State Government has issued clarification by communication dated 05.03.2021. Copy of the said document has been brought on record as Annexure SCA-7 to the Short Counter Affidavit. Clause (1) of the said communication specifically mentions that the candidates who have filled more aggregate of marks than their actual marks, their appointment/candidature shall be cancelled. Relevant Clause (1) of the said communication is being reproduced below:

(1) समिति की संस्तुति के बिन्दु-1, प्राप्तांक अधिक के संबंध में –जिन अभ्यर्थियों द्वारा अपने आवेदन पत्र में उनके पास उपलब्ध वैद्य प्रमाण-पत्र / अंकपत्रों के आधार पर अधिक प्राप्तांक अंकित किये गये थे तथा उनके अंकपत्रों / प्रमाणपत्रों के संबंध में स्कूटनी / पुनर्मूल्यांकन बैंक पेपर में अर्जित अंक अथवा अन्य किसी आधार पर प्राप्तांकों में विश्वविद्यालय / निगम संस्था द्वारा स्वयं परिवर्तन किया गया है तथा संबंधित प्रमाण पत्र आवेदन पत्र पूरित करने के पश्चात् निर्गत किया गया, तो ऐसे अभ्यर्थियों के अंकों में परिवर्तन होने त्रुटिपूर्ण आवेदन पत्र भरने के लिए संबंधित अभ्यर्थी को जिम्मेदार नहीं माना जा सकता, क्योंकि तत्समय संबंधित अभ्यर्थी के पास आवेदन पत्र में अंकित सूचनाओं संबंधी

ही प्रमाण-पत्र / अंक पत्र उपलब्ध थे। अतः : ऐसे अभ्यर्थी यदि संबंधित जनपद में अपने वर्ग में जनपद में अन्तिम चयनित अभ्यर्थी के गुणांक से अधिक गुणांकधारी हैं तो ऐसे अभ्यर्थियों के नियुक्ति पत्र निर्गत कर दिया जाये। यदि संबंधित अभ्यर्थी का वास्तविक गुणांक जनपद में सुबंधित वर्ग में अन्तिम चयनित अभ्यर्थी के गुणांक से कम है, किन्तु राज्य स्तर पर संबंधित वर्ग एवं वरीयताक्रम में अन्तिम चयनित अभ्यर्थी के गुणांक से अधिक है तो ऐसे अभ्यर्थी का प्रस्ताव शिक्षा निदेशक, बेसिक के माध्यम से शासन को उपलब्ध कराया जाये। शासन द्वारा दिये गये निर्देश के क्रम में कार्यवाही की जायेगी जहाँ पर अभ्यर्थी के द्वारा स्वयं बिना किसी अभिलेखीय आधार के वास्तविक प्राप्तांक से अधिक अंक अथवा कम पूर्णांक अंकित किया गया है, उनके चयन/अभ्यर्थन को निरस्त कर दिया जाय।”

27. The issue of categorization of advantageous and disadvantageous positions has been considered by the Apex Court in the case of **Jyoti yadav & Anr. v. The State of Uttar Pradesh & Ors.**¹⁹. Relevant part of the said judgement reads thus:

“14. Wherever the mistakes committed by the candidates purportedly gave additional marks or weightage greater than what they actually deserved, according to the Communication dated 05.03.2021, their candidature would stand rejected. However, wherever mistakes committed by the candidates actually put them at a disadvantage as against their original entitlement or the variation could be one attributable to the University or issuing authority, an exception was made by said Communication. The reason for treating these two categories of candidates differently cannot thus be called irrational.”

28. The Apex Court in the case of **Rahul Kumar v. State of Uttar Pradesh & Ors.**²⁰, has observed that the candidate who had put himself in a disadvantageous position and he was not claiming any advantage, candidature of such person shall

not be cancelled: Relevant excerpt of the said order is being quoted herein-below:

7. We need not consider individual fact situation as the reading of the G.O. and the Circular as stated above is quite clear that wherever a candidate had put himself in a disadvantaged position as stated above, his candidature shall not be cancelled but will be reckoned with such disadvantage as projected; but if the candidate had projected an advantaged position which was beyond his rightful due or entitlement, his candidature will stand cancelled. The rigour of the G.O. and the Circular is clear that wherever undue advantage can enure to the candidate if the discrepancy were to go unnoticed, regardless whether the percentage of advantage was greater or lesser, the candidature of such candidate must stand cancelled. However, wherever the candidate was not claiming any advantage and as a matter of fact, had put himself in a disadvantaged position, his candidature will not stand cancelled but the candidate will have to remain satisfied with what was quoted or projected in the application form.

(Emphasis supplied)

29. In a catena of judgements, the Supreme Court has consistently held that submission of false or incorrect information with the intent of securing an undue benefit amounts to misrepresentation and fraud, and any appointment or advantage obtained on the basis of such false information is liable to be cancelled. In the case of **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi**²¹, the Court has observed that a candidate cannot claim equity or sympathy when

he/she has obtained a benefit by suppressing or misstating material facts. Similarly, in the case of **Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav**²², the Supreme Court has held that furnishing incorrect information in recruitment documents justifies termination, irrespective of whether the misstatement was intentional or otherwise. The suppression or misstatement of material information in recruitment documents is a serious lapse, and even if the candidate claims inadvertence, the employer is justified in cancelling the candidature.

30. In the case of **Union of India v. M. Bhaskaran**²³, the Supreme Court has held that appointments obtained by producing false documents or incorrect information are void ab initio, and no equity can be claimed by the wrongdoer. In that respect reference may also be made to the judgement of Apex Court in the case of **State of Bihar and others v. Kirti Narayan Prasad**²⁴. Similarly, in the case of **Meghmala and others v. G. Narasimha Reddy and others**²⁵, the Court emphasised that fraud vitiates every solemn act and no benefit can be retained, if obtained by deceit or misrepresentation.

31. Applying the aforesaid settled principles, it is found that entering higher marks than actually obtained is not a mere clerical lapse but a deliberate act capable of altering the merit position, therefore it cannot be regularised under the guise of 'human error'. Any undue advantage so obtained is illegal and vitiates the selection itself. This Court further notes that the settled position of law leaves no room for ambiguity. Entering marks higher than the candidate has actually secured is a conscious act that materially alters the

candidate's position in the merit list. Such conduct cannot be trivialised as a human error.

32. It is a cardinal principle of service jurisprudence that fraud vitiates every solemn act. A candidate who enters the selection process by misrepresenting material particulars, such as academic marks that constitute the very basis of merit-based recruitment, cannot invoke the equitable doctrine of estoppel. One who approaches the authority with unclean hands, is not entitled to seek protection under any equitable principle. Public appointments must strictly conform to statutory norms and prescribed eligibility criteria. Where an applicant manipulates higher marks to obtain an undeserved advantage, the appointment becomes tainted from its inception. Since there can be no estoppel against statute, the employer is empowered and indeed duty-bound to annul an appointment obtained in derogation of the recruitment rules, notwithstanding any administrative lapse or delay.

33. The plea that the appointing authority had granted time to rectify the application form is misconceived. Such an opportunity is meant to correct bonafide clerical or inadvertent errors, not to sanitise a deliberate falsification of essential data. A procedural indulgence extended by the authority cannot be construed as a waiver of its right to scrutinise the veracity of the information furnished or to take action upon detection of misrepresentation. Even the issuance of an appointment letter does not confer any indefeasible or vested right to continue in service when the very foundation of the appointment is vitiated. An employment secured by deceit is voidable at the instance of the employer,

and neither length of service nor any administrative oversight can breathe legitimacy into an appointment that is tainted from the outset.

34. The argument that the employer is now precluded from acting because it failed to detect the discrepancy earlier is equally untenable. Public employment is a matter of public trust, and the State is under a constitutional obligation to uphold the integrity of the selection process. An illegality does not ripen into a legal right merely because it remained unnoticed for some time. Once the appointment is shown to have been procured by misrepresentation of marks, the employer is under no legal obligation to continue such appointment. Since the very entry into service is tainted, the candidate cannot claim protection under Articles 14 or 311 of the Constitution of India.

35. Permitting estoppel in such circumstances would undermine the sanctity of meritocracy, distort the selection process, and result in the displacement of genuinely more meritorious candidates. The doctrine of estoppel cannot be invoked to perpetuate illegality or to defeat the legitimate expectations of eligible aspirants.

36. Having considered the submissions and perused the material available on record, this Court is of the firm view that where a candidate deliberately enters marks higher than those actually secured, thereby placing himself/ herself in a position of unwarranted advantage and ultimately securing appointment, such appointment cannot be termed legal or valid. Such an act, by any stretch of reasoning, cannot be treated as a mere human error or an inadvertent mistake, as it

confers an undue advantage upon the candidate to the prejudice of other eligible aspirants and strikes at the very root of fairness and transparency in the selection process. The candidates' act of furnishing inflated academic marks constitutes a material misrepresentation. Their subsequent appointment is, therefore, vitiated ab initio. The opportunity given for rectification cannot absolve the candidates of intentional falsification. No estoppel can arise to protect an appointment that is fundamentally illegal. The very foundation of the appointment stands vitiated by misrepresentation.

37. In the facts at hand, it is an admitted position that the petitioners except Preeti, Manish Kumar Mahaur, Rinku Singh and Sweety Shokeen, deliberately inflated the marks obtained by them in their academic examinations while submitting their application forms for the posts of Assistant Teacher. Such inflation of marks placed them in an artificially enhanced position in the merit list, thereby enabling them to secure appointments to a public post to which they were not legitimately entitled.

38. Admittedly, case of the petitioners nos. 5, 6 & 7 in Writ-A No. 8734 of 2025, namely, Preeti, Manish Kumar Mahaur and Rinku Singh and petitioner no. 1 – Sweety Shokeen in Writ-A No. 8766 of 2025 fall within the criteria of disadvantage, thus, their appointments are based on the merit criteria they possess.

39. The records pertaining to remaining petitioners, in both the petitions, reveal a deliberate attempt of mentioning higher marks than they actually possess in their academic records. As per the settled position, discussed above, they are not entitled for any relief as being claimed for.

40. Having considered the submissions advanced by learned counsel for the parties and upon perusal of the record, a case is made out in favour of petitioner nos. 5, 6 & 7, namely, Preeti, Manish Kumar Mahaur and Rinku Singh in Writ-A No. 8734 of 2025 and petitioner no. 1 – Sweety Shokeen in Writ-A No. 8766 of 2025, only. The order impugned dated 21.05.2025 in respect to petitioners nos. 5, 6 & 7, namely, Preeti, Manish Kumar Mahaur and Rinku Singh in Writ-A No. 8734 of 2025 and petitioner no. 1 – Sweety Shokeen in Writ-A No. 8766 of 2025 is quashed.

41. In view of the above, Writ-A No. 8734 of 2025 in respect of petitioner nos. 5, 6 & 7 namely, Preeti, Manish Kumar Mahaur and Rinku Singh and Writ-A No. 8766 of 2025 in respect to petitioner no. 1 – Sweety Shokeen are allowed. Insofar as rest of the petitioners in both the writ petitions are concerned no relief is granted in their favour and the writ petitions are dismissed.

42. There shall be no order as to costs.

(2025) 12 ILRA 224
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.12.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 11186 of 2022

Ram Swarup Rajput & Ors. ...Petitioners
Versus
Union Of India & Ors. ...Respondents

Issue for consideration

Whether petitioners can be allowed to switch-over from Contributory Provident Fund Scheme (for short "CPF") to General Provident Fund-cum-Pension Scheme (for short "GPF") after exercising their options in the given timeline?

Headnotes

A. Service Law – An act whereby petitioner has given option to continue in CPF Scheme, would not be considered as *non-est* since he joined when CPF Scheme was enforced. (Para 16)

In present case, petitioner – 1 was appointed on the post of Teacher (Mechanic B) in respondent institution on 27.04.1978 and retired from the post of Senior Technical Superintendent on 30.06.2013. The petitioner – 3 was appointed post of Teacher on 19.07.1982 and retired on 31.07.2014 whereas petitioner – 2 has joined his duties on 31.08.1990 and retired on 31.07.2016, therefore, case of petitioner – 2 has to be considered separately since he has joined services in the year 1990 i.e. subsequent to O.M. dated 01.05.1987 and adopted by respondent – IIT on 11.09.1987. (Para 14)

B. Delay in approaching this Court - It was default of the respondent institution, therefore, delay will not come in the way if this writ petition is allowed qua to petitioner – 2 viz. Phool Singh Chauhan. (Para 15)

C. Petitioners – 1 and 3 have admittedly given option to stay with CPF Scheme not only once but twice i.e. firstly on 09.10.1987 and 19.10.1987 respectively and secondly on 06.02.1992 and 07.02.1992 respectively, despite they have opportunities to shift to GPF Scheme. They were granted third opportunity after 15 years of their respective services, still they have not come over to GPF Scheme, therefore, they have failed to exercise their right, if any. (Para 17)

OM dated 01.05.1987 was not automatically adopted by respondent institution rather it was adopted by an independent act which they took on 11.09.1987 with a specific timeline that options could be exercised by 30.12.1987 if they wanted to remain in CPF Scheme and admittedly, petitioners – 1 and 3 have given

option to remain in CPF on 09.10.1987 and 19.10.1987 respectively, therefore, they are bound by said option and question of *non-est* would not be applicable in given circumstances of the case. (Para 19)

Writ petition allowed qua to petitioner – 2. Writ petition dismissed qua to petitioners – 1 and 3. (E-4)

Case Law Cited:

1. University of Delhi Vs. Smt. Shashi Kiran and others, (2022) 15 SCC 325 (Para 7)
2. Priyanka Upadhyay Vs. Union of India and others, 2025:AHC:37820 (Para 7)
3. Prof. Harish Chandra Chaudhary and others Vs. The Union of India and others, 2025:AHC:69579-DB (Para 7)
4. Dr. S.K. Pant Professor and others Vs. Union of India and others, 2025:AHC:203155 (Para 7)

List of Keywords

Contributory Provident Fund, teacher, retirement benefits, GPF.

Appearances for Parties

For Petitioner(s): Pramod Kumar, Sanjeev Singh

For Respondent(s): A.S.G.I., Rohan Gupta

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioners (3 in numbers) are aggrieved that their applications to allow them to switch-over from Contributory Provident Fund Scheme (for short "CPF") to General Provident Fund-cum-Pension Scheme (for short "GPF") were rejected vide order dated 16.09.2021.

2. The petitioners – 1, 2 and 3 have worked as Teacher (Mechanic-B), Instrumentation Engineer (Chemical Engineering) and Teacher respectively in Indian Institute of Technology, Kanpur.

3. In the impugned order, there are reference of as many as 11

letters/communications whereby earlier also, aforesaid claim of petitioners was rejected and by way of amendment sought in this writ petition, all letters/communications are also challenged.

4. Before considering rival submissions, few facts which would be relevant are mentioned below :-

“a. The Government of India has issued an Office Memorandum dated 01.05.1987 on a subject “Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme-Implementation of the commendations of the Fourth Central Pay Commission. Salient features of said Office Memorandum are reproduced hereinafter:

1. The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M. No. F3(1)-Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

3.3. The CPF beneficiaries, who were in service on 1.1.1986, but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.09.1987.

3.4. In the case of CPF beneficiaries, who were in service on 1.1.1986 but have since retired, and in whose case the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless they specifically opt by 30.09.1987 to have their retirement benefits settled under the CPF Scheme.

3.5 in the case of CPF beneficiaries, who were in service on

1.1.1986, but have since died. Either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above as the case may be. Options in such cases will be exercised latest by 30.09.1987 by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable.

3.6 The option once exercised shall be final.

3.7 In the types of cases covered by paragraph 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987.

b. The Indian Institute of Technology, Kanpur has adopted above referred Office Memorandum dated 01.05.1987 by an Office Order dated 11.09.1987. For reference, said office order is quoted below in its entirety :-

“1. The Fourth Central Pay Commission has recommended that C.P.F. beneficiaries in service on January 1, 1986 should be deemed to have come over to the pension scheme on that date unless they specifically opt out to continue under the C.P.F. Scheme.

2. The aforesaid recommendations have been accepted by the Central Government vide O.M. No.4/1/87-PIC dated

1.5.1987, a copy of which is attached to this circular. The Chairman, B.O.G. has approved implementation of the aforesaid orders to the employees of this Institute.

3. All employees who are governed by Schedule C-Contributory Provident Fund and Schedule E-Contributory Provident Fund-cum-Gratuity Scheme and who were in service on 1.1.1986 shall be deemed to have come over to Schedule F-General Provident Fund-cum-Pension-cum-Gratuity Scheme w.e.f. 1.1.1986. However, the employees are given an option to continue under the C.P.F. Scheme, if they so desire. The option shall have to be exercised in the form enclosed and submitted to the Administration Section by 30.10.1987. In the case of employees who are on long leave out of India or are on deputation or are otherwise away from the Institute, the option can be exercised by 31.12.1987. The Faculty Members and others whose personal files are maintained by the Dean of Faculties, the options should be submitted to the Dean of Faculties. If no option is received by the above date the employees will be deemed to have come over to the Pension Scheme.

4. The employees who exercise an option to continue under the C.P.F. Scheme will henceforth be governed by Schedule E-C.P.F.-cum-Gratuity Scheme, and will be eligible for retirement gratuity and Death Gratuity in accordance with provisions of Government of India O.M. No.4/1/87-PIC-II dated 1.5.1987 (copy enclosed). Schedule C-C.P.F. Scheme will cease to be operative.”

5. As referred above, while adopting the O.M. dated 01.05.1987 by way of Circular dated 11.09.1987, a date to give option to continue in CPF Scheme was extended from 30.09.1987 to 30.10.1987.

6. Following are the details which are undisputed so far as repeated options submitted by respective petitioners to continue with CPF Scheme and a chart mentioned in written submission filed by learned counsel for respondents is scanned and pasted below :-

S.No.	Date of Office Order issued by the Respondent Institute	Cut-off dates to exercise such option to switch from CPF Scheme to GPF Scheme	Date of option as exercised by the Petitioners
1.	11.09.1987 (Annexure No. CA-2)	30.10.1987	Petitioner No. 1-09.10.1987, Petitioner No. 2-19.10.1987. (Annexure No. CA-3)
2.	16.01.1992 (Annexure No. CA-4)	--	Petitioner No. 1-07.02.1992 Petitioner No. 2-11.08.1992 Petitioner No. 3-06.02.1992 (Annexure No. CA-5)
3.	10.06.1998 (Annexure No. CA-6) *applicable to employees in service as on 01.04.1998	i. upto 30.07.1998 with immediate effect. ii. upto end of 15 years of continuous service at the Institute. However, both the options were irreversible and deemed to be final.	No option exercised upto completion of 15 years of their continuous service.

7. Sri Sanjeev Singh, learned Senior Advocate assisted by Sri Pramod Kumar, learned advocate for petitioners has placed reliance on various paragraphs of a judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran and others, (2022) 15 SCC 325**, judgments passed by this Court in **Priyanka Upadhyay vs. Union of India and others, 2025:AHC:37820** and a judgment of Division Bench of this Court

in **Prof. Harish Chandra Chaudhary and others vs. The Union of India and others, 2025:AHC:69579-DB** wherein judgment of **Priyanka Upadhyay (supra)** was upheld.

8. Per contra, Ms. Kriti Gupta, Advocate holding brief of Sri Rohan Gupta, learned counsel for respondents has opposed above submissions and has also referred the judgment of this Court in **Dr. S.K. Pant Professor and others vs. Union of India and others, 2025:AHC:203155**.

9. Crux of argument of learned Senior Advocate appearing for petitioners is that once the Office Memorandum dated 01.05.1987 is adopted and petitioners have not submitted their option to continue in CPF Scheme before cut off date fixed therein i.e. 30.09.1987, any subsequent act by submitting option to remain in CPF Scheme in the garb of various extension granted by respondents would be non-est and petitioners are deemed to be switched over to GPF-cum-Pension Scheme as soon as said O.M. was adopted by respondent-IIT and no option was submitted before the relevant date i.e. 30.09.1987 and for that learned Senior Advocate has referred following part of **University of Delhi vs. Smt. Shashi Kiran (supra)** is mentioned below :-

“47.Krishena Kumar [Krishena Kumar v. Union of India, (1990) 4 SCC 207 : 1991 SCC (L&S) 112] was a case where the retirees from two categories, namely, Pension Fund and Provident Fund, were taken to be distinct and different and as such the plea on the ground of discrimination was rejected. As the judgment of the Division Bench discloses, the matter was considered by it from the standpoint of discrimination between the

same category of persons, that is to say, those who had opted to be under CPF. The different groups in the same category were:

47.1. Those who had not exercised any option but continued to make payment of contribution towards CPF (R.N. Virmani [*R.N. Virmani v. University of Delhi*, 2014 SCC OnLine Del 2799] batch of cases).

47.2. Those who exercised the option to be under CPF but the option was exercised after the cut-off. Since the option was exercised after the cut-off, they were deemed to have “come over” to GPF and were granted benefit (*N.C. Bakshi* [*N.C. Bakshi v. Union of India*, 2014 SCC OnLine Del 2798] batch of cases).

47.3. Those who consciously exercised the option to be under CPF; but taking advantage of further options granted through 11 extensions to switch over, had been allowed to “come over” to GPF (2469 employees).

48. It was against these three sub-categories coming from the same category of employees that the argument of discrimination was considered by the Division Bench. Such was not the case in *Krishena Kumar* [*Krishena Kumar v. Union of India*, (1990) 4 SCC 207 : 1991 SCC (L&S) 112] or *Rajasthan Rajya Vidyut Vitran* [*Rajasthan Rajya Vidyut Vitran Nigam Ltd. v. Dwarka Prasad Koolwal*, (2015) 12 SCC 51 : (2016) 1 SCC (L&S) 315]. The matter was further considered by the Division Bench in the context of the employees of educational institutions such as IITs, who are directly under the Central Government, just as the employees of the University, which is a Central University. If the option was

allowed to be exercised by granting extension to the employees of the other educational institutions, the Division Bench did not find any reason why similar choice/option could not be given to the employees in *Shashi Kiran* [*Shashi Kiran v. Union of India*, WP (C) No. 5759 of 2010 sub nom *Kanta Batra v. Union of India*, 2014 SCC OnLine Del 2797] batch of cases. Additionally, the feature that has been presented through the documents which have subsequently come on record is that even with respect to the employees of insurance corporations similar options and extensions were granted.

49. The differential treatment afforded to those 2469 employees as against the employees in *Shashi Kiran* [*Shashi Kiran v. Union of India*, WP (C) No. 5759 of 2010 sub nom *Kanta Batra v. Union of India*, 2014 SCC OnLine Del 2797] batch of cases, was not founded on any rationale. No justifiable reason was coming forth. If those 2469 employees could be afforded chance to exercise an option of switch over to GPF, even though they had consciously opted to be under CPF, on principle of parity or equality, the case was certainly made out.

51. According to the Notification dated 1-5-1987, the employees joining the service after 1-1-1986 would always be under GPF. With respect to those who were in service on 1-1-1986, said employees would be deemed to have “come over” to GPF unless an option to continue to be under CPF was consciously exercised before the cut-off date. Thus, when the Scheme was framed and was sought to be implemented, the authorities concerned must have taken into account the entire magnitude such as, the number of employees and the likelihood of impact on

the management of the fund, so that reasonable returns can be effected by way of pension upon retirement of such persons. Going by the intent of the notification, those who were to opt for CPF, were an exception and the general rule was that everybody after 1-1-1986 would normally be covered by GPF. It is in this context that the number of original petitioners in *Shashi Kiran [Shashi Kiran v. Union of India, WP (C) No. 5759 of 2010 sub nom Kanta Batra v. Union of India, 2014 SCC OnLine Del 2797]* batch of cases has to be seen. We are concerned with only 75 persons. On the other hand, the bulk of people, namely, 2469 employees were granted the choice of reverse switch over and they were allowed all the benefits under GPF. It can reasonably be said that when the Notification dated 1-5-1987 was issued, the authorities were conscious of the possibility that all the employees may “come over” to GPF. With that possibility in mind, the fund was constituted and the affairs were arranged. The shift of those 75 employees would not in any way affect the strength and the character of the fund if a direction that the entire contribution made by the authorities be returned with reasonable rate of interest is issued. These 75 petitioners had approached the Court in the year 2010. At this length of time, it is not as if any floodgates are going to open and there will be drain on the resources of the State. A direction can, therefore, be issued, as was done by the learned Single Judge in para 20 of his judgment in *R.N. Virmani [R.N. Virmani v. University of Delhi, 2014 SCC OnLine Del 2799]* batch of cases and which aspect was mentioned in the Letter dated 23-1-2017 referred to in para 31.4 hereinabove, for recouping the contribution under CPF with 8% simple interest per annum.”

10. Per contra, learned counsel for respondents has submitted that :-

i. The IIT Statutes provide for following three schemes for its employees who can exercise their option even at the time of appointment :-

a. Contributory Provident Fund (under Schedule C of the IIT Statutes)

b. Contributory Provident Fund-cum-Gratuity Scheme (under Schedule E of the IIT Statutes)

c. General Provident Fund-cum-Pension-cum-Gratuity Scheme (under Schedule F of the IIT Statutes).

The Petitioners for the first time exercised their option to be governed by the Contributory Provident Fund-cum-Gratuity Scheme (under Schedule E of the IIT Statutes).

iii. Therefore, in this manner the Respondent Institute had adopted and amended the Om dated 01.05.1987 which only provided an option to switch from CPF to Pension Scheme to suit the requirements of the Institute which provided three different schemes for its employees.

iv. Request for change over made for the first in 2009 much after the expiry of their 15 years of continuous service. Further, another request was made by only Petitioner No. 1 on 30.05.2012 which came to be rejected for the first time on 18.07.2012. The said communication has not been challenged by the Petitioner and has attained finality. Thereafter, subsequent orders have been passed rejecting the same request for changeover.

11. She also has referred some documents annexed in counter affidavit and for reference, Office Order dated 16.01.1992 and 10.06.1998 are quoted below in its entirety :-

“16.01.1992

OFFICE ORDER

Sub- Exercise of option for change-over from Contributory Provident Fund-cum-Gratuity Scheme (Schedule 'E') to General Provident Fund-cum-Pension-cum-Gratuity Scheme (Schedule 'F')

Further to Office Order No. Adm. 26(G)/87-IITK/372 dated 11.09.1987, No-Adm. 26 (G)/90-IITK/1221 dated 23.01.1991 and No. DF/C-2/90-IITK dated 03.07.90, the Board of Governors of the Institute have been pleased to allow another opportunity to the members of the staff of the Institute viz. Group A,B,C and D (including Scientific employees for whom option was not provided owing to non-revision of their scales) who were in Institute Service on 01.01.1986 to come over to the Pension-cum-Gratuity scheme in accordance with the provision of Government of India, O.M. No. 4/1/87/PIC dated 01.05.1987. This opportunity of exercising option would also be applicable to the persons who have meanwhile retired from service and other CPF beneficiaries who since died, either before retirement or after retirement. In the later case the families of the deceased would be entitled to give an option to have the benefit of pension scheme. In such cases the contribution of the Institute to the contributory provident fund together with interest will have to be refunded to the Institute in one lumpsum. Interest would also have to be paid to the Institute on the

amount of Institute contribution and interest received by the beneficiaries from the date of receipt to the date of refund at the rate of ten percent.

5. Heads of the Departments/Sections/Units are requested to bring these orders to the notice of all the employees who are/were working under them. No action is required in respect of employee who are already governed by Schedule 'F' General Provident Fund-cum-Pension-cum-Gratuity Scheme.

6. It is to be emphasized that the option for change over to Pension Scheme is being extended as a matter of good gesture to the employees. No such change over would be permissible in future. In view of the benefits available under the Pension Scheme, the employees in their own interest are requested to avail of the opportunity.

10.06.1998

OFFICE ORDER

Sub- Exercise of option for change over from contributory Provident Fund-cum-Gratuity Scheme (Schedule 'E') to General Provident Fund cum Pension cum Gratuity Scheme (Schedule 'F')

Ref. 1998/Ist BOG meeting held on April 21, 1998

1. Further to Office Order No. Adm 26(G)87-IITK/372 dated 11.09.1987, No. DF/C-2/90 IITK dated 03.07.1990, No. Adm. 26(G)/90-IITK/1221 dated 23.01.1991, and No. Adm. 26(G)/92-IITK/1508 dated January 16, 1992, the Board of Governor of the Institute in the meeting held on April 21, 1998 considered

the request of staff/faculty members of the Institute and decided as under:-

a. CPF subscribers in service in IIT Kanpur as on 01.04.1998 be given the option to switch over (irreversibly) to GPF-cum-Pension Scheme with immediate effect.

b. CPF Subscribers who are not switching now be allowed to switch over (irreversibly) upto the end of 15 years of their continuous service at the Institute.

c. A new entrant to CPF Scheme (after 1.04.1998) be also given an option on analogue basis with reference to the decision at (b) above.

2. All CPF subscribers, who are eligible for pension or would become eligible for pension, may exercise their option to switch over to GPF-cum-Gratuity Scheme by filing and returning the annexed form so as to reach A.O. (Admin) or DOFA (as the case may be) on or before 30.07.98. The option once exercised shall be deemed final.”

12. Heard learned counsel for parties and perused the records.

13. In order to consider rival submissions, paragraph 30 of Priyanka Upadhyay (supra) being relevant is mentioned below :-

“30. The outcome of above discussion is that:

(a) The case of employees of Banaras Hindu University is factually on a different footing than the employees of Delhi University.

(b) Banaras Hindu University has adopted the Office Memorandum dated 01.05.1987 issued by Government of India by a notification dated 09.04.1988, i.e., much after the original cut off date, i.e., 30.09.1987, and has fixed the new cut off date, i.e., 09.07.1988 to submit option and since said notification is not under challenge, therefore, while applying the judgment of Supreme Court in University of Delhi vs. Smt. Shashi Kiran (supra), above referred dates rendered it distinguishable.

(c) If the law as held by Supreme Court in University of Delhi vs. Smt. Shashi Kiran (supra) is applied in the facts and circumstances of present cases taking note of above referred dates, the only interpretation would be that any option given beyond 09.07.1988 would non est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis of above cut off date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in University of Delhi vs. Smt. Shashi Kiran (supra) would not be applicable to present petitioners. Any other interpretation would render date of adoption and any subsequent cut off date meaningless.

(d) It is not the case of petitioners or Respondent-Banaras Hindu University or even Union of India that Office Memorandum dated 01.05.1987 was automatically applicable to all Central Universities without being its specific adoption by a particular University and further that issue was not before the

Supreme Court in the case of University of Delhi vs. Smt. Shashi Kiran (supra).”

14. In present case, petitioner – 1 was appointed on the post of Teacher (Mechanic B) in respondent institution on 27.04.1978 and retired from the post of Senior Technical Superintendent on 30.06.2013. The petitioner – 3 was appointed post of Teacher on 19.07.1982 and retired on 31.07.2014 whereas petitioner – 2 has joined his duties on 31.08.1990 and retired on 31.07.2016, therefore, case of petitioner – 2 has to be considered separately since he has joined services in the year 1990 i.e. subsequent to O.M. dated 01.05.1987 and adopted by respondent – IIT on 11.09.1987 and his case would squarely cover with the case of one Sushil Kumar Singh as considered by the Division Bench of this Court in **Prof. Harish Chandra Chaudhary (supra)** and for reference, paragraph – 57 of Harish Chandra Chaudhary (supra) is quoted below :-

“57. Having considered the respective submissions advanced in respect of the claim of Sri Sinha, we find that on the date of his substantive appointment in BHU i.e. 9.7.1990, he was covered by the pension scheme. Even his temporary appointment in the BHU on 9th July, 1988, was after the cut-off-date i.e. 1.1.1986. It is clearly revealed that he had objected to his inclusion in the CPF Scheme. He was in fact included in the pension scheme, but it was on account of resolution of the Executive Council, dated 19-20th July, 2002, that such benefit was withdrawn from him. There was otherwise no occasion for him to be extended the option to continue under the CPF Scheme. He has been representing against such decision and has approached the Court after the issue has

been settled by the Supreme Court. In the facts of the case, we find that his case is clearly covered by the pension scheme and the question of exercising any option by him, to continue under the CPF Scheme, is not countenanced under the Office Memorandum, dated 1.5.1987. The BHU on its own has accepted the claim of Dr. Sushil Kumar Singh in similar circumstances in 2013. There is otherwise no prior adjudication of the claim of Sri Sinha by this Court.”

15. So far as argument of learned counsel for respondent - IIT that there is a delay in approaching this Court is concerned, Court finds that it was default of the respondent institution, therefore, delay will not come in the way if this writ petition is allowed qua to petitioner – 2 viz. Phool Singh Chauhan.

16. So far as an act whereby said petitioner has given option to continue in CPF Scheme is concerned, it would not be considered as non-est since he joined when CPF Scheme was enforced as the same has been held in **Prof. Harish Chandra Chaudhary (supra)**.

17. So far as petitioners – 1 and 3 are concerned, admittedly, they have given option to stay with CPF Scheme not only once but twice i.e. firstly on 09.10.1987 and 19.10.1987 respectively and secondly on 06.02.1992 and 07.02.1992 respectively, despite they have opportunities to shift to GPF Scheme. They were granted third opportunity after 15 years of their respective services, still they have not come over to GPF Scheme, therefore, they have failed to exercise their right, if any.

18. The argument of learned Senior Advocate for said petitioners that since

O.M. dated 01.05.1987 whereby last date to give option was fixed for 30.09.1987 with a declaration that if an employee did not give option to remain in earlier scheme, he will be deemed to be switched over of GPF Scheme, therefore, once institution has adopted said O.M. by their Office Order dated 11.09.1987, they are deemed to be switched over to GPF Scheme. Notwithstanding any option given to remain in GPF Scheme since it would be *non-est*.

19. Aforesaid argument of learned Senior Counsel on face of it appears to be attractive, however, still there are two factors which go against aforesaid submissions that firstly OM dated 01.05.1987 was not automatically adopted by respondent-institution rather it was adopted by an independent act which they took on 11.09.1987 with a specific timeline that options could be exercised by 30.12.1987 if they wanted to remain in CPF Scheme and admittedly, petitioners – 1 and 3 have given option to remain in CPF on 09.10.1987 and 19.10.1987 respectively, therefore, they are bound by said option and question of *non-est* would not be applicable in given circumstances of the case.

20. In this regard, Court again takes note of paragraph 30 (c) of Priyanka Upadhyay (supra) which was upheld by Division Bench of this Court and for reference, said paragraph 30(c) is quoted below :-

“30. The outcome of above discussion is that:

a.

b.

(c) If the law as held by Supreme Court in University of Delhi vs. Smt. Shashi Kiran (supra) is applied in the facts and circumstances of present cases taking note of above referred dates, the only interpretation would be that any option given beyond 09.07.1988 would non est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis of above cut off date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in University of Delhi vs. Smt. Shashi Kiran (supra) would not be applicable to present petitioners. Any other interpretation would render date of adoption and any subsequent cut off date meaningless.”

21. Considering overall circumstances of the case, this Court does not find that claim as sought by petitioners – 1 and 3 has any force, therefore, their claim cannot be allowed on basis of above discussion, hence, rejected.

22. So far as petitioner – 2 is concerned, his claim has already been accepted in preceding paragraph of this judgment. The said petitioner has to return the amount towards CPF with 5% simple interest. The University will fix the period for such return.

23. In view of above, this writ petition is **allowed** qua to petitioner – 2 and it is **dismissed** qua to petitioners – 1 and 3.

**(2025) 12 ILRA 235
ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 12.12.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 13771 of 2025

**C/M, Ram Bharose Maiku Lal Inter College
Lko & Anr. ...Petitioners**

Versus

State Of U.P. & Ors. ...Respondents

Issue for consideration

Whether disapproval of District Inspector of Schools of the resolution of Committee of Management for suspension of the services of respondent no. 6 is sustainable in the eyes of law?

Headnotes

A. Service Law – U.P. Intermediate Education Act 1921: Section 16(G)(5) - Brief reasons must be recorded while disapproving the suspension order, which apparently is lacking in the present matter. (Para 15)

(a) On examining the impugned order dated 06.10.2025 on law and facts, it emerges that the DISs, after receiving the papers from the petitioners, concluded it, on mainly five grounds. So far as **the provision for constituting sub-committee** is concerned, that **has been prescribed u/regulation 35, which in fact regarding the enquiry and not for passing the suspension order.** (Para 16, 17)

(b) Ground no. 2, which reads that 'no approved chargesheet was served upon respondent no. 6' cannot be the zone of consideration of approval or disapproval of the suspension order, whereas, **the DISs could have applied his mind on the evidence/records sent by the Committee of Management, u/Regulation 39 and the provisions of section 16(G)(5) should have strictly been followed.** Therefore, the second

ground also goes against the mandate of the act and regulations. (Para 18)

(c) The third ground states that the chargesheet dated 10.01.2025, is not approved by the Committee of Management,' whereas, **the DISs should have applied his mind on the material/evidence regarding the suspension order and not the chargesheet.** (Para 19)

(d) The DISs, has said that since no evidence was made available by the Committee of Management for approval of the suspension order, therefore, the conditions prescribed u/s 16(G)(5) are not fulfilled, thus, the suspension order has been disapproved, whereas, **Section 16(G)(5) laid the first ground for consideration regarding the nature of the charges and there is not a single whisper in the order dated 06.10.2025, to discuss the seriousness of the charges,** thus, there seems to be the non-application of mind of the DISs. (Para 20)

(e) The DISs while taking decision regarding approval or disapproval, on suspension order, shall record, brief reasons, but so far as the case in hand is concerned that too is missing, as no reason has been recorded, for disapproval of the recommendation of the Committee of Management, in the order impugned dated 06.10.2025. Consequently, the order dated 06.10.2025 is unsustainable in the eyes of law. (Para 21)

The matter is relegated back to the DISs to pass a fresh order.

Writ petition allowed. (E-4)

Case Law Cited

Committee of Management, D.P.S.N. Inter College, Kanpur & Anr Vs. State of U.P. & Ors., 2018 (2) ADJ 840 (Para 6)

List of Acts

U.P. Intermediate Education Act 1921.

List of Keywords

service, suspension, committee, management, education, approval, disapproval.

Appearances for Parties

For Petitioner(s): Vikas Singh, Mahendra Bahadur Singh

For Respondent(s): C.S.C., Hari Prasad Gupta

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Supplementary affidavit filed by learned counsel for the petitioners and the counter affidavit filed by respondent no. 6, are taken on record.

2. Heard Mr. Mahendra Bahadur Singh and Mr. Vikash Singh, learned counsels for the petitioners, Mr. Hari Prasad Gupta, learned counsel for respondent no. 6, Mr. Brijendra Singh, learned Additional Chief Standing Counsel for respondent nos. 1 to 4.

3. Since in the instant petition, the pure legal question is involved, therefore, the matter is being decided at the admission stage. Notice to respondent no. 5 is hereby dispensed with.

4. The present writ petition has been filed assailing the order dated 06.10.2025, by which the district Inspector of Schools has disapproved the resolution of Committee of Management for suspension of the services of respondent no. 6.

5. The contention put forth by learned counsel appearing for the petitioner is that earlier, on two occasions also, the District Inspector of Schools had disapproved the suspension order and on the second time, Writ A No. 10304 of 2025 was instituted, challenging such an order of disapproval, wherein, the Court has passed the order on 15.09.2025, which is quoted hereinunder:-

"1. Preliminary objection and counter affidavit filed by Shri Hari Prashad

Gupta, Advocate on behalf of respondent No.7 is taken on record.

2. Learned counsel appearing for the petitioner states that he does not intend to file any objections/reply to the same as there is only a short question of law involved in the matter.

3. Learned counsel appearing for the petitioner prays for and is permitted to delete respondents No.5 & 6 from the array of the parties during the course of the day.

4. Heard learned counsel for the petitioner, Shri Ran Vijay Singh, learned Additional Chief Standing Counsel for the respondents-State and Shri Hari Prashad Gupta, learned counsel appearing for respondent No.7.

5. With the consent of the parties, the matter is being decided finally.

6. Under challenge is the order dated 01.07.2025 passed by the District Inspector of Schools, a copy of which is Annexure-1 to the petition, whereby the suspension order of the respondent No.7 dated 30.12.2024 has been disapproved.

7. The short question of law as raised by the learned counsel for the petitioners is that the District Inspector of Schools while passing the order impugned has also gone into the validity of the charges as leveled against the respondent No.7 and has held that said charges were not proved.

8. Argument of the learned counsel for the petitioners is that power to approve or disapprove an order of suspension is vested in the District Inspector of Schools under sub Section (7)

of Section 16-G of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'Act, 1921'). This Court in the case of Committee of Management, D.P.S.N. Inter College, Kanpur & Anr vs State of U.P. & Ors : [2018 (2) ADJ 840] after considering the aforesaid power has held that the D.I.O.S. has to examine the papers so transmitted but would have no right to address on the merits of the charges, but has only to see on, prima facie basis, as to whether charges have any substance.

9. The argument is that even though the D.I.O.S. was fully empowered to either approve or disapprove the order of suspension that had been sent for his approval by the petitioners but by no stretch of imagination or any principle of law, the D.I.O.S. could have gone into the validity and veracity of the charges that had been leveled against the respondent No.7 and as such on this ground alone, the impugned order merits to be set aside.

10. On the other hand, though learned counsel appearing for respondent No.7 does not dispute the aforesaid proposition of law laid down by this Court in the case of Committee of Management, D.P.S.N. Inter College, Kanpur (supra) yet says that once the order of suspension is dated 30.12.2024 and a period of more than 60 days have lapsed consequently the said suspension order cannot be read against the respondent No.7.

11. Having heard learned counsels for the parties and perused the record, it emerges that the order of suspension of respondent No.7 as sent for approval to the D.I.O.S. has been disapproved vide order impugned dated 01.07.2025 by going into the veracity of the charges.

12. This Court in the case of Committee of Management, D.P.S.N. Inter College, Kanpur (supra) has categorically held that the D.I.O.S. while exercising the powers under sub Section (7) of Section 16-G of the Act, 1921 only acts in a supervisory capacity and has to only see as to prima facie the charges are having any substance but he cannot go into veracity of the said charges.

13. As already indicated above, perusal of the order impugned would indicate that the D.I.O.S. has gone into veracity of the charges and thereafter disapproved the suspension order which order would clearly run against the principles of the law laid down by this Court in the case of Committee of Management, D.P.S.N. Inter College, Kanpur (supra).

14. In view of the aforesaid, the writ petition is allowed. Order impugned dated 01.07.2025, a copy of which is Annexure-I to the petition, is set aside.

15. The D.I.O.S. shall pass a fresh order in accordance with law within a period of two weeks from the date of receipt of a certified copy of this order. Needless to say that the petitioners shall cooperate with the D.I.O.S. while he passes the said order. In case of non cooperation, the D.I.O.S. would be at liberty to issue a notice to the petitioners indicating their noncooperation and thereafter proceed in accordance with law. "

6. Referring the aforesaid, he submits that on the last occasion also, the District Inspector of Schools, vide impugned order dated 1.7.2025, disapproved the order of suspension, against the provisions of law, therefore, this Court, while considering the

ratio of judgment passed in the case of **Committee of Management, D.P.S.N. Inter College, Kanpur & Anr vs State of U.P. & Ors : [2018 (2) ADJ 840]**, had directed to pass a fresh order, within the period of two weeks and in-compliance of the order aforesaid, the present impugned order has been passed.

7. He submitted that the findings which have been recorded, in point nos. 1 to 5, in the order dated 06.10.2025, is apparent that there is no application of mind by the District Inspector of Schools, on the papers sent by the petitioners under the provisions of Rule 39 of Chapter III of the regulations made under the U.P. Intermediate Education Act 1921(hereinafter referred to as 'Act 1921') and the said findings are quoted hereinunder in verbatim:-

"1- श्री रामचंद्र के विरुद्ध अनुशासनात्मक कार्यवाही हेतु इण्टरमीडिएट शिक्षा अधिनियम-1921 के अध्याय-तीन की धारा-16-छ उप धारा-35 के तहत किसी उप-समिति का गठन नहीं किया गया।

2- प्रबंधतंत्र / प्रबंधक / सचिव द्वारा अनुमोदित कोई आरोप पत्र निलंबित प्रधानाचार्य श्री रामचंद्र को नहीं उपलब्ध कराया गया।

3- श्री विपिन साहू अध्यक्ष, दीपक अग्रवाल सदस्य एवं दुष्यंत यादव सदस्य के हस्ताक्षर से जारी आरोप पत्र दिनांक 10 जनवरी 2025, नियुक्ति प्राधिकारी / प्रबंधतंत्र प्रबंधक / सचिव द्वारा अनुमोदित नहीं है।

4- प्रबंधक / सचिव श्री श्रीकांत साहू द्वारा अपने लिखित कथन दिनांक 25.09.2025 में निलंबन आदेश के समर्थन में कहा गया है कि रामचंद्र ने वित्त विहीन कक्षाओं के शुल्क का कोई लेखा-जोखा नहीं दिया। श्री रामचंद्र कार्यवाहक प्रधानाचार्य, (सम्प्रति निलम्बित) समिति विरोधी कार्य कर रहे हैं। श्री रामचंद्र द्वारा विभागीय आदेशों की अवहेलना, अशिष्टता, अवज्ञा अनाधीनता अनुशासनहीनता एवं विद्यालय की प्रबंध समिति के विरुद्ध षडयंत्र

किया जा रहा है किन्तु पत्र दिनांक 25.09.2025 के साथ पत्र में वर्णित आरोपों की पुष्टि में कोई पुष्टि साक्ष्य संलग्न नहीं किये गये हैं।

5- श्री रामचंद्र ने अपने द्वारा प्रस्तुत पत्रों को संदर्भित करते हुए अपने लिखित कथन दिनांक 26.09.2025 में कहा है कि 01. अप्रैल 2022 से विद्यालय के कार्यवाहक प्रधानाचार्य के रूप में कार्यरत हैं, बार-बार अनुरोध के बावजूद प्रबंधक महोदय विद्यालय के विकास एवं छात्रों के हित में कार्य नहीं कर रहे हैं। हाईस्कूल के कृषि वर्ग के छात्रों के लिए कृषि भूमि चिन्हित नहीं की जा रही है। विद्यालय का भवन अत्यंत जीर्ण-शीर्ण व जर्जर अवस्था में है जिससे छात्रों एवं अन्य को सदैव खतरा बना रहता है, जिसकी सूचना उनके द्वारा प्रबंधक के साथ-साथ शिक्षा विभाग के उच्च अधिकारियों को भी दी गई है। जिससे प्रबंधक महोदय उनसे व्यक्तिगत रूप से नाराज हैं। प्रबंधक महोदय उससे कनिष्ठ सहायक अध्यापक श्री अम्बर प्रसाद तिवारी, जोकि प्रबंधक महोदय द्वारा किए जा रहे अनियमित कार्यों का समर्थन करते हैं, को येन-केन प्रकारेण विद्यालय का कार्यवाहक प्रधानाचार्य का कार्यभार सौंपना चाहते हैं।"

8. Referring the aforesaid grounds of disapproval, he submitted that so far as ground no. 1 is concerned, it is stated that the petitioners have been failed to constitute a sub-committee as per regulation 35 of the regulations made under the Act 1921, whereas, there is no mandate in regulation 35, to constitute a sub-committee, at the stage of passing the suspension order.

9. He further submitted that ground no. 2, is also apparent that the District Inspector of Schools has taken into consideration that 'the Committee of Management, the petitioner no. 1, has failed to provide the approved chargesheet to the respondent no. 6', that too is not the condition precedent for passing the suspension order as per the mandate of the Act 1921 read with provision of regulations.

10. He argued that the conclusion clause of the aforesaid order is also goes against the provision of the Act, as it has been said that 'there is no evidence available to approve the suspension order', wherein, the District Inspector of Schools should have considered the nature of the charges, as is mandated vide the provisions of section 16(G)(5) of the Act 1921.

11. Concluding his arguments, he submitted that the order passed by the District Inspector of Schools is not only against the direction of the judgment and order dated 15.09.2025 passed in Writ A No. 10304 of 2025, but that too is against the provisions of the Act 1921 read with the regulations. He submitted that the order impugned is also against the settled proposition of law, therefore, submission is that the impugned order dated 06.10.2025 may be quashed.

12. Per contra, Mr. Hari Prasad Gupta, learned counsel for respondent no. 6 has vehemently opposed the contentions aforesaid and submitted that the ground for disapproval has rightly been recorded by the District Inspector of Schools. He submitted that, in fact, the petitioner no. 2 has committed unlawful activity in the College and when the voice has been raised by respondent no. 6, the present disciplinary proceedings has been instituted against him. He also submitted that the District Inspector of Schools has very well considered the evidences which were made available by the petitioners, therefore, there is no ambiguity or erroneousness in the order impugned, thus, no interference is warranted.

13. Learned counsel appearing for the State has supported the version of counsel for respondent no. 6 and submitted that

there is limited scope for the District Inspector of Schools to apply his mind so far as the approval or disapproval of the suspension order is concerned and he recorded the reasons by adverting that no evidence or material was available for approval of the suspension order as per the provision of Section 16(G)(5) of Act 1921, therefore, the suspension order passed by the Committee of Management has rightly been disapproved.

14. Upon considering the submissions of counsel for the parties and after perusal of records, it is apparent that the impugned order has been passed in-compliance of the order dated 15.09.2025, passed in Writ A No. 10304 of 2025. Vide the aforesaid order, this Hon'ble Court, while considering the law settled in the case of **Committee of Management, D.P.S.N. Inter College, Kanpur(supra)**, has directed the District Inspector of Schools to consider and decide the matter on merits. The relevant paragraph 18 is extracted as under:-

"18. I need not detail the allegations and material in support thereof, placed by the Management before the District Inspector of Schools. The District Inspector of Schools while exercising power under sub-section (7) of Section 16G acts in a supervisory capacity. He has to record brief reason to accord approval or disapproval to any order of suspension passed by the Management. The District Inspector of Schools has to examine the papers so transmitted but would have no right to address on the merit of the charges, but has only to see on, prima facie, basis, as to whether, charges have any substance. The issue in that regard has to be examined in departmental enquiry to be held against the Principal/Teacher."

15. It has been held that brief reasons must be recorded while disapproving the suspension order, which apparently is lacking in the present matter.

16. When this Court examines the impugned order dated 06.10.2025 on law and facts, it emerges that the District Inspector of Schools, after receiving the papers from the petitioners, concluded it, on mainly five grounds, which are mentioned in the preceding paragraphs. The ground nos. 1 & 2 is said to be the main basis of the consideration. It is said that the sub-committee was not constituted, whereas, the provisions of Section 16(G)5 as well as the regulation 35 of the regulations made under the Act 1921 do not provide such provision. Section 16(G)(5) of the Act 1921 is extracted hereinunder:-

"16-G (5) No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management-

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial."

17. So far as the provision for constituting sub-committee is concerned, that has been prescribed under regulation 35, which in fact regarding the enquiry and not for passing the suspension order. The regulation 35 reads as under:-

"35. शिकायत अथवा गम्भीर प्रकृति के आरोपों की प्रतिकूल आख्या प्राप्त होने पर समिति, अध्यापकों एवं अन्य कर्मचारियों के विषय में प्रधानाध्यापक अथवा आचार्य अथवा प्रबन्धक को जाँच अधिकारी नियुक्त करेगी (अथवा प्रबन्धक स्वयं जाँच करेगा यदि समिति द्वारा नियमों के अन्तर्गत उसे यह अधिकार प्रतिनिहित हो गये हैं) और प्रधान अध्यापक अथवा आचार्य के विषय में एक छोटी उपसमिति होगी जिसे आख्या यथाशीघ्र प्रस्तुत करने के निर्देश होंगे। चतुर्थ श्रेणी के कर्मचारियों के सम्बन्ध में प्रधानाचार्य/ प्रधानाध्यापक द्वारा किसी वरिष्ठ अध्यापक को जाँच अधिकारी नियुक्त किया जायेगा।"

18. So far as the ground no. 2, which reads that 'no approved chargesheet was served upon respondent no. 6' can not be the zone of consideration of approval or disapproval of the suspension order, whereas, the District Inspector Of Schools could have applied his mind on the evidence/records sent by the Committee of Management, under Regulation 39 and the provisions of section 16(G)(5) should have strictly been followed. Therefore, the second ground also goes against the mandate of the act and regulations.

19. The third ground is also not in consonance with the provisions of the Act 1921, as it has been said that the chargesheet dated 10.01.2025, is not approved by the Committee of Management,' whereas, the District Inspector Of Schools should have applied his mind on the material/evidence regarding the suspension order and not the chargesheet.

20. Further, this Court finds that the District Inspector of Schools, while disapproving the suspension order passed by the Committee of Management has said that since no evidence was made available by the Committee of Management for approval of the suspension order, therefore, the conditions prescribed under Section

16(G)(5) are not fulfilled, thus, the suspension order passed by the Committee of Management has been disapproved, whereas, Section 16(G)(5) laid the first ground for consideration regarding the nature of the charges and there is not a single whisper in the order dated 06.10.2025, to discuss the seriousness of the charges, thus, there seems to be the non-application of mind of the District Inspector of Schools.

21. This Court is also aware of the judgment and order rendered in the case of **Committee of Management, D.P.S.N. Inter College, Kanpur(supra)**, wherein, it is specifically held that the District Inspector of Schools while taking decision regarding approval or disapproval, on suspension order proposed by the Committee of Management, shall record, brief reasons, but so far as the case in hand is concerned that too is missing, as no reason has been recorded, for disapproval of the recommendation of the Committee of Management, in the order impugned dated 06.10.2025. Consequently, the order dated 06.10.2025 is unsustainable in the eyes of law.

22. Ergo, the impugned order dated 06.10.2025, is hereby quashed.

23. The matter is relegated back to the District Inspector of Schools to pass a fresh order, on the papers already sent by the petitioner, on 04.01.2025, as well as the objection given by respondent no. 6, within a period of five weeks from the date of this order, while strictly adhering with the relevant provisions of law.

24. Parties are directed to cooperate in the proceedings before the District Inspector of Schools concerned.

25. It is further provided that no party shall take unnecessary adjournments.

26. The present writ petition is **allowed** accordingly.

(2025) 12 ILRA 241
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.12.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 14000 of 2025

C/M, Chutki Bhandar Girls Inter College & Anr. ...Petitioners

Versus

State Of U.P. & Ors. ...Respondents

Issue for consideration

Whether it is incumbent upon the District Inspector of Schools (DISs) to issue notice to the Committee of Management (Committee) or the same shall be heard after receiving the proposal/recommendation of the Committee of Management for dismissal of an employee from service or any punishment is awarded as prescribed u/s 16(G)(B) even the provision overtly does not prohibit so?

Headnotes

A. Service Law – U.P. Intermediate Education Act: Section 16 G 3(a)(b); Regulations 31 to 45, of Chapter III of the Regulations - If there are civil consequences of any decision or order, such order/decision has to be preceded by a show cause notice. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party, a notice of the case, so that he could defend himself. (Para 20, 22, 24)

B. The law of principle of natural justice developed with the intent to give the minimum protection to the rights of the individuals against the arbitrary act or the procedure in judicial, quasi judicial and

administrative functioning and that subsequently stretched upto the person (legal entity), if prejudice is caused to the rights. It is trite law that there is implied applicability to the rules of natural justice unless statutory provision either specifically or by necessary implication excludes application of such rules, in any exercise of power prejudicially affecting another. (Para 19)

The principle of natural justice recognized in the jurisprudence in all over world is known as 'Audi alteram partem', which means that no one should be unheard and therefore, the first limb of this principle is to bring the issue in the notice of the person to whom the prejudice would be caused and therefore, the adequate opportunity is required to enable such person (including the legal person) to represent. (Para 17)

In present case, the order dated 26-09-2025 has been passed, whereby the proposal/recommendation of dismissal of services of the opposite party no. 6, which was sent after due consideration (thoroughly considering the enquiry report), by the Committee of Management (Committee), has been disapproved by the DISs, without giving any notice to the Committee, prior to passing the order of disapproval. The Committee plays key role in the day to day administration of any institution/college. Once the proposal has been disapproved, the repercussion would be that such, teacher/headmaster/headmistress, would work more spontaneously. Infact, in the present case, there was complaint regarding the rude and unruly behaviour of the opposite party no. 6 and if the Committee is not given the proper opportunity of hearing so as to defend it's proposal/recommendation, which was passed/given after a thorough consideration, essentially, the prejudice would be caused to the Committee. (Para 25)

In case, the Committee of Management recommends for discharge, removal, dismissal from service or reduce in rank or subjected to any diminution or emulation, in case of Principal, Headmaster or Teacher of the institution as per section 16 G(3)(a) of Regulations, prior passing the order of disapproval, such Committee of

Management, shall be heard with preceding notice. The hearing should not be formal, but, it must be substantive. (Para 26)

The order impugned dated 26-09-2025 is hereby quashed as is against the first principle of law i.e. the 'principle of natural justice'. Matter is remitted back to the District Inspector of Schools-II, Lucknow to take a fresh decision.

Writ petition allowed.(E-4)

Case Law Cited

1. Cooper Vs. Wandswords Board of Works, (1863) 143 ER 414 (Para 18)
2. Gorkha Security Services Vs. Government (NCT of Delhi) and Others, (2014) 9 SCC 105, (Para 20)
3. Raghunath Thakur Vs. State of Bihar, (1989) 1 SCC 229] (Para 21)
4. UMC Technologies Private Ltd. Vs. Food Corporation of India and Another, (2021) 2 SCC 551 (Para 23)

List of Acts

U.P. Intermediate Education Act.

List of Keywords

arbitrary, judicial, quasi, administrative, natural justice, preceding notice, prejudice.

Appearances for Parties

For Petitioner(s): Vikas Singh, Mahendra Bahadur Singh

For Respondent(s): C.S.C., Indra Pratap Singh

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. M.B. Singh and Mr. Vikas Singh, learned counsels for the petitioners, Mr. Brijendra Singh, learned Additional Chief Standing Counsel for the State and Mr. Indra Pratap Singh, learned counsel for the opposite party no. 6.

2. By means of the present writ petition, the petitioners have assailed the order dated 26-09-2025 passed by the

District Inspector of Schools-II, Lucknow, whereby the matter has been remitted back to the Committee of Management, while disapproving the recommendation of the Committee of Management, for dismissal of the services of the opposite party no. 6.

3. Briefly stated facts are that Chutki Bhandar Girls Intermediate College, Lucknow(hereafter referred to as 'College'), is recognized by the U.P. Intermediate Education Board and imparts education upto intermediate and the college receives grant-in-aid from the state government and the provisions of the U.P. Intermediate Education Act, 2021 as well as the U.P. High School and Intermediate College(Payment of Salary to the Teachers and Other Employees) Act,1971, are fully applicable on the teaching and non teaching staffs of the college.

4. Factual matrix of the case are that Smt. Shubhra Pandey, took voluntarily retirement, who was working as adhoc principal and thereafter, opposite party no 6, Dr. Suman Shukla, who was working as Lecturer (Civics) in the college, was given the charge of the post of Principal, on officiating basis, on 01-03-2024 and her signatures were sent for approval and attestation, before the District Inspector of Schools (DIOS), which was returned by him, without any approval.

5. It is said that after the officiating charge was given to opposite party no. 6, her behaviour was observed as being rude and uncalled for and she has also started disobeying the instructions of the Committee of Management of the college. On several complaints received against the opposite party no. 6, the preliminary enquiry was instituted against her and thereafter, the Committee of Management

in it's meeting dated 13-07-2024, has unanimously resolved for handing over the charge to the another seniormost teacher, namely, Smt. Sunita on place of opposite party no. 6 and the opposite party no. 6 was directed to hand over the charge to Smt. Sunita, but, that was declined by her and she forcibly continued herself as officiating Principal and created unpleasant and awkward situation and thereafter looking into the unruly behaviour of opposite party no. 6, under the compelling circumstances, the Committee of Management suspended her and contemplated an enquiry proceeding and the papers regarding the approval of suspension have also been forwarded to the District Inspector of Schools, Lucknow for it's approval, which was disapproved and being aggrieved, the Committee of Management instituted Writ A No. 8442 of 2025, wherein this Hon'ble Court passed the order, on 21-11-2025, whereby the order of disapproval dated 09-07-2025, passed by the District Inspector of Schools, has been quashed and the matter has been remitted back to the DIOS-II Lucknow to pass order afresh, which is still pending consideration.

6. Further, facts are that in the meanwhile, the Enquiry Committee constituted by the college of management for conducting enquiry against the opposite party no. 6, completed the enquiry proceedings and submitted enquiry report, whereafter, the Committee of Management took a decision on 27-07-2025, for recommendation of the dismissal of services of opposite party no. 6, seeking approval/consent of the DIOS. In this regard, the entire papers including the proposal of the Committee of Management of the college dated 22-06-2025, was sent to the District Inspector of Schools vide letter dated 27-07-2025. On receiving the

proposal/recommendation of the Committee of Management, the District Inspector of Schools issued notice on 14-08-2025, to the opposite party no. 6, the delinquent employee but without affording any opportunity and associating the petitioners, the order impugned dated 26-09-2025 has been passed, by which the recommendation for dismissal of the services of the opposite party no. 6 has been disapproved and the records sent by the Committee of Management has also been relegated back to the college. The order of disapproval passed by the DIOS-II, dated 26-09-2025, is challenged herein.

7. Contention put forth by learned counsel for the petitioners is that the Committee of Management after thoroughly considering the enquiry report, has resolved/recommended for dismissal of services of opposite party no. 6 and the same was sent to the DIOS-II, Lucknow with its recommendation alongwith the relevant documents. He has specifically submitted that no dismissal order has finally been passed by the petitioners rather the recommendation/proposal of Committee of Management was sent for approval of the D.I.O.S. Further submission is that the DIOS-II, Lucknow, without hearing the Committee of Management, has remitted back the matter to the Committee of Management while disapproving the proposal/recommendation of the same, which caused great prejudice to the rights of the Committee of Management. He added that the order/letter dated 26-09-2025 is against the 'principles of natural justice' and therefore, the order dated 26-09-2025 does not stand on its own legs and is liable to be quashed.

8. On the other hand, counsels for the opposite parties have refuted the

contentions aforesaid and submitted that the present petitioners have also approached this court by way of instituting Writ A No. 8442 of 2025 while assailing the disapproval of the suspension order of opposite party no. 6, passed by the DIOS, wherein the final Judgment and Order was passed on 21-11-2025 and the matter was remitted back to the DIOS-II, Lucknow to pass a fresh order while affording the proper opportunity of hearing to the petitioners as well as the opposite party no. 6 including the other stakeholders and he has raised doubt that the order has still not been placed before the DIOS concerned. They further submitted that there is no ambiguity or erroneousness in the order dated 26-09-2025, assailed herein this writ petition, thus, no interference is warranted.

9. In addition, they argued that unless the DIOS-II, Lucknow takes a decision in compliance of the order dated 21-11-2025, passed in Writ A No. 8442 of 2025, on the approval of the suspension order of the opposite party no. 6, no further proceeding can go on regarding any recommendation/proposal made by the Committee of Management, thereof.

10. Upon considering the submissions of learned counsels for the parties and after perusal of records, it emerges that the petitioners have assailed the order of disapproval of the recommendation of the Committee of Management/petitioners for dismissal of services of opposite party no. 6.

11. It is also contended before this court, that since this court earlier, vide Judgment and Order dated 21-11-2025, passed in Writ A No.8442 of 2025, directed the DIOS-II, Lucknow to take a fresh

decision, on the proposal/recommendation of the suspension of the opposite party no. 6, therefore, no decision could be taken further, unless the decision in compliance of the order dated 21-11-2025, is taken by the DIOS-II, Lucknow.

12. This court finds that disapproval of the recommendation of the suspension of the services of the opposite party no. 6 was under challenge in Writ A No. 8442 of 2025 and there was certain reason for reaching to the conclusion to quash the order of disapproval passed by the DIOS-II, Lucknow, whereas in the present matter, the recommendation of the Committee of Management for dismissal of the services of the opposite party no. 6 which has been disapproved, is under challenge, which is altogether different stage, as there is no restriction that unless the suspension order is approved or disapproved, no further proceeding or any enquiry can go on and therefore, when the enquiry has been concluded by the Committee of Management and the proposal/recommendation is made for dismissal of the services of the opposite party no. 6, the District Inspector of Schools is empowered to consider the same, under the provisions of section 16 G 3(a)(b) of the Act, 1921 read with Regulations.

13. The provision with respect to the removal, dismissal or discharge from service and reduction in rank etc. has been provided under 16 G(3)(b) of the U.P. Intermediate Education Act, 1921(hereafter referred to as 'Act, 1921'), which reads as under:-

"16-(G)(3)(b) The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of

the notice for termination of service proposed by the management:

Provided that in the cases of punishment, before passing orders, Inspector shall give an opportunity to the Principal, the Headmaster or the teacher to show cause within a fortnight of the receipt of the notice why the proposed punishment should not be inflicted."

14. Further, the Regulations 31 to 45, of Chapter III of the 'Regulations', prescribes the provision regarding the punishment, enquiry and suspension of the employees. The relevant Regulations 35 & 37 are quoted hereinunder:-

"35. शिकायत अथवा गम्भीर प्रकृति के आरोपों की प्रतिकूल आख्या प्राप्त होने पर समिति, अध्यापकों एवं अन्य कर्मचारियों के विषय में प्रधानाध्यापक अथवा आचार्य अथवा प्रबन्धक को जाँच अधिकारी नियुक्त करेगी (अथवा प्रबन्धक स्वयं जाँच करेगा यदि समिति द्वारा नियमों के अन्तर्गत उसे यह अधिकार प्रतिनिहित हो गये है) और प्रधान अध्यापक अथवा आचार्य के विषय में एक छोटी उपसमिति होगी जिसे आख्या यथाशीघ्र प्रस्तुत करने के निर्देश होंगे।

चतुर्थ श्रेणी के कर्मचारियों के सम्बन्ध में प्रधानाचार्य / प्रधानाध्यापक द्वारा किसी वरिष्ठ अध्यापक को जाँच अधिकारी नियुक्त किया जायेगा।

37. जाँच-अधिकारी से कार्यवाही की आख्या तथा संस्तुति प्राप्त होने के बाद शीघ्र ही कर्मचारी को नोटिस देने के बाद प्रबन्ध समिति की बैठक कार्यवाही की आख्या तथा संस्तुति पर विचार करने के लिए होगी और उस मामले पर निर्णय लेगी। कर्मचारी को, यदि वह चाहता है समिति के समक्ष स्वयं उपस्थित होने की आज्ञा दी जायेगी जिससे वह अपना अभियोग प्रस्तुत कर सके और बैठक में उपस्थित किसी सदस्य द्वारा पूछे गये किसी प्रश्न का उत्तर दे सके। तब समिति पूर्ण आख्या, समस्त सम्बन्धित कागज पत्र सहित निरीक्षक अथवा मण्डलीय निरीक्षिका को उसके द्वारा प्रस्तावित कार्यवाही को स्वीकृत हेतु प्रेषित करेगी।

किन्तु, चतुर्थ श्रेणी के कर्मचारियों के सम्बन्ध में निरीक्षक निरीक्षिका को स्वीकृत हेतु कोई आख्या नहीं भेजी

जायेगी। इनके सम्बन्ध में उपरोक्त सारी कार्यवाही नियुक्ति प्राधिकारी द्वारा की जायेगी।"

15. The question, which is crop up herein for adjudication is that whether it is incumbent upon the District Inspector of Schools to issue notice to the Committee of Management or the same shall be heard after receiving the proposal/recommendation of the Committee of Management for dismissal of an employee from service or any punishment is awarded as prescribed under Section 16(G)(B) even the provision overtly does not prohibit so ?

16. When this court examines the aforesaid issue, it is apparent from the provision envisaged under 16 G(3)(b) of the 'Act,1921', that the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of the services, recommended/proposed by the Committee of Management, provided that in the cases of punishment, before passing orders, Inspector shall give an opportunity to the Principal, Headmaster or the Teacher to show cause within fortnight of the receipt of the notice, whereas, there is no provision has been prescribed in the event of the disapproval of the proposal of punishment of the Committee of Management for issuing notice or preceding opportunity to be heard.

17. The principle of natural justice recognized in the jurisprudence in all over word is known as '*Audi alteram partem*', which means that no one should be unheard and therefore, the first limb of this principle is to bring the issue in the notice of the person to whom the prejudice would be caused and therefore, the adequate opportunity is required to enable such person (including the legal person) to represent. The reasonable

opportunity of hearing, if lacking in any decision, the same vitiates the proceeding, wholly and therefore, it is necessary that a party should be served the notice before any adverse order is passed against the same. In fact, this principle was first time enumerated when the historic document was prepared at Runnymede in 1215, which is the first statutory recognition.

18. In the celebrated case of **Cooper Vs Wandsworths Board of Works (1863) 143 ER 414**, the following principle has been laid :-

"Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where are thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

19. In fact, the law of principle of natural justice developed with the intent to give the minimum protection to the rights of the individuals against the arbitrary act or the procedure in judicial, quasi judicial and administrative functioning and that subsequently stretched upto the person (legal entity), if prejudice is caused to the rights. It is trite law that there is implied applicability to the rules of natural justice unless statutory provision either specifically or by necessary implication excludes application of such rules, in any exercise of power prejudicially affecting another.

20. It is not out of place to mention the law rendered in the case of **Gorkha Security Services Vs Government (NCT of Delhi) and Others**, reported in **(2014) 9 Supreme Court Cases 105**, wherein, in paragraph no. 16, it has been held as follows :-

"16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

21. Again, in **Raghunath Thakur v. State of Bihar [(1989) 1 SCC 229]** the aforesaid principle has been reiterated in the following manner:-

"4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have

right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of."

22. It has been so held in the abovesaid case that if there are civil consequences of any decision or order, such order/decision has to be preceded by a show cause notice.

23. The aforesaid principle has further been reiterated by the Hon'ble Apex Court in the case of **UMC Technologies Private Ltd. Vs Food Corporation of India and Another**, reported in **(2021) 2 Supreme Court Cases 551**. Paragraph no. 13 of the said Judgment is relevant, which is extracted as follows :-

"13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose

right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in Nasir Ahmad v. Custodian General, Evacuee Property [Nasir Ahmad v. Custodian General, Evacuee Property, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

24. The Hon'ble Apex Court has held that the basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party, a notice of the case, so that he could defend himself.

25. This court finds that the order dated 26-09-2025 has been passed, whereby the proposal/recommendation of dismissal of services of the opposite party no. 6, has been disapproved, which was sent after due consideration, by the Committee of Management. The Committee of Management after thoroughly considering the enquiry report, has come to the conclusion to propose/recommend the dismissal of the services of the opposite party no. 6 but the

District Inspector of Schools admittedly has not given any notice to the Committee of Management, prior passing the order of disapproval of the proposal of the Committee of Management. It is infact the Committee of Management, which plays key role in the day to day administration of any institution/college. Once the proposal is been disapproved, the repercussion would be that such, teacher/ headmaster/ headmistress, would work more spontaneously. Infact, in the present case, there was complaint regarding the rude and unruly behaviour of the opposite party no. 6 and if the Committee of Management is not given the proper opportunity of hearing so as to defend it's proposal/recommendation, which was infact passed/ given after a thorough consideration, essentially, the prejudice would be caused to the Committee of Management.

26. In view of the aforesaid submissions and discussions, this court is of the considered opinion that in case, the Committee of Management recommends for discharge, removal, dismissal from service or reduce in rank or subjected to any diminution or emulation, in case of Principal, Headmaster or Teacher of the institution as per section 16 G(3)(a) of Regulations, prior passing the order of disapproval, such Committee of Management, shall be heard with preceding notice. The hearing should not be formal, but, it must be substantive.

27. Consequently, this court finds that the order impugned herein is against the first principle of law i.e. the 'principle of natural justice'. Ergo, the order impugned dated 26-09-2025 is hereby quashed.

28. The matter is remitted back to the District Inspector of Schools-II, Lucknow

to take a fresh decision, on the proposal/recommendation of the Committee of Management, strictly adhering to the provisions of law and affording opportunity of hearing to Committee of Management, within the period of six weeks, from the date a certified copy of this order is produced before him.

29. With the aforesaid observations, the instant writ petition is hereby **allowed**.

(2025) 12 ILRA 249

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 09.12.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 14077 of 2025

Dr. Vijay Bahadur Jaiswal & Anr.

...Petitioners

Versus

State Of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether order dated 19.11.2025 is valid? Order dated 19.11.2025 has been passed mainly on the ground that the minimum eligibility criteria provided vide circular dated 29.03.2011 issued by the ICAR, has not been followed, rather another eligibility criterion, which has been mentioned in the advertisement, and therefore, the whole selection proceedings has been stated to be unlawful.

Headnotes

A. Service Law – Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya) Adhiniyam, 1958: Chapter 21: Section 28(r) - Every order has to stand on its own legs – In present case as the findings recorded regarding the circular dated 29.03.2011 issued by the ICAR, stated to be applicable regarding eligibility criteria/qualifications, in the appointment of the Program-Coordinator of

K.V.K. of the respondent university, is *non est*, therefore, the whole order is erroneous and ambiguous. (Para 30)

B. The circular dated 29.03.2011, rather the circular which is as per the argument of the counsel for the petitioners dated 26.04.2012, **which is ought to have been considered, have been ignored by the Board of Management, therefore, there was no question so as to assume by any authority, while publishing the advertisement to prescribe the minimum eligibility criteria for the appointment of the post of Program Coordinator.**

The decision of the enquiry committee constituted by the Chancellor has been taken into consideration and the same has been accepted, but there is no discussion of any kind over the same, by the Board of Management of the University. (Para 26)

It has been noticed the provisions regarding number and qualification of employees of the University, as is provided u/s 28(r) of Chapter XXI of the Act of 1958, which says that the number of Teachers in each department and their qualification, shall be recommended by the academic council which would be approved by the Board of Management. Admittedly, in the 150th meeting of the Board of Management, the agenda no. 10 was considered and discussed and the agenda was approved w.r.t. the qualification which, in fact, was mentioned in the advertisement for appointment of the post of Program Coordinator. The aforesaid resolution of the Board of Management has never been revoked or recalled by any competent authority. (Para 27)

C. The report of the enquiry committee, which is mentioned in the resolution of the Board, by which the advertisement no. 5/2014 has been cancelled, has only been mentioned and there is no discussion that why the Board of Management is accepting the report and canceling the advertisement no. 5/2014.

The Enquiry Committee has not unanimously come to the conclusion regarding the charges leveled against the petitioners, to be found

proved, though, this all is the subject matter of the Board of Management to be considered. (Para 28, 29)

The resolution dated 19.11.2025 sent by Secretary, Board of Management to the State Government for its approval are hereby quashed. The matter is relegated back to the Board of Management of respondent university to take a fresh decision.

Writ petition allowed. (E-4)

Case Law Cited

1. Mohinder Singh Gill Vs. Chief Election Commissioner New Delhi, (1978) 1 SCC 40 (Para 12)
2. Dr. Anil Kumar Katiyar and Another Vs. State of U.P. and Others alongwith other connected writ petitions, 2023 SCC OnLine All 2986 (Para 13)
3. Dr. Shiv Kumar Singh Vs. State of U.P. and Ors., 2011 SCC OnLine All 2369 (Para 14)

List of Acts

Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya) Adhiniyam, 1958.

List of Keywords

minimum eligibility criteria, appointment, selection, advertisement, process, committee.

Appearances for Parties

For Petitioner(s): Vikas Vikram Singh, Rajat Gangwar

For Respondent(s): C.S.C., Uttam Kumar Verma

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. On 5.12.2025, the following order was passed:-

"Mr. Uttam Kumar Verma, learned counsel for the respondent nos. 3 to 6 and Mr. Pradeep Kumar Singh, learned counsel appearing for the State are directed to seek detailed instructions in the matter.

List this matter on 9.12.2025 as fresh."

2. In-compliance of the aforesaid, Mr. Uttam Kumar Verma, learned counsel for the respondent-university has placed the seriatim of the orders and the action taken thereof by the Board of Management as well as the Chancellor, stating it to be the instructions, which is taken on record.

3. Heard Mr. Vikas Vikram Singh and Mr. Rajat Gangwar, learned counsel for the petitioners, Mr. Uttam Kumar Verma, counsel for the respondent-university, Mr. Shailendra Kumar Singh, Chief Standing Counsel assisted by Mr. P.K. Singh, learned Additional Chief Standing Counsel for the State.

4. By means of the present petition, the petitioners have assailed the minutes of emergency meeting of Board of Management dated 19.11.2025 of Chandra Shekhar Azad University Of Agriculture & Technology, Kanpur(hereinafter, referred to as University) as well as the letter dated 19.11.2025, by which the resolution of the board of management was placed before the State Government for its approval.

5. The contentions put forth by learned counsel appearing for the petitioners is that the respondent-university is governed under the Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya) Adhiniyam, 1958(hereinafter, referred to as Act 1958). He submits that in the year 2014, the respondent-university invited applications for appointment against the number of teaching posts in the University by issuing advertisement nos. 1/2014, 3/2014 and 5/2014 and the advertisement no. 5/2014 was for appointment on the post of Program Coordinator for Krishi Vigyan

Kendra(KVK). He added that the educational qualification was prescribed in the advertisement itself, which was approved by the Board of Management of the University, in its 150th meeting and in the agenda of Board meeting. The minimum eligibility criteria were proposed, in proposal no. 10 and was approved by the Board's Meeting and the same is still intact as that has never been assailed or revoked by any authority of law or person.

6. Further, submission is that the petitioners, who holds Master of Science in Agriculture & Horticulture degree and Doctorate in Horticulture, being fully qualified applied for consideration of the post of Program Coordinator, in furtherance to the advertisement no. 5/2014 and an interview letter was issued to the petitioners on 06.12.2014 and in furtherance thereof, they appeared before the selection committee on 23.12.2014 and the selection committee, after due consideration, recommended the name of the petitioners for appointment, which was to be placed before the Board of Management, scheduled on 31.12.2014, but a day prior to the said date, due to some complaint, the Chancellor passed the order through its Principal Secretary, whereby, the meeting of the Board of Management, which was scheduled on 31.12.2014 was kept in abeyance, until further orders and the selection proceedings were also suspended. He added that along with advertisement no. 5/2014, advertisement nos. 1/2014 & 3/2014 were also issued and in that respect, complaints were also made with respect to irregularities and corrupt practices against the then Vice-Chancellor, Professor Munna Singh, whereafter, on 05.05.2015, a three-member enquiry committee was constituted by Chancellor vider order date 05.05.2015 to conduct the

inquiry against Dr. Munna Singh and the inquiry committee so appointed, has submitted its final report, on 19.09.2016. The report was considered by the Chancellor, whereafter, on 04.10.2016, the remaining period of service of the then Vice-Chancellor of the University was terminated and on 07.10.2016, the Chancellor directed the acting Vice-Chancellor of the University to place a copy of the order dated 04.10.2016 alongwith the inquiry report dated 19.09.2016, before the Board of Management, to take appropriate decision within a period of 15 days.

7. He argued that after passing of about 11 months, while defying the order passed by the Chancellor, the decision was taken by the Board of Management and advertisement nos. 1/2014 & 3/2014 were cancelled, whereas, the advertisement no. 5/2014, in furtherance to which the selection committee had recommended the name of the petitioners for appointment, was not cancelled. He also submitted that one of the candidates, Ram Lakhan Singh, who had also appeared before the selection committee, instituted a writ petition, bearing Writ A No. 12751 of 2025, before this Court and after entertaining the writ petition, this Court had passed an interim order on 03.11.2025, for opening of the sealed cover. He submitted that the Board of Management, even after the letter written by the Chancellor on 07.10.2016, kept on sleeping over the decision regarding the recommendation of the Selection Committee, which was done in furtherance to the advertisement no. 5 of 2014 and once the order was passed by this Court for opening the sealed cover, the impugned order dated 19.11.2025 was passed, by which the recommendation of the selection committee has been cancelled,

thus, the order passed by this Court for opening the sealed cover has been violated by the authorities concerned.

8. He further argued that since Mr. Ram Lakhan Singh, the petitioner in the Writ Petition No. 12751 of 2025, was not recommended by the selection committee for appointment, as anyhow the sealed covers are opened, wherein, it was found that the petitioners were recommended for appointment in furtherance to the advertisement no. 5/2014. The present petitioners, being agrieved with the decision dated 19.11.2025 have instituted the present writ petition.

9. The contention of counsel for the petitioners is that the sole and main ground for rejecting the recommendation of the Selection Committee while taking the decision vide impugned order dated 19.11.2025 is that the petitioners do not possess the requisite qualification as is provided under the Circular file No. 1-3/2009AE-1 dated 29.03.2011 issued by the Indian Council for Agricultural Research(hereinafter, referred to as ICAR). He has drawn attention towards the circular dated 29.03.2011 issued by ICAR appended as annexure no. 16 to this writ petition and submitted that, in fact, the aforesaid circular do not have binding effect, so far as the minimum eligibility criteria for the post of Program Coordinator is concerned. In support of his contentions, he has referred Section 28(r) of Chapter 21 of the Act, 1958, which reads as under:-

"(r) the number, qualifications, emoluments and other conditions of service (including the age of retirement) of teachers and salaried officers of the University, and the preparation and maintenance of a record of their services and activities;"

10. Referring the aforesaid, he submitted that so far as the number, qualifications and other service conditions of the Teachers and salaried officers of the University is concerned, the provisions prescribes that the number of Teachers in each department and their qualifications shall be as 'recommended by the academic council and approved by the Board of Management.' He submitted that, admittedly, the Board of Management in its 150th meeting, in agenda no. 10, has placed the issue regarding the approval of the qualification criteria for direct recruitment and that too has been approved and in consonance thereof, the advertisement no. 5/2014 was published. He submitted that nothing will be valid against the provisions prescribed under the statute and if the authorities had taken decision that, since the minimum eligibility criterion and the qualification which was prescribed in the advertisement no. 5 of 2014, is against the circular of ICAR dated 29.03.2011, wherein, certain qualifications and criteria are prescribed, have not been complied with, the same goes against the provision of statute, therefore, the finding and the decision, taken as such, by the Board of Management itself is unlawful.

11. While buttress his arguments, he submitted that in fact the decision which was taken by the Board of Management after an interim order was passed by this Court on 03.11.2025, in Writ A No. 12751 of 2025, is in fact, do not stand on its own legs, as the finding which is recorded and the reasoning which have been given, are nonest and is against the law, therefore, the whole decision which was taken on 09.11.2025, canceling the recommendation of the Selection Committee, vitiates in the eyes of law. He further added that since the decision with respect to the qualification

which was approved in 150th meeting of Board of Management of the respondent-University has been reviewed in the order dated 19.11.2025, thus, the same is also against the settled proposition of law as the Board of Management could not review its own orders. He submitted that in fact the resolution which was passed in 150th meeting of Board of Management of the University has neither been revoked nor cancelled by any competent authority.

12. He has also given strength to his arguments while referring the judgment and order rendered in the case of **Mohinder Singh Gill versus Chief Election Commissioner New Delhi - (1978) 1 SCC 40** and has referred paragraph 8 of the abovesaid judgment:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to

whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

13. In addition, the counsel for the petitioners has also argued that the status of ICAR has also been decided in the judgment and order rendered in the case of **Dr. Anil Kumar Katiyar and Another Versus State of U.P. and Others** alongwith other connected writ petitions, reported in **2023 SCC OnLine All 2986**, and he has referred paragraph nos. 20, 35 and 49 of the abovesaid judgment, which are extracted as under:-

"20. Sri Ganguli has accepted during the course of his submission that this budget has been kept under a different head and State Government has nothing to do with that budget provided by the Council inasmuch as those appointed and employed on the posts of Scientist or Subject Matter Specialist at the centre (KVK) only as per the MOU and State Government has never provided any matching grant or has directed for framing any rules or regulations to otherwise provide for the service conditions of such employees. Sri Ganguli would also not dispute that Chandra Shekhar Azad Agricultural University has also not made any amendment in its first Statute which has been made applicable to the universities separately to govern the service condition of the employees like Scientist, Subject Matter Specialist and other technical staff or other regular staff working with KVK.

35. Sri Rakesh Kumar, learned Advocate appearing for the other university, namely, Chandra Shekhar Azad University in one connected matter, adopts the arguments advanced by Sri Ganguli

with a further addition that judgment in the case of Dr. Mithilesh Kumar Pandey (supra) would not apply as there in that case there was a resolution of the Board of Management of the university concerned taking such staff of the KVK at par with the faculty of university but here there is no such resolution placed before the Court.

49. Now interestingly, Division Bench has also noticed the stand of ICAR filed before the Court by means of a short counter affidavit, vide paragraphs 20, 21 and 22 of the judgment which are reproduced hereunder:

"(20) The ICAR has filed a short counter affidavit which also needs to be referred to. According to the short counter affidavit, Krishi Vigyan Kendras are established under the administrative control of a Host Organization which in this case is the University. The said short counter affidavit states that the ICAR provides cent percent financial assistance to Krishi Vigyan Kendras under the 'Salary' and 'General' heads of the annual budget and further that the service conditions of the employees of the Krishi Vigyan Kendras are to be governed by the Rules, Regulations and Policies of the respective organization. The ICAR in the said short counter affidavit has clearly stated that the University is the Host Organization and at the time of Memorandum of establishment of Krishi Vigyan Kendra, Understanding was signed between ICAR and the Host Organization according to which all staff of Krishi Vigyan Kendras shall be borne on the establishment of the Grantee (Host Organization) only. It also provides that the administrative control over the staff employed under the Scheme, shall vest in the host institution and that placement of the staff in case the project is terminated

shall be the sole responsibility of the Host Organization.

(21) Para 13 of the short counter affidavit filed by the ICAR, it has been clearly stated that staff of Krishi Vigyan Kendras are the employees of the Host Organization and not that of ICAR. Such stipulation is made in the Memorandum of Understanding signed between the ICAR and the University. The short counter affidavit further refers to a Circular of the ICAR dated 17.06.2015 according to which all staff of Krishi Vigyan Kendras shall be borne on the establishment of the Host Institution and further that the service conditions including recruitment, appointment etc. of the staff of Krishi Vigyan Kendra shall be regulated as per the Rules and Regulations of the Host Institution. In para 16 of the short counter affidavit, it has been stated that as per Circular dated 17.06.2015 issued by the ICAR, the staff of Krishi Vigyan Kendras are the employees of the respective Host Organizations and in this case, all the employees of Krishi Vigyan Kendras are the employees of the University and their service conditions such as appointment, probation, promotion, disciplinary matters, leave rules and age of superannuation etc. will be governed by the Rules and Regulations of the University. It also mentions that the age of retirement/superannuation is to be decided by the respective Host Organization. Thus, the case of ICAR is that the conditions of service including the age of superannuation will be as per the Rules applicable to the employees of the University and further that the staff working in Krishi Vigyan Kendras are the staff of the Host Organization which in this case is the University.

(22) The State Counsel has argued that the petitioners are the

employees of Krishi Vigyan Kendras and not that of the University. However, having regard to the stand taken by the ICAR and as per the Memorandum of Understanding entered into ICAR which is Funding Agency and the University, it is the Host Institute under whose control the staff of Krishi Vigyan Kendras work. As per the said Memorandum of Understanding, so far as the conditions of service of the staff of Krishi Vigyan Kendras are concerned, the same are to be governed by the Rules and Regulations applicable to the employees of the University."

14. Referring the aforesaid, the counsel appearing before the Court has admitted the legal position that ICAR's circular has not been adopted by the Board of Management of the university. He has further placed reliance on the judgment rendered in the case of **Dr. Shiv Kumar Singh versus State of U.P. and Ors.** reported in **2011 SCC OnLine All 2369** and has referred paragraph no. 11 of the aforesaid judgment, which is extracted as under:-

"11. It is settled law that if a Statute provides to do a thing in a particular manner then that thing has to be done in that very manner. In case the petitioner was not having requisite qualification as provided under the Statute or in the advertisement, certainly it would have been a case where the petitioner could be held ineligible for appointment. But here the case is different, the petitioner possess essential qualification as provided under the relevant Statute of the University and the advertisement inviting the application for the appointment on the aforesaid post of Assistant Professor. The qualification prescribed by I.C.A.R. may be there but unless it is inserted in the Statute of the

University, that can have no binding force. In the event of non insertion of the said qualification in the statute, the I.C.A.R. may take action against the University (if it is so permissible) but unless the alleged instruction of I.C.A.R. of the year 2003 (which has not even been brought on record), is inserted in the Statute, that will not vitiate the selection in question and the petitioner's right to continue on the post would be unaffected, as his selection was made as per prescribed qualification given in the Statute. The view taken by us finds support from the Division Bench judgment of this Court in the case of Prof. Chandra Prakash Jha v. Vice Chancellor, Allahabad University, (2000) (2) UPLBEC 1134: (2000 ALJ 1667) where this Court has held as under:

"It is settled law that delegated legislation is as binding as the parent legislation unless there is conflict between the two. We do not find any conflict. In fact Section 49(d) and (e) of the Act states that the statutes of the Universities can provide the terms and conditions of service of a person appointed to a post under the University. In our opinion Section 49(d) and (e) includes the power to fix the age of superannuation of the University teachers. Since the age of superannuation has been fixed by Statute 16, it can only be altered by amending the Statute. In the system of administration we have adopted from the British, the executive is subordinate to the legislature. Hence in our opinion the Central Government has no power to issue any executive order abrogating or modifying any provision in the U.P. State University Act or the statutes made thereunder. In our opinion if any direction of the U.G.C. had not been complied with by the University concerned, the U.G.C. can withhold or reduce the financial

assistance given to that university, but neither the Central Government nor the U.G.C. has any power to amend the Act or statute. Under Section 50(1) the State Government could amend the first statute made by the State Government at any time up to 31.12.1990, and the Executive Council under Section 50(2) can amend the Statute, thereafter. Under Section 50(4) the amendment in the statute has to be submitted to the Chancellor who may assent to it or withhold his assent therefrom or remit it to the Executive Council for further consideration. Hence any amendment to Statute 16.24 changing the age of superannuation of University teachers can only be done in accordance with Section 50 and by the authority mentioned in Section 50. No such amendment can be made by any other authority or, in any other manner. If Sri Upadhyaya's submission is accepted it will logically lead to the result that the Central Government or U.G.C. can issue a direction to the University not to obey or comply with the Act or statutes, and thus by an executive order the University statute (which is a piece of delegated legislation) can be abrogated or modified. We cannot accept such submission."

15. Referring the aforesaid, he submitted that the qualification if any, prescribed by the ICAR with respect to the qualification of appointment of Scientist or likewise post in the University, would have no bearing at all as the statute of the University would prevail.

16. He further emphasized on the fact that vide order dated 07.10.2016, the then Chancellor of the University, directed the payment of the entire salary together with the allowances, for the entire period of his suspension. Further added that in fact, the

inquiry committee has also not reached on unanimous or ultimate conclusion regarding the charges leveled against Mr. Prof. Munna Singh. He submitted that the Board of Management has not considered the fact that it is not the opinion of the Chairman of the Enquiry Committee which matters, but the opinions of the Members of the Committee are also valuable as the two members, as well as the chairman, gave their separate opinions/observations while concluding the inquiry proceeding. Moreso, one of the members has said nothing regarding any irregularity committed by the Vice Chancellor, Professor Munna Singh, but he has observed to this extent only that the eligibility criteria provided in the advertisement, is not in-consonance with the Circular dated 29.03.2011, of the ICAR.

17. Concluding his arguments, he submitted that since the order dated 19.11.2025 and the finding thereof is against the provisions of Act 1958, therefore, the same is liable to be quashed.

18. On the other hand, Mr. Uttam Kumar Verma, learned counsel appearing for the respondent-university has vehemently opposed the contentions of aforesaid and submitted that the advertisement no. 5/2014 was published in October 2014 and in compliance thereof, the Selection Committee was constituted, after the resolution of Board of Management, in its 150th meeting and thereafter, a complaint was received by the Chancellor, regarding irregularities committed by the then Vice Chancellor, whereafter, the Principal Secretary to the Chancellor vide letter dated 30.12.2014, issued a direction for putting the meeting of the Board of Management in abeyance which was scheduled for 31.12.2014. He

submitted that thereafter a preliminary inquiry was done and subsequently, a three-member committee was constituted, headed by a retired Judge of this Court, who submitted his report on 19.09.2016.

19. Referring the aforesaid report, he submits that one member of the committee, in the conclusion of the report, has observed that whether the charges leveled against the then Vice-Chancellor, namely, Munna Singh, were proven against him or not in the light of the documentary and oral evidences adduced during the enquiry and not beyond that and therefore, he was of firm view that he should not express any opinion on the sanctity of whole selection process, whereas, he pointed out the circular dated 29.03.2011 issued by ICAR regarding its non-compliance. He also added that each member of enquiry committee had made their separate opinion and the recommendation was, to quash the selection proceedings.

20. He further submitted that in-compliance of the aforesaid recommendation, the meeting of the Board of Management of the respondent-university was convened and decision was taken to cancel advertisement nos. 1/2014 and 3/2014, whereas, due to some mistakes, the proceedings of selection, which was done in furtherance of advertisement no. 5/2014 was not cancelled. He also submitted that the decision taken by the Board of Management is based on the decision taken by the Enquiry Committee and if the decision in the same stroke was not taken for cancelling the advertisement no. 5/2014, that is merely a fault and that does not give strength to the sanctity of the advertisement or any proceedings held thereof.

21. Adding his arguments, he submitted that once the order was passed by this Court on 03.11.2025, the meeting of the Board of Management of the University was convened and a lawful decision was taken for cancelling the recommendation of the Selection Committee. During the course of his arguments, he submitted that the Circular of ICAR is in fact of 26.04.2012 which fixes the terms and conditions with respect to the qualification for the post of Program Coordinator.

22. Referring the decision taken by the Board of Management, after the order dated 03.11.2025 passed by this Court, he submitted that there is no erroneousness or ambiguity in the decision of the Board and after thoroughly considering the pros and cons of the matter, the Board of Directors has taken decision and therefore, no interference is warranted in the same.

23. Mr. Shailendra Kumar Singh, learned Chief Standing Counsel appearing for the State submitted that though, the letter has been received by the State, which was sent by the Secretary, Board of Management of the respondent-university dated 19.11.2025, but the decision is still pending consideration.

24. Upon considering the submission of counsel for the parties, it is apparent that the petitioners have assailed the order dated 19.11.2025, by which the Board of Management of the respondent-university, has taken a decision, in-compliance of the order dated 03.11.2025 passed in Writ A No. 12751 of 2025 and on the same day, i.e. on 19/11/2025, the letter was written by Secretary of Board to the State Govt. which is also under challenge.

25. The matter before the Court is to examine the validity of the order dated 19.11.2025. This Court finds that the order dated 19.11.2025 has been passed mainly on the ground that the minimum eligibility criteria provided vide circular dated 29.03.2011 issued by the ICAR, has not been followed, rather another eligibility criterion, which has been mentioned in the advertisement, and therefore, the whole selection proceedings has been stated to be unlawful.

26. Further the decision of the enquiry committee constituted by the Chancellor has also been taken into consideration and the same has been accepted, but there is no discussion of any kind over the same, by the Board of Management of the University. In fact, during course of argument, the counsel for the respondent-university himself has submitted that it is the circular of ICAR dated 26.04.2012 which covers the field regarding the minimum qualification for appointment on the post of Program Coordinator, whereas, the Board of Management has apparently considered in this regard, the circular dated 29.03.2011, issued by the ICAR, which itself demolishes the decision of the Board of Management of the respondent-university.

27. This Court has also noticed the provisions regarding number and qualification of employees of the University, as is provided under Section 28(r) of Chapter XXI of the Act of 1958, which says that the number of Teachers in each department and their qualification, shall be recommended by the academic council which would be approved by the Board of Management. Admittedly, in the 150th meeting of the Board of Management, the agenda no, 10 was

considered and discussed and the agenda was approved with respect to the qualification which, in fact, was mentioned in the advertisement for appointment of the post of Program-Coordinator. The aforesaid resolution of the Board of Management has never been revoked or recalled by any competent authority. The circular dated 29.03.2011, rather the circular which is as per the argument of the counsel for the petitioners dated 26.04.2012, which is ought to have been considered, have been ignored by the Board of Management, therefore, there was no question so as to assume by any authority, while publishing the advertisement to prescribe the minimum eligibility criteria for the appointment of the post of Program Coordinator.

28. So far as the report of the enquiry committee, which is mentioned in the resolution of the Board, by which the advertisement no. 5/2014 has been cancelled, has only been mentioned and there is no discussion that why the Board of Management of the respondent-university is accepting the report of the Enquiry Committee, while coming to the conclusion of canceling the advertisement no. 5/2014.

29. This Court has also noted the contention of counsel for the petitioners that the Enquiry Committee has not unanimously come to the conclusion regarding the charges leveled against the petitioners, to be found proved, though, this all is the subject matter of the Board of Management to be considered.

30. The law is settled in this regard that every order has to stand on its own legs, as is prescribed in the law rendered in the case of **Mohinder Singh Gill**(supra) and that ratio covers the field of present

case as the findings recorded regarding the circular dated 29.03.2011 issued by the ICAR, stated to be applicable regarding eligibility criteria/qualifications, in the appointment of the Program-Coordinator of K.V.K. of the respondent-university, is nonest, therefore, the whole order is erroneous and ambiguous.

31. Consequently, the resolution dated 19.11.2025 sent by Secretary, Board of Management to the State Government for its approval are hereby quashed.

32. The matter is relegated back to the Board of Management of respondent-university to take, a fresh decision, in light of the aforesaid observations, within period of eight weeks, from the date of this order.

33. The decision shall be taken strictly in accordance with the provisions of the Act 1958 as well as the settled propositions of law, up till date.

34. With the aforesaid observations, the present writ petition is hereby **allowed**.

35. Till the decision is taken, no further proceedings with respect to the appointment of the post of Program Coordinator, against which the selection committee has recommended the name of petitioners for appointment, shall be done.

(2025) 12 ILRA 259

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 02.12.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ A No. 14242 of 2025

&

Writ A No. 15566 of 2025

Indra Devi

...Petitioner

Versus

State Of U.P. & Ors.

...Respondents

Issue for consideration

Whether the petitioners are bound to be suspended on the ground that they were not found in the institution at the time of inspection?

Headnotes

A. Service Law – The Right of Children to Free and Compulsory Education Act, 2009 has already promulgated by the Central Government in the year 2009 according to which right to education to the children is a fundamental right. In case teachers will not attend the institution within time it will frustrate the mandate of the Act, 2009 and the children will be deprived off from this fundamental rights guaranteed u/Article 21-A of the Constitution of India which was inserted in to the Constitution by means of the Constitution (86 Amendment) Act, 2002 which mandate every State to provide free and compulsory education to all children in the age group of 6 to 14 years. It is well known fact that in large number of primary institutions throughout the State of U.P., teachers are not attending the institution on time. It is obligation on the State to ensure imparting unbarred education to children belonging to the primary institutions. (Para 31)

B. The reverence accorded to teachers in Indian culture is not merely symbolic but reflects a deep seated recognition of their transformative role. From the ancient Gurukula system to present day educational frame work teachers have consistently carried forward the legacy of knowledge, values and ethical conduct. Any dilution of the status, dignity of teachers would have far reaching consequence not only for students but society at large. (Para 30)

In this view of the matter and also in the interest of justice, without interfering with the orders of suspension, which are under

challenge in the present writ petitions, writ petitions are disposed of with a direction to the disciplinary authority to conclude the disciplinary proceedings initiated against them most expeditiously and positively within a period of two months from the date of receipt of certified copy of this order. (Para 32)

Writ petitions disposed of. (E-4)

Case Law Cited

1. Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others, (1997) 2 SCC 534 (Para 23)
2. Andhra Kesari Educational Society Vs. Director of School Education And others, (1989) 1 SCC 392 (Para 24)
3. Sukh And Others Vs. State of Rajasthan And others, 1989 Supp (2) SCC 189 (Para 25)
4. Manager, Nirmala Senior Secondary School Port Blair Vs. N.J. Khan and others, (2003) 12 SCC 84 (Para 26)
5. Sushmita Basu and others Vs. Ballygunge Siksha Samity and others, (2006) 7 SCC 680 (Para 27)
6. Har Pal Singh and others Vs. State of U.P. and others, 2011 SCC Online All 3523 (Para 28)
7. Parimal Kumar and others Vs. State of Jharkhand and others, 2025 SCC OnLine SC 210 (Para 29)

List of Acts

The Right of Children to Free and Compulsory Education Act, 2009; The Constitution of India.

List of Keywords

suspension, inspection, teacher, fundamental right, constitution of India.

Appearances for Parties

For Petitioner(s): Harsh Narayan Singh, Prabhakar Awasthi

For Respondent(s): C.S.C., Rajesh Khare

(Delivered by Hon'ble Prakash Padia, J.)

1. Teachers are essential members of our society. They are pillars of knowledge, shaping the future of our kids-they are educators, mentors, guides, and inspirations.

2. According to Dr Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant alms, and to build the character of the students.

3. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students.

4. The aforesaid writ petitions have been filed challenging the order dated 30.08.2025 and 11.07.2025 respectively passed by the District Basic Education Officer, by which the petitioners in the aforesaid writ petitions have been placed under suspension on the ground that they were not found in the institution at the time of inspection.

5. Since the controversy involved in all the above writ petitions are similar hence these are being decided by a common order.

6. While entertaining the Writ Petition No.14242 of 2025, observations were made by this Court vide order dated 16.10.2025 that Court is flooded with the matters pertaining to the attendance and non-attendance of teachers in primary educational institutions. It was further observed that without proper attendance of teachers as well as staff of the primary institution, the purpose of the Right of Children to Free and Compulsory Education Act, 2009 will be frustrated. Ultimately the following observations were made by this Court on 16.10.2025:-

"9. The State Government has made a policy to check the institution in respect of quality teaching in the institution primary school of U.P. State as digital attendance and constituting.. Task Force at District Level and Block Level.

10. The District Magistrate and Basic Siksha Adhikari shall submit reports about the District Level Task Force and Block Level Task Force for inspection to ensure quality education.

11. For monitoring teachers' attendance, a Government Order (G.O.) regarding attendance digitalization and related work has been issued, permitting the process to be carried out digitally but the same is not on ground.

12. A self-disciplined person as a teacher, their conduct should not be regulated by any statute even then, the State Government, in respect of the absence of teachers and quality education, adopted policy. There are many cases of teachers coming to the Court due to the absence of teachers and action has been taken by the authority. On the other hand, some teachers are coming to the institution treating it not only as a job but also as a pious obligation and are teaching in the institution, so they are overburdened, and it also affects the violation of the fundamental right provided under Article 14 of the Constitution.

13. The Chief Secretary, Government of U.P., as well as the Additional Chief Secretary, Basic Education; Additional Chief Secretary of Social Welfare Department and Additional/Principal Secretary,

Minority Department, Director General of Schools Education of Government of U.P. Lucknow; Director, Basic Education, Lucknow; Additional Director, Basic Education, Prayagraj Government of U.P. and District Basic Education Officers are directed to come up with certain rules and regulations for ensuring the presence of the teachers in the institution from the beginning as well as up to the end of the period of a day which is fixed for teaching for children of poor villagers residing in rural areas. "

7. Pursuant to the order passed by this Court, instructions dated 28.11.2025 is placed before this Court by Shri Abhishek Srivastava, learned Chief Standing Counsel appearing on behalf of State-respondent, the same is taken on record. Paragraph-4 of the aforesaid instructions reads as follows:-

"4. मुख्य सचिव, उ०प्र० शासन की अध्यक्षता में सम्पन्न उक्त बैठक दिनांक 30.10.2025 में लिए गये निर्णय के क्रम में शासन के कार्यालय ज्ञाप संख्या-1/1134710/2025-68-5005/6/2025 दिनांक 06.11.2025 (छायाप्रति सलग्न) द्वारा अपर मुख्य सचिव, बेसिक शिक्षा विभाग, उत्तर प्रदेश शासन की अध्यक्षता में प्राथमिक एवं उच्च प्राथमिक विद्यालयों के अध्यापकों की उपस्थिति सुनिश्चित करने के संबंध में सुविचारित प्रस्ताव उपलब्ध कराने हेतु एक समिति का गठन किया गया। उक्त समिति की बैठक दिनांक 13.11.2025 में लिये गये निर्णय के अनुसार प्रकरण में आवश्यक कार्यवाही सुनिश्चित करायी जायेगी। उक्त बैठक से संबंधित कार्यवृत्त दिनांक 27.11.2025 संलग्न है।"

8. Pursuant to the aforesaid meeting of Committee was held on 13.11.2025 in which the following decision was taken:-

अपर मुख्य सचिव, बेसिक शिक्षा विभाग, उ०प्र० शासन की अध्यक्षता में प्राथमिक एवं उच्च प्राथमिक विद्यालयों के अध्यापकों की उपस्थिति सुनिश्चित करने हेतु गठित समिति की दिनांक 13.11.2025 को सम्पन्न बैठक का कार्यवृत्त।

उपस्थिति-उपस्थिति पत्रक संलग्न है।

मा० उच्च न्यायालय इलाहाबाद में घोषित रिट याचिका संख्या-ए 15586/2025 श्रीमती सीता सिंह चौहान बनाम उ०प्र० राज्य व अन्य तथा रिट याचिका संख्या-ए-14242/2025 श्रीमती इन्दिरा देवी बनाम उ०प्र० राज्य व अन्य में पारित आदेश दिनांक 16.10.2025 के अनुपालन में विचार-विमर्श हेतु दिनांक 30 अक्टूबर, 2025 को मुख्य सचिव महोदय की अध्यक्षता में सम्पन्न बैठक में लिये गये निर्णय के क्रम में प्राथमिक एवं उच्च प्राथमिक विद्यालयों के अध्यापकों की उपस्थिति सुनिश्चित करने हेतु गठित समिति की बैठक अपर मुख्य सचिव महोदय की अध्यक्षता में सम्पन्न हुई।

2. उक्त सम्पन्न बैठक में सचिव, माध्यमिक शिक्षा परिषद, उ०प्र० द्वारा माध्यमिक शिक्षा विभाग के विद्यालयों में प्रचलित शिक्षकों की उपस्थिति से संबंधित ऑनलाइन डिजिटल प्रणाली का प्रस्तुतीकरण किया गया। प्रस्तुतीकरण के पश्चात् विचार विमर्श के उपरान्त समिति द्वारा निम्नलिखित बिन्दुओं पर मत स्थिर किया गया:-

1. शिक्षकों को उपस्थिति हेतु विद्यालय प्रारम्भ होने से 01 घंटे का मॉर्निंग दिया जायेगा। उक्त अवधि के बाद सिस्टम लॉक हो जायेगा।
2. जिन विद्यालयों में नेटवर्क की अनुपस्थिति के कारण उपस्थिति दर्ज करने में समस्या आ रही हो वहाँ ऑफलाइन मोड में उपस्थिति दर्ज की जायेगी जो नेटवर्क आने पर ऑनलाइन डिजिटल प्रणाली में सिक हो जायेगी।
3. विद्यालय के प्रधानाध्यापक द्वारा उक्त उपस्थिति प्रणाली में उपस्थिति दर्ज की जायेगी।
4. यदि किसी प्रधानाध्यापक द्वारा उपस्थिति दर्ज करने में असमर्थता व्यक्त की जाती है तो उनसे चार्ज ले कर अन्य अध्यापक को यह जिम्मेवारी दी जायेगी।
5. किसी भी अध्यापक के विरुद्ध अनुपस्थिति के संबंध में बिना कारण बताओ नोटिस जारी किये तथा अध्यापक का पक्ष जाने किसी भी प्रकार की कोई कार्यवाही नहीं की जायेगी।
6. महाविदेशिक, स्कूल शिक्षा, उ०प्र० की अध्यक्षता में एक तकनीकी समिति का गठन किया जायेगा, जो माध्यमिक शिक्षा विभाग के विद्यालयों में शिक्षकों के उपस्थिति से संबंधित ऑनलाइन डिजिटल प्रणाली बेसिक शिक्षा विभाग में लागू किये जाने हेतु आवश्यक डिजिटल प्लेटफॉर्म तैयार करेगी।
7. अल्पसंख्यक कल्याण विभाग एवं समाज कल्याण विभाग शिक्षकों की उपस्थिति से संबंधित उपर्युक्त व्यवस्था को अपनाने के लिये सचिव है। यदि वे चाहें तो इससे इतर व्यवस्था अपना सकते हैं।

अन्त में बैठक सभ्यव्यवहार सम्पन्न हुई।

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ANAND KUMAR SINGH
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उप सचिव

9. In this view of the matter, it is argued that policy decision has already been taken by the State-Government to prepare the policy for digital attendance of teaching and non-teaching staff in the primary institution.

10. Heard learned counsel for the petitioner, Sri Abhishek Srivastava, learned Chief Standing Counsel for the respondent-State and Sri Rajesh Khare, learned counsel for the respondent no.3-District Basic Education Officer, Banda as well as Sri Hare Ram Tripathi, learned counsel for the respondent-Basic Education Officer, Etawah in the connected writ petition.

11. Importance of teacher (Guru) as has been mentioned in the Brahmanda Puran reads as follows:-

"Guru is Shiva sans his three eyes,

*Vishnu sans his four arms
Brahma sans his four heads.*

He is parama Shiva himself in human form"

12. Guru is the God, say the scriptures. Indeed, the guru in the Vedic tradition is looked upon as one not less than God. "Guru" is an honorific designation for a preceptor, or teacher, as defined and explained variously in the scriptures and ancient literary works, including the epics; and the Sanskrit term has been adopted by English, as well. The Concise Oxford Dictionary of Current English defines a guru as "Hindu spiritual teacher or head of religious sect; influential teacher, revered mentor." The term is well known around the world, used to refer to a teacher of particular skill and talent.

13. Scriptural definitions aside, gurus are quite real more so than the gods of mythology. Basically, the guru is a spiritual teacher leading the disciple on the path of "god-realization." In essence, the guru is considered a respected person with saintly qualities who enlightens the mind of his disciple, an educator from whom one receives the initiatory mantra, and one who instructs us in rituals and religious ceremonies.

14. The Vishnu Smriti and Manu Smriti contains regards to Acharya (teacher), along with the mother and the father, as the most venerable gurus of an individual. According to Deval Smriti, there can be eleven kinds of gurus, and according to Nama Chintamani, ten. Depending on his functions, the guru is categorized as rishi, acharyam, upadhyaya, kulapati or mantravetta.

15. The Upanishads have profoundly underlined the role of the guru. Mundak Upanishad says that to realize the supreme godhead holding samidha grass in his hands, one should surrender himself before the guru who knows the secrets of Vedas.

16. Spiritual works, his sphere of instruction soon included subjects like **Dhanurvedya (archery)**, **Arthashastra (economies)** and even **Natyashastra (dramatics)** and **Kamashastra (sexology)**.

17. Such was the ingenuity of the all-pervading intellect of the ancient Acharyas that they included even shastra, like thievery, Shudrakar's celebrated play. Mricchakatikam tells the story of Acharya Kanakashakti, who formulated the Chaurya Shastra, or the science of thievery, which was further developed by gurus such as

Brahmanyadeva, Devavrata, and Bhaskarnandin.

18. Gradually, the institution of Gurukula, or in-forest-hermitage became a system in which where disciples learned at the feet of guru for long years. The great urban universities at Takshashila, Vikramashila, and Nalanda essentially evolved from these tiny gurukulas tucked away in deep woods. If we have to believe the records of Chinese travelers who visited Nalanda at that time, around 2700 years ago, there were more than 1,500 teachers teaching various subjects to more than 10,000 students and monks. These great universities were as prestigious in their time as Oxford or MIT universities are today.

19. Ancient scriptures and literary works make many references to gurus as well as their disciples.

20. The most popular legend, found in the Mahabharata, is the story of Ekalavya, who, after being rejected by the teacher, Dronacharya, went into the forest and made a statue of his teacher. Treating the statue as his guru, with great devotion Ekalavya he taught himself the art of archery, soon exceeding the skills of even the guru himself.

21. In the Chandogya Upanishad, we meet an aspiring disciple, Satyakama, who refuses to tell lies about his caste in order to get an admission in the gurukula of Acharya Haridrumat Gautam.

22. And in the Mahabharata, we come across Karna, who did not bat an eyelid while telling Parashurama that he belonged to the Bhrgu Brahmin caste, just in order

to obtain the Brahmastra, the supreme weapon.

23. Apart from the same, the functioning of teacher and importance of teaching has been dealt with from time to time in large number of cases which can be seen in the observations of the Hon'ble Apex Court. In the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others** reported in (1997) 2 Supreme Court Cases 534 held that the success of the educational process depends considerably on the teacher, the teacher is the primary functionary to transmit the intellectual and ethical values to the young. He should encourage the attitude of free enquiry and rational reflections. The relevant portion of the aforesaid judgment namely paragraph nos.9 to 11 reads as follows:-

"9. On the functions of a teacher, at p. 133, according to Dr Radhakrishnan, the success of the educational process depends considerably on the teacher, for it is the teacher who has to implant alms, and to build the character of the students. According to Laski, at bottom of the education, the quality of a university is always in direct proportion to the quality of its teacher. A good teacher is one who knows his subject, is enthusiastic about it and one who never ceases to learn. Communication with the students and sense of commitment to his work are necessary. A good teacher, therefore, according to Dr Radhakrishnan, is one who is objective, just, humble and is open to correction. According to Whitehead the teacher must be a self-confident learned man. The teacher, therefore, is the primary functionary to transmit the intellectual and ethical values to the young. He should encourage the attitude of free enquiry and

rational reflections. The teacher should try to remove the leaden weights of pride and prejudice, passion and desire which are likely to cloud a student's vision. The devoted teacher is not only concerned with the child's intellectual development but also has the obligation to attend to his moral, emotional and social growth as well.

10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them". Shri Aurobindo has stated that "it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks". Dr S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?" Swami Vivekananda had stated that "the student should live from his very boyhood with one whose character is a blazing fire and should have

before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis".

11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional Ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of

the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by a teacher."

24. The Role of teacher has again been reiterated by the Hon'ble Apex Court in paragraph-20 of the judgment in the case of **Andhra Kesari Educational Society Vs. Director of School Education And others** reported in (1989) 1 Supreme Court Cases 392. Paragraph-20 of the aforesaid judgment reads as follows:-

"20. Before parting with the case, we should like to add a word more. Though teaching is the last choice in the job

market, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the "engine" of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of everchanging conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration."

25. In the case of **Sukh And Others Vs. State of Rajasthan And others** reported in **1989 Supp (2) Supreme Court Cases 189**, it was held that the primary school teachers are of utmost importance in developing a child's personality in the formative years. Paragraph-7 of the aforesaid judgment, reads as follows:-

"7. These observations are equally relevant to primary school teachers with whom we are concerned. The primary school teachers are of utmost importance

in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers. We are, therefore, unable to give any relief to the petitioners."

26. Hon'ble Apex Court in the case of **Manager, Nirmala Senior Secondary School Port Blair Vs. N.J. Khan and others** reported in **(2003) 12 Supreme Court Cases 84** has held that a teacher affects eternity and Educational institutions are temples of learning. Paragraph Nos.1, 2 and 10 of the aforesaid judgment reads as follows:-

"1. A teacher affects eternity. He can never tell where his influence stops; said Henry Adam. Any educational institution for its growth and acceptability to a large measure depends upon the quality of teachers.

2. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of

teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.

*10. The allegations made against respondent Khan are no doubt of a very serious nature and certainly if proved, do not befit a teacher. The clay-like minds of young children are shaped into beautiful moulds by teachers. They shape the future course of the students. To a great measure their behaviour, character, reputation leave imprints in the minds of the young children. If their conduct, behaviour and reputation is full of blemish that would not be for the interest and in the welfare of the students. Respondent Khan has denied the allegations and has alleged bias. But we do not think it necessary to apine one way or the other. Whatever be the truth, the undisputed fact is that the litigation has continued unabated for long years. It would neither be in the interest of respondent Khan nor the institution if respondent Khan is continued in the institution. By making this observation, it is not to be construed as if we have found the allegations to be true. On the contrary, the welfare of the institution, the reputation of respondent Khan has been considered by us in the proper perspective. If an act or omission of an employee reflects upon his character, reputation,. Integrity or devotion to duty or is an unbecoming act, certainly the employer can take action against him. In this context, reference may be made to the following observations of Lopes, C.J. in *Pearce v. Foster* (QBD at p. 542):*

"If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to

my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant."

*This view was reiterated by a three-Judge Bench of this Court in *Union of India v. K.K. Dhawan* reported in (1993) 2 SCC 56 and *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* reported in (2003) 4 SCC 579."*

*27. In the case of **Sushmita Basu and others Vs. Ballygunge Siksha Samity and others** reported in (2006) 7 Supreme Court Cases 680 it was held that the profession of teaching is a noble profession and teacher fulfils a great role in the life of the human. He is the "Guru". Paragraph-5 of the aforesaid judgment reads as follows:-*

"We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the "guru". It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the

cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students, former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice."

28. In the case of ***Har Pal Singh and others Vs. State of U.P. and others*** reported in **2011 SCC Online All 3523**, it has been held by the Division Bench of this Court that from time immemorial in our Indian Culture and society a teacher has been the most revered person. Paragraph Nos.1 to 7 of the aforesaid judgment reads as follows:-

"1. From time immemorial in our Indian culture and society a teacher has been the most revered person, which would be seen from the following verse:

*"Gurur brahma Gurur vishnu
Gurur devo maheshwara Guru sakshat
parabrahma tasmai shri gurave namaha
akhandamandalakaram yena characharam
vyaptam darshitam yena tasmai shri gurave
namaha" tat padam*

2. When translated in English it means

*"Guru is Brahma Guru is Vishnu
Guru is Shiva. The true Guru is the
Highest, formless God. I prostrate before
the holy Guru. The unbounded is the
endless canopy of the sky, the omnipresent*

*in all creation, both animate and inanimate
I bow to Sri Guru who reveals to us the
ultimate reality"*

3. The famous saint Kabir in the 15 Century eulogised the teacher the following couplet

*"Guru Govind dou khade, kaake
laagoon paye Balihari guru aapki, Govind
diyo milaye."*

4. When translated in English it means:

*"I face both God and my guru.
Whom should I bow to first?"*

5. I first bow to my guru because he's the one who showed me the path to God

6. However, the question that arise in these appeals is whether the teachers who have been placed in such an exalted position justify the faith entrusted in them even in the current century or whether they have fallen prey to selfish individual interests and seek personal gains through administrative jobs which are no part of their teaching assignments

7. From the aforesaid, it would be seen that in our society teachers are placed on a higher pedestal than even God. However, in this 21 Century, some of the teachers, who occupy an exalted position in our society, have forgotten their duties as a teacher and instead want to hold and continue the administrative post while retaining their position as a teacher. The present appeals are a glaring example of the downfall of the standard professed by teachers in our country. We hasten to add that by this we do not mean that all

teachers are indulging in such activities, majority of them do not."

29. In the case of **Parimal Kumar and others Vs. State of Jharkhand and others** reported in **2025 SCC OnLine SC 210** it was again held that the role played by a teacher, especially when dealing with students in primary schools, is of utmost importance. Relevant paragraphs namely paragraph nos.2, 3 & 7 of the aforesaid judgment reads as follows:-

"2. As the case pertains to selection of Assistant Teachers, I wish to add a few lines regarding importance of their role in nation building They are to teach in Primary and Upper Primary Schools ie. upto Class VIII. The role played by a teacher, especially when dealing with students in primary schools, is of utmost importance. Teachers educate the young minds, much like sculptors shaping clay, to mould them into better human beings The, imprint a teacher leaves on the minds of their students is everlasting.

3. The status of a teacher is well said in the Sanskrit verse taken from Guru Gita which is said to be part of Visvasaratantra. from Uttarakhand of Skandapurana. The same is reproduced hereunder.

*"Gurur Brahma Gurur Vishnu,
Gurur Devo Maheshwara; Gurur Sakshat
Param Brahma, Tasmai Shri Gurave
Namah"*

This Shloka refers to the Guru as none other than Brahma The creator, Vishnu-The sustainer and Shiva-The destroyer, since the Guru creates, sustains knowledge and destroys ignorance. By doing so he liberates the disciple from the

ocean of samsara, from the trap of Maya, thereby attaining Moksha. For this, we bow down with utter humility and total gratitude to the Guru. (Source Guru Gita which is said to be part of Visvasaratantra from Uttarakhand of Skandapurana).

7. The importance of a teacher as narrated by Pandit Mohan Malaviya (the founder of the Banaras Hindu University) was highlighted in the following lines:

...It lies largely in his teacher's hand to mould the mind of the child who I father of the man. If he is patriotic and devoted to the natiopal cause and realizes his responsibility, he can produce a race of patriotic men and women who would religiously place the country above the community and national gain above communal advantage."

30. From perusal of the aforesaid, it is clear that time and again importance of teacher (Guru) has been dealt with in the Hindu Literature and by the Hon'ble Apex Court. The reverence accorded to teachers in Indian culture is not merely symbolic but reflects a deep seated recognition of their transformative role. From the ancient Gurukula system to present day educational frame work teachers have consistently carried forward the legacy of knowledge, values and ethical conduct. Any dilution of the status, dignity of teachers would have far reaching consequence not only for students but society at large.

31. It is well known fact that in large number of primary institutions throughout the State of U.P., teachers are not attending the institution on time. It is obligation on the State to ensure imparting unbarred education to children belonging to the primary institutions. The matters are

coming every day before this Court in which allegations were made against the teachers and headmasters of the institution to the effect that they are not attending the institution within time. The Right of Children to Free and Compulsory Education Act, 2009 has already promulgated by the Central Government in the year 2009 according to which right to education to the children is a fundamental right. In case teachers will not attend the institution within time it will frustrate the mandate of the Act, 2009 and the children will be deprived off from this fundamental rights guaranteed under Article 21-A of the Constitution of India which was inserted in to the Constitution by means of the Constitution (86 Amendment) Act, 2002 which mandate every State to provide free and compulsory education to all children in the age group of 6 to 14 years.

32. In this view of the matter and also in the interest of justice, without interfering with the orders of suspension, which are under challenge in the present writ petitions, writ petitions are **disposed of** with a direction to the disciplinary authority to conclude the disciplinary proceedings initiated against them most expeditiously and positively within a period of **two months** from the date of receipt of certified copy of this order.

33. A further mandamus is issued to the respondent no.1 namely **Special Secretary, Basic Education, State of U.P. at Lucknow** to take a policy decision and also to take all possible steps for ensuring the presence of teachers in school within time. The aforesaid decision be taken by the Respondent No.1 most expeditiously and positively within a period of 3 months from today.S

(2025) 12 ILRA 270
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.12.2025

BEFORE

THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.

Writ A No. 17615 of 2025
 &
 Writ A No. 18573 of 2025

Km. Dimple Singh & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Issue for consideration

Whether for appointment to the post of Headmaster, the teaching experience must mandatorily be experience gained in the post of Assistant Teacher alone, or whether 'teaching experience' simplicitor including experience acquired as a part-time instructor can be treated as valid experience for the purpose of eligibility?

Headnotes

A. Service Law – Right of Children to Free and Compulsory Education Act, 2009: Schedule-1(b)(3)(ii) of Section 19; U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers), Rules 1978 (Seventh Amendment) Rules, 2019: Rule 4(2).

Eligibility conditions prescribed under the statutory recruitment rules must be strictly construed and scrupulously followed. Neither the appointing authority nor the court can dilute, relax, or substitute the essential qualifications unless such power is expressly conferred by the rules themselves. The purpose behind prescribing teaching experience for the post of Headmaster is to ensure administrative efficiency, academic leadership, and familiarity with institutional responsibilities acquired through regular service. (Para 37)

Contractual or irregular engagements do not confer parity with regular appointees nor entitlement to be treated alike for service benefits. (Para 42)

In present case, it is evident that if the recruitment rules specifically require teaching experience as an Assistant Teacher in regular service, experience acquired merely as a part-time instructor lacking the attributes of permanency, administrative responsibility, and regular academic engagement cannot be treated as valid compliance with the eligibility criteria. To hold otherwise would amount to rewriting the rules, which is impermissible in law. (Para 39)

B. The principle of equivalence cannot be presumed. When statutory rules prescribe specific qualifications, the same cannot be relaxed on equitable considerations, and appointments made contrary thereto are unsustainable in law. Experience must be of the nature and character contemplated by the rules, and experience gained in any other capacity cannot be treated as equivalent unless the rules so provide. (Para 38, 41, 47)

The duties discharged by part-time instructors are restricted in scope and duration and cannot be equated with the comprehensive academic, evaluative, and administrative responsibilities entrusted to Assistant Teachers. In the absence of any provision under the Rules, 1978, expressly recognizing part-time service as equivalent to regular teaching service, such experience cannot be imported to satisfy the eligibility requirement for appointment to the post of Headmaster. (Para 40, 44, 51)

Even otherwise, under the notification / GO dated 19.02.2021, applications were invited only from those candidates who possessed a minimum of five years' teaching experience as an Assistant Teacher, such experience being a mandatory and essential qualification for consideration for appointment on the post of Headmaster. Thus, the rule of the game has not been changed in the midst of the selection proceedings. (Para 49)

C. The expression 'teaching experience' occurring in Rule 4 of the Rules of 1978,

as amended in 2019, unequivocally refers to experience acquired while serving as a duly appointed teacher in a recognized Junior High School of Senior Basic School, forming part of the regular teaching cadre. Experience gained in any other capacity, including as a part-time instructor does not satisfy the statutory requirement prescribed under the rules and cannot be taken into consideration for appointment to the post of Headmaster. (Para 43, 52)

Writ petition dismissed. (E-4)

Case Law Cited:

1. Sadanand Singh Vs. State of U.P. Thru Secy & Ors., Writ-A No. 6419 of 2013, Decided on 10.12.2018 (Para 17)
2. Bhatiya & Others Vs. State of U.P. & Others Writ-A No. 2842 of 2010 (Para 17)
3. Ram Darash Yadav Vs. State of U.P. & Others, Civil Misc. Writ Petition (A) No. 64307 of 2015 (Para 23)
4. P.M. Latha and another Vs. State of Kerala and others, (2003) 3 SCC 541 (Para 38)
5. Yogesh Kumar and others Vs. Government of NCT Delhi and others, (2003) 3 SCC 548 (Para 38)
6. P. Mahendran and others Vs. State of Karnataka and others, (1990) 1 SCC 411 (Para 41)
7. State of Rajasthan and others Vs. Jagdish Chopra, (2007) 8 SCC 161 (Para 41)
8. Chairman, LIC and others Vs. A. Masilamani, (2013) 6 SCC 530 (Para 42)
9. State of Rajasthan Vs. Kunji Raman, (1997) 2 SCC 517 (Para 42)
10. Secretary, State of Karnataka and others Vs. Umadevi and others, (2006) 4 SCC 1 (Para 42)

List of Acts

Right of Children to Free and Compulsory Education Act, 2009 (Parliamentary Act No. 35 of 2009); U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers), Rules 1978; U.P. Basic Education (Teachers) Services Rules, 1981.

List of Keywords

appointment, teacher, part time instructors, recruitment, qualification, eligibility

Appearances for Parties

For Petitioner(s): Siddharth Khare, Sr. Advocate

For Respondent(s): C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Mr. Abhishek Srivastava, learned Chief Standing Counsel has filed Short Counter Affidavit, which is taken on record. Learned counsel for the petitioners does not propose to file rejoinder affidavit to the said short counter affidavit.

2. There are thirteen petitioners in Writ-A No. 17615 of 2025 and three petitioners in Writ-A No. 18573 of 2025. Controversy involved in both the writ petitions is similar, hence, they are being decided by this common judgement.

3. The petitioners have approached this court with a prayer to quash the prescribed format of the experience certificate, contained in Appendix-3 to the Circular dated 03.11.2025, insofar as it insists upon experience as Assistant Teacher/ Headmaster, and further to treat the petitioners as fully eligible in terms of notification dated 04.12.2019 permitting them to participate in the remaining process of selection.

4. Placing the facts of the case, learned counsel for the petitioners submits that the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (Parliamentary Act No. 35 of 2009), making provisions for free and compulsory education for all children up to the age of 14 years. For the implementation of the said Act, a Government Order dated 31.01.2013 was issued. Pursuant thereto, the District Basic Education Officers of the concerned districts published an

advertisement inviting applications from eligible candidates for appointment as Part Time Instructors. Being eligible for the said posts, the petitioners applied and were appointed as part-time Instructors in view of the Schedule-1(b)(3)(ii) of Section 19 of the Act of 2009, wherein part-time instructors for teaching Art Education, Health and Physical Education and Work Education were to be appointed for teaching Classes 6 to 8 in schools having more than 100 students.

5. The details of initial appointment of the petitioners in Writ-A No. 17615 of 2025, as part-time instructors, are: petitioner nos. 1 and 8 were granted appointment in District Sultanpur, petitioner no. 02 in District Bhadohi, petitioner nos. 3 and 4 in District Basti, petitioner no. 5 in District Varanasi, petitioner no. 6 in District Muzaffarnagar, petitioner no. 7 in District Barabanki, petitioner no. 9 in District Kaushambi, petitioner no. 10 in District Kushinagar, petitioner no. 11 in District Meerut, petitioner no. 12 in District Jaunpur and petitioner no. 13 was offered appointment in District Saharanpur. The appointment letters were issued to them on different dates in the months of June, July and September, 2013, pursuant to which the petitioners joined their respective places of postings. The petitioner nos. 1, 3 and 8 were appointed in the subject of Work Education, while others (petitioner nos. 2, 4, 5, 6, 7, 9, 10, 11, 12 & 13) were granted appointment in Art Education.

6. The petitioners in Writ-A No. 18573 of 2025 were granted appointment in the subject of Art Education. Appointment letters to petitioner nos. 1 & 2 were issued on 23.02.2013 and order of appointment

was issued to petitioner no. 3 on 25.02.2013.

7. As the appointment of the petitioners was in accordance with the stipulations contained in the Government Order dated 31.01.2013 for a period of 11 months, annual extension was granted to each of them and accordingly extension orders in respect to each petitioner were issued for every year succeeding 2013-14. Since then the work and conduct of the petitioners have been satisfactory and there was no complaint against them. Although the petitioners were treated as part time instructors but they discharged full time duties in their respective schools. Apart from teaching the subject for which they were appointed, they were also required to teach other subjects to the students.

8. Furthermore, in addition to teaching, the petitioners were also required to discharge other duties pertaining to elections as booth level officers/ polling officers, duties relating to different categories of surveys conducted under various Government Orders as well as duties with regard to Summer Camp for the students.

9. The petitioners were paid salary for 11 months every year. The salary for 15 days for the month of December and 15 days salary for June stood deducted. They were paid monthly emoluments of Rs. 7,000/- which were subsequently increased to Rs. 9,000/- per month. Accordingly, the petitioners, who were appointed as part-time instructors since the year 2013 and are continuing till date, their services have been renewed after a period of every 11 months as stipulated in the Government Order dated 31.01.2013.

10. The recruitment of teachers and headmasters is governed by the provisions of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers), Rules 19782 as amended on 04.12.20193. By the said amendment, Rule-10 has been substituted and as per the amended Rule-10, the Management of each institution is required to intimate the number of vacancies to the Director of Education (Basic), who is required to issue an advertisement in at least two leading/ widely circulated daily newspapers, inviting online applications from the candidates possessing the prescribed educational and trainings qualification. The selection process requires a recruitment examination to be conducted by the authority, as may be specified by the State Government, on the basis of which the result is prepared and the same is sent by the Director of Education (Basic) to the Basic Education Officer after allotment of district/ school for appointment.

11. Pursuant to the aforesaid provisions, the State Government issued an order dated 19.02.2021, notifying the Junior High School Headmaster/ Assistant Teacher Recruitment Examination, 2021. As per Clause-2 of the said Government Order, the Examination Regulatory Authority, U.P., Prayagraj was specified as the examination body and the procedure for the examination was also specified. Pursuant to the said Government Order, an advertisement was issued by the Examination Regulatory Authority, inviting applications from eligible candidates. The petitioners also applied for the posts of Assistant Teacher as well as Headmaster and participated in the written examination held on 17.10.2021. The result of the written examination was declared on

15.11.2021, wherein all the petitioners qualified for being appointed on the post of Headmaster.

12. Due to some litigation, a revised result was published on 06.09.2022, wherein also all the petitioners were shown as qualified in the written examination. Thereafter, the petitioners awaited the finalization of the selection proceedings. On 03.11.2025, the Director of Education (Basic) proceeded to issue a circular letter notifying the schedule for completion of the remaining steps in the procedure for selection, according to which all candidates, declared successful in the written examination, were required to fill up online application forms between 15.11.2025 to 05.12.2025 and were also required to upload the documents specified in the circular. One of the documents required for uploading was an experience certificate certified by the Basic Shiksha Adhikari in the prescribed format contained in Appendix-3 of the circular dated 03.11.2025.

13. The format specified in the Appendix-3 requires certificate of experience on the post of Assistant Teacher. The petitioners are aggrieved by the specification of the requirement of experience as Assistant Teacher / Head Master as specified in the format for experience certificate as the same is in conflict with the eligibility prescribed under the Rules, 1978, as originally existing and as per the amended Rules 2019.

14. Rule-4 of the Rules, 1978, as amended in the year 2019, specifies the minimum qualification for the post of Headmaster, which requires five years of teaching experience in a recognized Junior

High School or Senior Basic School run by the U.P. Basic Education Board. Each petitioner possesses teaching experience as envisaged under Rule-4, however, the impugned circular has been issued specifying teaching experience to be possessed in the capacity of Assistant Teacher/ Head Master, which is not envisaged under the Rules, 1978, as amended in the year 2019.

15. Learned Counsel for the petitioners contends that the condition contained in the impugned circular requires experience in the capacity of Assistant Teacher// Head Master though it is not envisaged under Clause-4 of the Government Order dated 19.02.2021. There exists no rational justification for incorporating a further condition of experience having been required in the capacity of Assistant Teacher/ Head Master by prescribing a format in which the experience certificate is required to be submitted as per Rule-4 of the Rules, 1978, as amended in the year 2019, as well as Clause 4 of the Government Order dated 19.02.2021.

16. Learned Counsel for the petitioners further contends that incorporating additional condition by specifying a format of experience certificate notified in the circular dated 03.11.2025 amounts to a change in the rules of the game in the midst of the selection proceedings, for which there exists neither any rational justification nor any authority of law.

17. Placing reliance on a judgement of a Coordinate Bench of this Court in the case of **Sadanand Singh v. State of U.P. Thru Secy & Ors.**⁴, learned counsel for the petitioners submits that the claim of the

petitioners cannot be excluded *en masse* in absence of any specific stipulation as to teaching experience being in the capacity of Assistant Teacher. Placing reliance on another judgement of a Coordinate Bench of this Court dated 15.07.2010 passed in the case of **Dr. Deepak Bhatiya & Others v. State of U.P. & Others**⁵, learned counsel for the petitioners contends that part time instructors (petitioners) cannot be excluded *en masse* only on the basis of not possessing teaching experience as Assistant Teacher as per the prescribed qualification i.e., only five years teaching experience which requires no specification, being that of possessing experience as an Assistant Teacher.

18. Learned counsel for the petitioners further submits that the specification of requirement of experience as an Assistant Teacher in the required format, is an administrative direction which has been supplemented in an arbitrary manner, wrongly interpreting Rule-4 of the Rules, 1978, as amended in the year 2019.

19. Mr. Abhishek Srivastava, learned Chief Standing Counsel assisted by Sri Shailendra Singh, learned counsel for the State submits that the person to be appointed as Teacher in a Primary/Upper Primary School must possess the minimum qualifications as per the provisions of notification of the NCTE dated 23.08.2010, as amended on 29.07.2011. He further submits that the said qualifications have also been incorporated in the U.P. Basic Education (Teachers) Services Rules, 1981 and U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions of Service of Teachers) Rules, 1978.

20. It has further been contended by learned Chief Standing Counsel that under

the Schedule to the RTE Act, 2009, the post of Teacher is distinct from that of Instructor. For Classes 1st to 5th in the said Schedule, there is no requirement for appointment of any part-time instructor. On the other hand, for Classes 6th to 8th where the number of students in a school is less than 100, there is likewise no requirement for appointment of any part time instructor and in Junior High Schools where the number of students exceeds 100, apart from a full time head teacher, Part Time Instructors for the subjects of Art Education, Health and Physical Education and Work Education are to be appointed, therefore, Part Time Instructors constitutes a separate category of posts which is clearly distinct from the post of a Teacher and even a part time instructor has not been recognised as a Teacher under the provisions of the RTE Act, 2009.

21. He next contends that the appointment of the part time instructors in the State of U.P. was made on a contractual basis in terms of the Government order dated 31.01.2013, wherein Clause 1(7) of the said Government Order prescribes the minimum educational qualifications for appointment on the post of Part Time Instructor, namely, High School, Intermediate, Graduation and a Professional Degree/Diploma in the related subject. The said qualifications are entirely different from the qualifications which is required for appointment on the post of Teacher for which a two-year Diploma in Elementary Education known as B.T.C. along with T.E.T. Certificate are mandatory, while for appointment on the post of Part Time Instructor, the candidate was not required to possess the said minimum qualifications, thus, a part-time instructor is entirely different from a Teacher and also lacks the minimum

qualifications for being appointed as Assistant Teacher/ Headmaster, therefore, the work experience as a part-time instructor cannot be counted equivalent to the teaching experience of an Teacher appointed under the provisions of RTE Act, 2009. Even the duties of Teachers as defined under Section 24 of the RTE Act, 2009 are entirely different from those of a part time instructor, hence by no stretch of imagination, it can be said that the part time instructors were working at par with that of teacher.

22. It is further contended by learned counsel for the State that circular dated 3.11.2025 and the format provided therein which has been prescribed by the authority is in consonance with Rule 4(2) of Rule, 1978 (Seventh Amendment) Rules, 2019 and there is no conflict between them. Since the part-time instructors were not appointed against the post of teachers, therefore, they cannot take any benefit of their work discharged as part-time instructors for being appointed to the post of Headmaster as regards the teaching experience of minimum five years is required as per the Rule 4(2) of the Rules, 1978 (Seventh Amendment) Rules, 2019.

23. Learned counsel for the respondents contends that a Division Bench of this Court in **Civil Misc. Writ Petition (A) No. 64307 of 2015**⁶, by judgment and order dated 12.09.2025 has observed that when Rules contemplate teaching experience for a specified period, it means that experience must be in a post held for full time. The operative portion of the said order is as under:

"40. As a Guest Lecturer, petitioner was required to attend assigned lectures. For each lecture prescribed

amount was payable. As per G.O. dated 4.7.1998, Rs. 150/- per lecture was payable, subject to maximum payment of Rs. 3000/- per month. Meaning thereby, no person could have been engaged to deliver more than 20 lectures in a month. Petitioner actually delivered 1307 lectures in a period of about 6 years i.e. about 18 lectures per month were delivered by him. It is not pleaded anywhere in the entire writ petition that a Lecturer regularly appointed in a Medical College is supposed to deliver only 18 or 20 lectures in a month and not more than that. It is also not pleaded that teaching work of a regularly appointed "Lecturer" is confined only to deliver lectures and nothing more than that. When experience is talked in terms of "period", it cannot be equated with certain number of Lectures rendered in certain period for the reason that such an interpretation if accepted, even if a Guest Lecturer may have delivered or engaged for delivering one or two lectures in a month but has continued so engaged for a length of time, he can also claim to have gained requisite "Teaching Experience". This interpretation would be clearly a travesty and mockery to the purpose of which requirement of "Teaching Experience" has been provided. When Rules contemplate "Teaching Experience" of a particular period, it means that experience must be in a post held for full time. Experience acquired by rendering requisite "Teaching work" which a regular teacher is required to perform. It cannot be equated with occasional or fortuitous engagement of a person to deliver lectures otherwise it would also amount to treating unequals as equal. Moreover, requirement under advertisement is consistent with requirement of such "experience" under Regulations, 2013. We are inclined to give an interpretation in favour of the qualification advertised and not as

contemplated by petitioner. Hence it cannot be said that petitioner has been wrongly held ineligible for consideration for appointment to the post of Principle SHMC pursuant to advertisement under challenge."

24. The learned Chief Standing Counsel further contends that once the part-time instructors were not working on the posts of Teachers either part time or full time, therefore, any interpretation of expression 'teaching experience' as mentioned in Rule 4(2) of the Rules of 1978 would amount to treating unequals as equal and would be violative of Articles 14 and 16 of the Constitution of India.

25. I have heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Siddharth Khare, Mr. Navneet Kumar Srivastava, learned Advocate holding brief of Mr. Chandan Kumar Chaturvedi, learned counsel for the petitioners, and Mr. Abhishek Srivastava, learned Chief Standing Counsel assisted by Mr. Shailendra Singh, learned Standing Counsel appearing for the State.

26. The petitioners claim to be considered for recruitment to the posts of Headmaster /Assistant Teacher in Junior High Schools notified by the Government order dated 19.02.2021, wherein it is stipulated that the selection/recruitment will be in accordance with Rule-10 of the Rules of 1978, as amended on 04.12.2019. The condition stipulated in the said Government order for the selection on the post of Headmaster requires five years teaching experience as an Assistant Teacher. Relevant part of the said Government order is being reproduced herein below:

"प्रधानाध्यापक प्रधानाध्यापक के पद पर चयन हेतु दो प्रश्न प्रश्न होंगे। प्रथम प्रश्न पत्र 150 अंकों का वही प्रश्न पत्र होगा जो सहायक अध्यापक हेतु निर्धारित प्रश्न पत्र होगा। उक्त प्रश्न पत्र सहायक अध्यापक / प्रधानाध्यापक दोनों पदों हेतु अनिवार्य होगा क्योंकि सहायक अध्यापक के पदों पर चयन हेतु 05 वर्ष सहायक अध्यापक के रूप में अध्यापन अनुभव की अनिवार्यता है। अतः प्रधानाध्यापक के पद पर नियुक्त होने वाले अभ्यर्थियों को शिक्षा विभाग से सम्बन्धित विभिन्न अधिनियमों, नियमों, शासनादेशों, शिक्षा विभाग से सम्बन्धित गठित विभिन्न आयोगों / समितियों एवं उनकी संस्तुतियों, शिक्षा नीतियों के सम्बन्ध में विभागीय कार्यक्रमों तथा योजनाओं एवं प्रबंधन के संदर्भ में भी ज्ञान होना अनिवार्य है।..."

27. The Clause-4 of the impugned circular dated 03.11.2025 requires the candidates selected in the written examination to fill up application forms. Clause-4 of the circular is quoted below:

"4. अभ्यर्थी द्वारा जिस विषय में अशासकीय सहायता प्राप्त जूनियर हाईस्कूल सहायक अध्यापक चयन परीक्षा वर्ष 2021 (संशोधित परीक्षा परीणाम दिनांक 06.09.2022) उत्तीर्ण की गयी है को केवल एक ही आवेदन पत्र भरना होगा।

यदि किसी अभ्यर्थी द्वारा सहायक अध्यापक जूनियर हाईस्कूल चयन परीक्षा वर्ष 2021 में सहायक अध्यापक एवं प्रधानाध्यापक संशोधित परीक्षा परीणाम दिनांक 06.09.2022 द्वारा उत्तीर्ण की गयी है, को पृथक-पृथक सहायक अध्यापक एवं प्रधानाध्यापक का ऑनलाइन आवेदन पत्र भरना होगा।"

28. The Clause-10 of the aforesaid circular prescribes eligibility for application, which reads thus:

"10-आवेदन हेतु पात्रता:

(i)-शैक्षिक/प्रशिक्षण अर्हता- उत्तर प्रदेश मान्यता प्राप्त बेसिक स्कूल (जूनियर हाईस्कूल) (अध्यापकों की भर्ती और सेवा की शर्तें) नियमावली-1978 (सातवां संशोधन) नियमावली-2019 में उल्लिखित न्यूनतम शैक्षिक अर्हता एवं प्रशिक्षण अर्हता नियम-4 के अनुसार होगी।

29. Rule-4 of the Rules, 1978, as amended in 2019, mentions minimum qualification, which is as follows:

“4. Amendment of Rule 4.....

4. Minimum qualification --- (1)
The minimum qualifications for the post of Assistant Teacher of a recognised Junior High School shall be a Graduation Degree from a recognised University by U.G.C. and a teachers training course recognized by the State Government or National Council for Teacher Education as follows--
-

Two year Diploma in Elementary Education (by whatever name called)

Or

Graduation with at least 50% marks and Bachelor of Education (B.Ed.)

Or

Basic Teaching Certificate (B.T.C.)

Or

Four year Degree in Elementary Education (B.El.Ed.)

Or

Four year B.A./B.Sc. Ed. or B.A. Ed./B.Sc.Ed.

Or

B.A./B.Sc. with at least 50% marks and 1 year B.Ed. (Special Education)

And

Teacher Eligibility Test (Upper Primary Level) passed conducted by the State Government or by the Government of India.

(2) The minimum qualification for the appointment to the post of Headmaster of a recognized schools shall be as follows---

(a) a graduation degree from a recognized University or an equivalent examination recognised as such;

(b) a teacher's training course recognised by the State Government or National Council for Teacher Education as follows---

Two year Diploma in Elementary Education (by whatever name called)

Or

Graduation with at least 50% marks and Bachelor of Education (B.Ed.)

Or

Basic Teaching Certificate (B.T.C.)

Or

Four year Degree in Elementary Education (B.El.Ed.)

Or

Four year B.A./B.Sc. Ed. or B.A. Ed./B.Sc. Ed.

Or

B.A.M.Sc. with at least 50% marks and 1 year B.Ed. (Special Education)

And

Teacher Eligibility Test (Upper Primary Level) passed conducted by the State Government or by the Government of India.

And

Five years teaching experience in a recognized Junior High School or Senior Basic School of Basic Education Board.”

30. For the appointment as a Teacher in Primary / Upper Primary School, a candidate must possess the minimum qualification as prescribed under the notification issued by the National Council for Teacher Education⁷ dated 23.08.2010, as amended on 29.07.2011. The said qualifications have also been incorporated in the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 read with the Rules, 1978. As per the Schedule pertaining to Sections 19 and 25 of the RTE Act, 2009, the norms and standards for such schools are prescribed where part-time instructors are to be appointed, the same mentions as follows:

1.	Number of teachers :	Norms and Standards
(a)	For first class to fifth class	Admitted children
		Number of teachers
		Up to Sixty
		Two
		Between sixty-one to ninety
		Three
		Between Ninety-one to one hundred and twenty
		Four
		Between One hundred and
		Five

twenty-one to two hundred

Above One hundred and fifty children

Five plus one Headteacher

Above Two hundred children

Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.

(b) For sixth class to eighth class

(1) At least one teacher per class so that there shall be at least one teacher each for—

(i) Science and Mathematics;

(ii) Social Studies;

(iii) Languages.

(2) At least one teacher for every thirty-five children.

(3) Where admission of children is above one hundred—

(i) a full time head-teacher;

(ii) part time instructors for—

(A) Art Education;

(B) Health and Physical Education;

(C) Work Education.

31. As per the afore-quoted Schedule of the RTE Act, 2009 no part time instructor is required for Classes 1 to 4 as well as for Classes 6 to 8, where the number of students is less than 100. It would be apt to refer the qualification for appointment of part time instructors as provided under Clause-3 of the Government Order dated 31.01.2013, which reads thus:

"3. अंशकालिक अनुदेशकों की शैक्षिक अर्हता-उपरोक्त तीनों विषयों के अंशकालिक अनुदेशकों की संविदा पर तैनाती हेतु शैक्षिक अर्हता निम्नवत् निर्धारित की गई है-

(अ) शैक्षिक अर्हता-कला शिक्षा (Art Education)---

कला शिक्षा हेतु अंशकालिक अनुदेशकों की शैक्षिक अर्हता निम्नवत् होगी-

इण्टरमीडिएट कला विषय के साथ तथा बी.ए.

अथवा

ड्राइंग अथवा पेंटिंग के साथ बी.ए.

अथवा

इण्टरमीडिएट के साथ भारत में विधि द्वारा सीपित किसी विश्वविद्यालय अथवा मान्यता प्राप्त संस्थानों द्वारा प्रदत्त कला में विशेष उपाधि अथवा डिप्लोमा।

(ब) शैक्षिक अर्हता-स्वास्थ्य एवं शारीरिक शिक्षा (Health & Physical Education)--

स्वास्थ्य एवं शारीरिक शिक्षा हेतु अंशकालिक अनुदेशकों की शैक्षिक अर्हता निम्नवत् होगी-

(1) स्नातक तथा

(2) राज्य सरकार द्वारा मान्यता प्राप्त व्यायाम शिक्षा में डिप्लोमा डिप्लोमा अथवा उसके अथवा भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय द्वारा प्रदत्त व्यायाम शिक्षा में उपाधि समकक्ष कोई अन्य योग्यता।

(स) शैक्षिक अर्हता-कार्य शिक्षा (Work Education)--

कार्य शिक्षा (Work Education) में 04 विषय क्रमशः कम्प्यूटर शिक्षा, गृह शिल्प एवं सम्बन्धित कला, कला, उद्यान विज्ञान एवं फल संरक्षण तथा कृषि विषय प्राविधानित है। कार्य शिक्षा के उक्त 04 विषयों में से प्रति विद्यालय एक ही

विषय का चयन करते हुए सम्बन्धित विषय के एक अंशकालिक अनुदेशक की नियुक्ति विद्यालय में की जायेगी। शिक्षा के क्षेत्र में वर्तमान परिपेक्ष्य को दृष्टिगत रखते हुए जनपद में कम्प्यूटर शिक्षा के लिए 35 प्रतिशत, गृह शिक्षा एवं सम्बन्धित कला के लिए 35 प्रतिशत, उद्यान विज्ञान एवं फल संरक्षण के लिए 15 प्रतिशत तथा कृषि विषय के लिए 15 प्रतिशत विद्यालयों में विषयवार अंशकालिक अनुदेशकों का चयन कराया जायेगा।

(i) कम्प्यूटर शिक्षा (Computer Education)--

कम्प्यूटर शिक्षा के अंशकालिक अनुदेशकों को उन्हीं विद्यालयों हेतु चयनित किया जायेगा जो कम्प्यूटर ऐडेड लर्निंग से आच्छादित होंगे तथा जिनमें नामांकन 100 से अधिक होगा। कम्प्यूटर के अनुदेशकों हेतु शैक्षिक अर्हता निम्नवत् होगी-

बी.एस.सी. इन कम्प्यूटर साइन्स

अथवा

बी.सी.ए.

अथवा

DOEACC "A" लेवल कोर्स के साथ स्नातक

(ii) गृहशिल्प एवं सम्बन्धित कला-

गृहशिल्प हेतु अंशकालिक अनुदेशकों की शैक्षिक अर्हता निम्नवत् होगी-

गृह विज्ञान (होम साइन्स) या गृह अर्थशास्त्र (होम इकनोमिक्स) या घरेलू विज्ञान (डोमेस्टिक साइन्स) या गृहकला (होम आर्ट) में स्नातक।

(iii) उद्यान विज्ञान एवं फलसंरक्षण-

बी.एस.सी. कृषि के साथ फल संरक्षण को विशेष डिप्लोमा।

(iv) कृषि शिक्षा-

बी.एस.सी. कृषि।"

32. Qualification for being appointed as Assistant Teacher in such schools, is

governed by the Rules, 1978, wherein Rule-5 envisages the eligibility, which is as follows:

“5. Eligibility for appointment.

- No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognized school, unless –

(a) he possesses the minimum qualifications prescribed for such posts;

(b) he is recommended for such appointment by the Selection Committee.”

33. The Rules of 1978, as amended, were enacted to regulate recruitment and conditions of service of teachers in Junior High Schools, including appointment to the post of Headmaster, which is a promotional post carrying academic as well as administrative responsibilities., Rule-4 of the Rules 1978 as amended on 2019, prescribes the minimum qualifications as already quoted above. In view thereof, for appointment to the post of Assistant Teacher, the candidate must possess a graduation degree from a University recognized by the University Grant Commission⁸ along with a teacher training course recognized by the State Government or the National Council for Teacher Education and the minimum qualification for appointment to the post of Headmaster includes a graduation degree from a recognized University or an equivalent qualification recognized as such and teachers training course recognized by the State Government or the National Council for Teacher Education and Teacher Eligibility Test (Upper Primary Level) conducted by the State Government or the Government of India as well as minimum 5 years of teaching experience in a

recognized Junior High School or Senior Basic School of the Basic Education Board.

34. A harmonious and purposive interpretation of the Rules makes it abundantly clear that the teaching experience contemplated therein must be experience gained as a duly appointed teacher in a recognized Junior High School or Senior Basic School, forming part of the regular teaching cadre. The post of Headmaster being the academic head of the institution, the required experience which cannot be construed to include experience gained in any casual, part-time, honorary, or non-cadre capacity.

35. The question for consideration in the instant case is whether, for appointment to the post of Headmaster, the teaching experience must mandatorily be experience gained in the post of Assistant Teacher alone, or whether ‘teaching experience’ simplicitor including experience acquired as a part-time instructor can be treated as valid experience for the purpose of eligibility.

36. As per the Rules, 1978, as amended from time to time, the post of Headmaster is a promotional/selection post requiring a prescribed minimum period of teaching experience in a recognized institution. Said Rules consciously employ the expression “teaching experience” in the context of regular teachers appointed against sanctioned posts and governed by the statutory service conditions. From a plain reading of the Rules, 1978, it is evident that part-time instructors do not constitute a cadre of teachers under the said Rules. The minimum educational qualifications, mode of engagement, tenure, and nature of duties of part-time instructors are fundamentally different from those of

Assistant Teachers appointed under the said Rules. Part-time instructors are engaged only for Classes 6 to 8, that too subject to student strength exceeding 100, and are not appointed for Classes 1 to 4 at all. Their engagement is thus contingent, limited, and need-based, lacking the attributes of a regular statutory appointment.

37. It is well settled that eligibility conditions prescribed under the statutory recruitment rules must be strictly construed and scrupulously followed. Neither the appointing authority nor the court can dilute, relax, or substitute the essential qualifications unless such power is expressly conferred by the rules themselves. The purpose behind prescribing teaching experience for the post of Headmaster is to ensure administrative efficiency, academic leadership, and familiarity with institutional responsibilities acquired through regular service.

38. In the case of **P.M. Latha and another v. State of Kerala and others**⁹, the Supreme Court has held that when statutory rules prescribe specific qualifications, the same cannot be relaxed on equitable considerations, and appointments made contrary thereto are unsustainable in law. Similarly, in the case of **Yogesh Kumar and others v. Government of NCT Delhi and others**¹⁰, it has been held that experience must be of the nature and character contemplated by the rules, and experience gained in any other capacity cannot be treated as equivalent unless the rules so provide.

39. Applying the aforesaid principles to the facts of the present case, it is evident that if the recruitment rules specifically require teaching experience as an Assistant Teacher in regular service, experience

acquired merely as a part-time instructor lacking the attributes of permanency, administrative responsibility, and regular academic engagement cannot be treated as valid compliance with the eligibility criteria. To hold otherwise would amount to rewriting the rules, which is impermissible in law.

40. However, where the rules use the expression 'teaching experience' without any restrictive qualification as to the nature of appointment or cadre, and where the duties discharged by the candidate demonstrably involve regular teaching functions comparable to those of an Assistant Teacher, such experience may be considered, subject to strict proof and rule-based interpretation.

41. It is a settled principle that eligibility conditions prescribed by statutory rules must be strictly construed and strictly satisfied. The Apex Court in the case of **P. Mahendran and others v. State of Karnataka and others**¹¹, held that qualifications and experience prescribed by rules cannot be diluted by administrative interpretation or equitable considerations. Further, in the case of **State of Rajasthan and others v. Jagdish Chopra**¹², the Supreme Court has observed that experience for promotion to a higher post must be relevant to the nature of duties attached to that post. Teaching experience, therefore, must have a direct nexus with classroom teaching as a regular teacher.

42. The Apex Court in the case of **Chairman, LIC and others v. A. Masilamani**¹³, has categorically held that courts cannot expand the scope of eligibility by reading into the rules something which is not expressly provided. In the case of **State of Rajasthan v. Kunji**

Raman¹⁴, the Apex Court has held that experience must be of the nature contemplated by the rules; ad-hoc or non-regular service cannot be equated unless specifically provided. In the case of **Secretary, State of Karnataka and others v. Umadevi and others**¹⁵, contractual or irregular engagements do not confer parity with regular appointees nor entitlement to be treated alike for service benefits.

43. Applying the aforesaid principles, this Court finds that teaching experience under Rule 4 of the Rules of 1978, as amended, for the purpose of appointment to the post of Headmaster, means experience acquired as a regularly appointed teacher, and not experience gained as a part-time instructor or in any other non-recognized capacity. Consequently, any claim for appointment to the post of Headmaster based on experience other than experience as a teacher, as contemplated under the Rules, cannot be sustained in law.

44. The duties discharged by part-time instructors are restricted in scope and duration and cannot be equated with the comprehensive academic, evaluative, and administrative responsibilities entrusted to Assistant Teachers. In the absence of any provision under the Rules, 1978, expressly recognizing part-time service as equivalent to regular teaching service, such experience cannot be imported to satisfy the eligibility requirement for appointment to the post of Headmaster.

45. Insofar as reliance placed by the learned counsel for the petitioners in **Sadanand Singh (supra)** is concerned, said judgement does not apply in the present case as the petitioners therein earned experience on the post of lecturer in the unaided Intermediate Section of the

same Institution recognized under the U.P. Intermediate Education Act, 1921, having the requisite eligibility required for being appointed on the post of Headmaster / Principal of aided Intermediate High School Institutions. However, the petitioners in the case in hand are purely appointed on contractual basis that too lacking qualification required for the post of Assistant Teacher, of which five years teaching experience is required to be appointed as Headmaster.

46. As regards the submission of learned counsel for the petitioners that in view of the judgement in **Dr. Deepak Bhatiya (supra)**, the petitioners cannot be excluded *en masse*, the case of petitioners herein is not on similar footings as the petitioners in the said case who were full time teachers and appointed in accordance with the rules applicable to the institutions affiliated from Central Board of Secondary Education, New Delhi, which was a recognized Intermediate College, were said to be within the zone of consideration. Thus, the submission of learned counsel for the petitioners does not merit acceptance.

47. The principle of equivalence cannot be presumed. Where the rules prescribe specific qualifications and experience, courts are not empowered to dilute or rewrite them by treating unequal service as equal. Consequently, experience gained as a part-time instructor does not answer the statutory description of 'teaching experience' contemplated by the Rules, 1978 for appointment as Headmaster.

48. The submission advanced by learned counsel for the petitioners that the specification of requirement of experience as an Assistant Teacher in the required

format is an administrative direction, is not admissible as the format prescribed in the impugned circular is in consonance with Rule-4(2) of the Rules, 1978 as amended in the year 2019, which stipulates minimum qualification for the post of Head Master in a recognized school i.e. five years teaching experience which ought to be construed as full time teaching experience, though the petitioners are discharging their duties as part-time instructors. Thus, the petitioners do not fulfill the required qualification in view of the provisions of the Rules, 1978, hence, the challenge of the petitioners in the writ petition is unsustainable.

49. Even otherwise, under the notification / Government order dated 19.02.2021, applications were invited only from those candidates who possessed a minimum of five years' teaching experience as an Assistant Teacher, such experience being a mandatory and essential qualification for consideration for appointment on the post of Headmaster. Thus, the rule of the game has not been changed in the midst of the selection proceedings.

50. Accordingly, a candidate who relies solely on five years' experience as a part-time instructor cannot be held eligible for appointment to the post of Headmaster under the Rules, 1978 as amended in 2019.

51. Experience acquired as a part-time instructor is not equivalent to regular teaching experience under the Rules, 1978 and cannot be counted towards the requisite five years teaching experience for appointment to the post of Headmaster. The experience gained on part-time basis cannot ordinarily be equated with regular service experience unless the rules expressly permit such equivalence. The post, status,

and duties attached to the experience are required to be considered.

52. In view of the foregoing discussion and the settled position of law, this Court holds that the expression 'teaching experience' occurring in Rule 4 of the Rules of 1978, as amended in 2019, unequivocally refers to experience acquired while serving as a duly appointed teacher in a recognized Junior High School of Senior Basic School, forming part of the regular teaching cadre. Experience gained in any other capacity, including as a part-time instructor does not satisfy the statutory requirement prescribed under the rules and cannot be taken into consideration for appointment to the post of Headmaster.

53. Accordingly, the action of the respondents in rejecting the claim of the petitioners for appointment to the post of Headmaster, on the ground of lack of requisite teaching experience as mandated under Rule 4 of the Rules of 1978, as amended, calls for no interference by this Court.

54. The writ petition, being devoid of merit, is dismissed. There shall be no order as to costs.

(2025) 12 ILRA 284
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.12.2025

BEFORE

THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.

Writ A No. 17776 of 2025

Deepak Kumar		...Petitioner
	Versus	
State Of U.P. & Ors.		...Respondents

Issue for consideration

Whether petitioner's claim for compassionate appointment should have been considered by the respondent?

Headnotes

A. Service Law – The scheme of compassionate appointment is to provide immediate relief and cannot be applied in a manner defeating its humanitarian purpose. Authority should consider the claim in light of subsequent eligibility and should not freeze the assessment at the date of death of the employee. Where economic hardship persists, compassionate appointment cannot be denied on technical grounds. (Para 9 to 11)

In the present case, the petitioner's father died in harness in the year 2023. Although the petitioner's mother was employed as a Safai Karamchari at the time of the employee's death, it is undisputed that she subsequently tendered her resignation, leaving the family without any assured source of livelihood. In such circumstances, the rejection of the petitioner's claim for compassionate appointment on the sole ground that the mother was employed at the time of the demise is wholly unsustainable and contrary to the settled principles governing compassionate appointment. (Para 12 to 14, 16)

If the order impugned would have been passed, considering the petitioner's application, prior to resignation of the petitioner's mother, the case would have been different but consideration of the application after resignation of petitioner's mother, places it in distinct situation, wherein the petitioner's claim for compassionate appointment ought to have been considered. (Para 15)

The mere fact that one dependent was employed is not conclusive, and compassionate appointment cannot be denied if the employment was insufficient to alleviate the financial crisis or if the circumstances have subsequently changed. (Para 17)

The matter is remitted to respondent no. 3 to reconsider the claim of compassionate appointment of the petitioner.
Writ petition allowed. (E-4)

Case Law Cited

1. Umesh Kumar Nagpal Vs. State of Haryana and others, (1994) 4 SCC 138 (Para 8)
2. Canara Bank and another Vs. M. Mahesh Kumar, (2015) 7 SCC 412 (Para 8)
3. Balbir Kaur and another Vs. Steel Authority of India Ltd. and others, (2000) 6 SCC 493 (Para 9)
4. Syed Khadim Hussain Vs. State of Bihar and others, (2006) 9 SCC 195 (Para 10)
5. Kusum Devi (Smt.) Vs. State of U.P. and others, (2001) 3 UPLBEC 2431 (Para 11)
6. Rekha Joshi Vs. State of Rajasthan and Ors., MANU/RH/0079/2018 (Para 11)

List of Acts

Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974.

List of Keywords

service, compassionate, appointment, resignation.

Appearances for Parties

For Petitioner(s): Sameer Srivastava, Shivanshu Mehta

For Respondent(s): C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Present writ petition has been filed challenging an order dated 26.07.2025 passed by respondent no. 3¹, vide which claim of the petitioner for compassionate appointment has been rejected.

2. Placing brief facts of the case, learned counsel for the petitioner submits that the petitioner's father was working as a Safai Karamchari in Nagar Palika Parishad, Farrukhabad since 1991. He died-in-harness on 20.05.2023, leaving behind his wife i.e. the petitioner's mother and one son i.e. the petitioner, as his legal heirs. The petitioner moved an application for his appointment on compassionate ground, on 11.07.2023. As the petitioner's father was suffering from a chronic ailment, therefore,

his mother who was also working as Safari Karmchari in Gram Panchayat Dilawarpur, had to take leave to take care of her husband. After demise of her husband, when the petitioner's mother re-joined her services, she was pestered and harassed for her alleged unauthorized absence and was compelled to tender her resignation, which was accepted on 31.05.2025. The matter regarding compassionate appointment of the petitioner was still pending, therefore, he moved an application before the respondent authority on 31.05.2024 mentioning about the financial crisis that arose due to resignation of his mother, however, without considering the said circumstances, the claim of the petitioner for compassionate appointment has been rejected by respondent no. 3 in an arbitrary manner.

3. Learned counsel for the petitioner contends that the object and purpose of compassionate appointment is to provide assistance to the bereaved family of the deceased employee, who has suffered a shock and is facing financial crisis due to sudden demise of the sole bread earner. In numerous cases, the Courts have interfered with for creation of posts to meet out the financial crisis of such families and to consider the claim for compassionate appointment. He further submits that the application dated 11.07.2023 was not considered at the relevant point of time and it is after the resignation of petitioner's mother on 31.05.2025, the claim which was pending consideration, was rejected only on the ground that the petitioner's mother was a Government Servant, and without considering the current situation/ status of the family pertaining to the financial status and the crisis which they are suffering. Thus, the impugned order is bad,

unreasonable and unjustifiable in the eyes of law.

4. Learned counsel appearing for the respondents could not dispute the aforesaid facts.

5. I have heard Sri Sameer Srivastava, learned counsel for the petitioner, Ms. Anuradha Sundaram, learned Additional Chief Standing Counsel for respondent nos. 1 & 2, Sri Atul Kumar Tiwari, learned counsel appearing for respondent no. 3 and perused the record.

6. In the present case, the petitioner's father passed away while in service in the year 2023. The petitioner moved an application for compassionate appointment on 11.07.2023. Although the petitioner's mother was employed as a Safai Karmchari at the time of the death of the petitioner's father, she subsequently tendered her resignation on 31.05.2023. However, the impugned order has been passed sans considering the changed circumstances which were prevailing at the time of consideration by the authority.

7. The principal argument advanced by learned counsel for the petitioner is that once petitioner's mother resigned and the family was left without any source of subsistence, the relevant consideration is the financial condition of the family at the time of examination of the application, and not merely the employment status of the dependent at the time of death. This hyper-technical view denying relief would defeat the very object of the compassionate appointment scheme under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974², which aims to provide

immediate financial support to the bereaved family to prevent destitution.

8. The Supreme Court in the case of **Umesh Kumar Nagpal v. State of Haryana and others**³, has categorically held that the object of compassionate appointment is to provide immediate succour to the bereaved family to save it from financial destitution. The test to be applied is the financial condition of the family, and not hyper-technical considerations. Similarly, in **Canara Bank and another v. M. Mahesh Kumar**⁴, the Court reiterated that the scheme must be interpreted in a manner that advances its purpose and mitigates the financial hardship of the dependents.

9. The Apex Court in the case of **Balbir Kaur and another v. Steel Authority of India Ltd. and others**⁵, has reiterated that the scheme of compassionate appointment is to provide immediate relief and cannot be applied in a manner defeating its humanitarian purpose.

10. Considering the changed circumstances in between the period from the date of death of the employee and the date of consideration for compassionate appointment, the Supreme Court in the case of **Syed Khadim Hussain v. State of Bihar and others**⁶, has observed that authority should consider the claim in light of subsequent eligibility and should not freeze the assessment at the date of death of the employee.

11. This Court in the case of **Kusum Devi (Smt.) v. State of U.P. and others**⁷ and the Rajasthan High Court in the case of **Rekha Joshi v. State of Rajasthan and Ors.**⁸ have also held that where economic hardship persists, compassionate

appointment cannot be denied on technical grounds.

12. In the present case, the petitioner's father died in harness in the year 2023. Although the petitioner's mother was employed as a Safai Karamchhari at the time of the employee's death, it is undisputed that she subsequently tendered her resignation, leaving the family without any assured source of livelihood. In such circumstances, the rejection of the petitioner's claim for compassionate appointment on the sole ground that the mother was employed at the time of the demise is wholly unsustainable and contrary to the settled principles governing compassionate appointment.

13. The conditions prescribed for grant of compassionate appointment are required to be examined with reference to the circumstances prevailing on the date on which the competent authority considers the application, also, and not solely with reference to the situation prevailing on the date of death of the deceased employee. The underlying object of the scheme of compassionate appointment is to provide immediate succour to the bereaved family facing financial destitution owing to the untimely demise of the breadwinner. Therefore, where the eligibility conditions undergo a change prior to the consideration of the application, or where subsequent events materially alter the financial status of the family, the same must duly be taken into account. A mechanical or hyper-technical reliance on facts existing at the time of death alone would defeat the very object of the scheme.

14. In the present case, once the petitioner's mother, who was employed as a Safai Karamchhari, tendered her

17. The mere fact that one dependent was employed is not conclusive, and compassionate appointment cannot be denied if the employment was insufficient

Whether, in proceedings relating to proof of a Will under Sections 63 of the Indian Succession Act, 1925 and 68 of the Indian Evidence Act, 1872, an application for obtaining expert opinion regarding the thumb impression/signature of the

testator can be entertained before examination of the attesting witnesses.

HEADNOTE

Constitution of India, Art. 226 – Indian Succession Act, 1925, S. 63 – Indian Evidence Act, 1872, Ss. 68 & 73 – Proof of Will – *Manner in which a Will can be proved – Attestation by two or more witnesses – Calling of at least one attesting witness to prove execution – Thumb impression/signature of testator – Comparison under S. 73 of the Evidence Act – Invocation of S. 73 only when sufficient doubt can be created – Stage at which expert evidence can be sought – Examination of attesting witnesses as pre-condition – Liberty to move appropriate application for production of the original Will – Liberty to move appropriate application for obtaining expert opinion after respondents have adduced their evidence to prove the Will*

HELD:

Will has to be proved by the person who has relied/produced the Will and for which purposes, in case the attesting witnesses are alive, the same have to be produced, who have to testify that the Will was signed by the testator in their presence. It is only when sufficient doubt can be created in the mind of the trial court by the petitioner with regard to the validity of the Will that the provision of Section 73 of the Evidence Act can be invoked, and the discretion of the court would arise for comparison of signatures/thumb impressions. Only after the attesting witnesses are examined can the question arise with regard to verification of signatures/thumb impressions. In the present case, the attesting witnesses were not examined nor produced by the private respondents, and therefore the threshold had not been crossed. Liberty was granted to move an appropriate application for production of the original Will on record, and further liberty was granted that after the respondents have adduced their evidence to prove the Will, the petitioner would be at liberty to move appropriate application for obtaining expert opinion on the signatures thereon in accordance with law. (Paras 6 to 12) (E-5)

CASE LAW CITED

List of Acts

Constitution of India;
Indian Succession Act, 1925;
Indian Evidence Act, 1872;
U.P. Consolidation of Holdings Act, 1953.

List of Keyword

Proof of Will; Attesting witnesses; Section 68 Evidence Act; Section 63 Succession Act; Expert opinion; Thumb impression; Signature comparison; Section 73 Evidence Act; Premature application; Consolidation proceedings; Interference under Article 226.

CASE ARISING FROM

Challenge to the orders passed by the Consolidation Officer and Deputy Director of Consolidation rejecting the petitioner's application for obtaining expert opinion regarding thumb impression/signature on the Will.

Appearances for Parties

Advs For Petitioner: Vijai Bahadur Verma; Ajeet Kumar; Ankit Pande; Rajat Rajan Singh
Advs For Respondents: C.S.C.; Jitendra Kr. Pandey

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Shri Vijai Bahadur Verma, learned counsel for the petitioner as well as learned Standing Counsel for respondents no. 1 and 2 and no one has put in appearance on behalf of the private respondents.

2. It has been submitted by learned counsel for the petitioner that the present dispute pertains to Khata No. 125 situated at Gram Mohanpur, Pargana Dewa, Tehsil Nawabganj, District Barabanki, which was recorded in the name of Shyam Narayan @ Makka Lal and after the death of Shyam Narayan the land came to be recorded in the name of his wife Badki. It is stated that Badki, wife of Shyam Narayan had

executed a Will in favour of Avadh Bihari, Ram Het, Kishan Bihari, Brij Bihari sons of Deo Bux as well as the petitioner- Smt. Madhuri Devi.

3. It has been submitted that with regard to the succession of the said land proceedings under 9-A (2) are still pending before the Consolidation Officer. The petitioner has all along assailed the validity of the Will executed by Badki on 13.2.1981. Initially the petitioner has approached this Court by filing a writ petition being Writ Petition No. 9848 of 1989, which was dismissed by this Court by means of judgment and order dated 28.03.1990. For the sake of convenience the order passed by this Court is quoted herein below:-

" This petition arises from mutation proceedings. It appears that on the death of Smt. Barabanki mutation proceedings have started. The petitioner claims to be the daughter of Smt. Barabanki and has sought mutation of her name on the basis of succession. Opposite parties 4 to 7 have claimed mutation on the basis of will alleged to have been executed by Smt. Barabanki. The will set up by opposite parties 4 to 4 is not admitted by the petitioner. The petitioner's case appears to be that the alleged will is a forged document. The petitioner made an application before the Additional Tahsildar, Nawabganj, Barabanki seeking permission to bring expert evidence on record regarding the thumb impressions contained on the will filed by opposite parties 4 to 7. This application has been rejected by the Additional Tehsildar with the following observations-

"there is no provision for experts opinion."

Against the order of Additional Tahsildar, the applicant preferred revision before the Collector who rejected the same by order dated 19.7.1989. The Board of Revenue has also rejected the petitioner's revision through order dated 7.10.1989. In paragraph 4 of its order the Board of Revenue has observed that mutation proceedings are of fiscal and summary nature and are subject to decision in a regular suit. With this observation of the Board of Revenue no exception can be taken. However, I am not inclined to interfere at this stage because the petition arises from an interlocutory order. If opposite parties 4 to 7 fail to substantiate the will petitioner will have no cause for grievance against the impugned orders.

In view of the above the petition is dismissed."

4. It has been submitted that the writ petition was dismissed by this Court observing that only application of the petitioner for obtaining expert opinion with regard to the thumb impression of the testator was rejected which was an interlocutory order and therefore considering that the matter was still pending consideration before the revisional authority, this Court has declined to interfere in the matter.

5. It has been submitted by learned counsel for the petitioner that the aforesaid dispute regarding the validity of the Will has been raised by the petitioner by filing suit under Section 229 B, which also stood abated on commencement of the consolidation proceedings. Subsequently before the Consolidation Officer also the petitioner had filed an application for obtaining expert evidence with regard to the thumb impression of the testator,

namely, Smt. Badki. The said application has been rejected by means of the order dated 12.6.2017. Against the said order the petitioner has preferred a revision before the Deputy Director of Consolidation, which has also been rejected by means of order dated 7.10.2017. The revisional authority has noticed the fact that original copy of the Will is not available on record.

6. The question gaining the attention of this Court is with regard to the application of the petitioner for obtaining the expert opinion with regard to the thumb impression of Smt. Badki, who has executed a Will on 13.2.1981. The manner in which a Will can be proved in the Court, has been provided in Section 63 of the Succession Act and Section 68 of the Indian Evidence Act. The necessary ingredients for a Will provided under Section 63 of the Succession Act where it is provided that the testator shall sign or affix some mark to the Will or it shall be signed by some other person in his presence and by his directions and the Will shall be attested by two and more witnesses each of whom had seen the testator sign or affix his mark to the Will. The manner in which such a Will has to be proved in the court of competent jurisdiction is provided under Section 68 of the Indian Evidence Act, where it is provided that such a document, which is required to be attested shall not be used as an evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if the attesting witnesses are alive and careful of keeping evidence.

7. Accordingly the Will has to be proved by the person who has relied/produced the Will and for which purposes in case the attesting witnesses are alive, same has to be produced, who has to

testify the Will was signed by testator in his presence.

8. It is only when sufficient doubt can be created in the mind of the trial court by the petitioner with regard to the validity of the Will only then provision of Section 73 of the Evidence Act can be invoked by the petitioner and the discretion of the trial court. In case the trial court is of the opinion that there is certain doubts with regard to the signature of the testator only then the question arises for comparison of the signature or any other mark affixed by the testator on the said Will.

9. It is noticed that in the present case the very threshold has also not been crossed, in as much as, the attesting witnesses have not been examined by the trial court nor have been produced by the private respondents. It is only after the attesting witnesses are examined the question has arisen with regard to the verification of the signatures/ thumb impressions in case the petitioner can successfully indicate that the same are doubtful.

10. Accordingly I find that the repeated applications of the petitioner before the various authorities at this stage are premature and certainly at the appropriate stage such applications can be adequately considered.

11. I find that the matter is still pending before the Consolidation Officer and a similar prayer has been made by the petitioner before this Court, was also rejected on 28.3.1990 in mutation proceedings.

12. In light of the above, this Court is not inclined to interfere in the order

person having locus i.e. either lessor or lessee in private lease deed may proceed to cancel or terminate the lease deed. Petitioner was only co-applicant for allotment of Retail Outlet of Indian Oil and has nothing to do with private lease deed i.e. neither he was lessor nor lessee, therefore, he cannot challenge the private lease deed. No infirmity or illegality in the impugned orders and the writ petition was dismissed. (Paras 9 to 17) **(E-5)**

CASE LAW CITED

List of Acts

Constitution of India;
U.P. Revenue Code, 2006;
U.P. Revenue Code Rules, 2016.

List of Keyword

Private lease; Section 94 U.P. Revenue Code; Locus standi; Person aggrieved; Sections 104 & 105 U.P. Revenue Code; Section 105(e) exclusion; Rule 103 U.P. Revenue Code Rules; Declaratory suit; Section 144 U.P. Revenue Code; Retail Outlet Dealership; Cancellation of lease.

CASE ARISING FROM

Challenge to the orders dated 28.05.2025 passed by the Sub-Divisional Officer rejecting the petitioner's application for cancellation of a private lease deed executed under Section 94 of the U.P. Revenue Code, 2006, and the revisional order dated 10.07.2025 passed by the Board of Revenue, U.P.

Appearances for Parties

Advs For Petitioner: Amit Kumar Rai
Advs For Respondents: C.S.C.; Shyam Surat Shukla; Abhinav Singh
Amicus Curiae: Samir Sharma, Sr. Adv.

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Sri Amit Kumar Rai, learned counsel for petitioner, learned standing counsel for respondent nos. 2 to 4, Sri Shyam Surat Shukla, learned counsel for respondent no. 6 and Mr. Samir Sharma, learned Senior Counsel as *amicus curiae*

appointed by this Court vide order dated 26.08.2025.

2. Present petition has been filed seeking following relief:-

“(I) Issue, a writ, order or direction in the nature of certiorari quashing the impugned revisional order dt. 10.07.25 passed by respondent no. 1 and impugned order dt. 28.05.25 passed by respondent no. 4 (Annexure No. 1 & 2 to this writ petition respectively).

(II) Issue a writ order or direction in the nature of mandamus commanding the respondent no. 4 to cancel the lease deed dt. 15.02.23 as per provisions of section 104 of the code and Rule 103 of the U.P. Revenue Code Rules 2016.”

3. Brief facts of the case are that an advertisement was issued on 28.06.2023 for allotment of Retail Outlet Dealership of Indian Oil Corporation. Along with petitioner, respondent no. 6 was also one of the applicant. In terms of advertisement, respondent no. 6 has produced required lease deed of land executed by respondent no. 5 for 29 years and 11 months. Based upon that, Letter of Intent was issued in favour of respondent no. 6. At this stage, petitioner has challenged the lease deed before the Sub Divisional Officer on the ground that lease deed so executed is in violation of Section 94 of U.P. Revenue Code, 2006 (hereinafter referred to as ‘Code, 2006’), therefore, it is void in terms of Section 104 of Code, 2006 read with Rules 103 of U.P. Revenue Code Rules, 2016 (hereinafter referred to as ‘Rules, 2016’). Against the said application, objection was filed and in objection apart from other grounds, it is firmly stated that petitioner is having no locus to challenge

the lease deed executed under Section 94 of Code, 2006.

4. Learned counsel for petitioner submitted that from the perusal of Section 94 of Code, 2006, it is apparently clear that lease deed in Section 94 of Code, 2006 can only be executed for agriculture or for setting up Solar Plant, whereas in the present case, it is executed for establishment of Retail Outlet of Indian Oil, therefore, the said lease deed may be declared void. He next submitted that instead of declaring the lease deed void, Sub Divisional Officer has rejected the application of petitioner only on the ground that applicant is having no locus to challenge the same as he is neither owner nor co-sharer. He firmly submitted that in terms of Section 94 of Code, 2006 read with Rule, 103 of Rules, 2016, there is no need to become a co-sharer or owner and only information is sufficient to declare the lease deed void. He also submitted that in terms of Rule 186 of Rules, 2016, provisions of Civil Procedure Code would not be applicable in present case, therefore, under such facts orders impugned are bad and liable to be set aside. He also pointed out that averment so made in lease deed is false and fabricated as the facts are entirely different. In support of that, he has also placed reliance upon Khasra, Khatauni and report of Lekhpal, where it is stated that two rooms are present but on the spot, no rooms are in existence on the land in dispute, therefore, lease deed is based upon incorrect facts. Petitioner has challenged the order by filing Revision No. 2692 of 2025, which was dismissed at the admission stage vide order dated 10.07.2025 affirming the order of Sub Divisional Officer dated 28.05.2025.

5. Per contra, Sri Shukla, learned counsel for respondent no. 6 submitted that

Section 94 of Code, 2006 pertains to execution of private lease and further Section 95 of Code, 2006 provides the provisions of cancellation or termination in case of dispute. He firmly submitted that Section 95(6)(e) of Code, 2006 clearly provides that it can only be terminated by lesser or lessee by a Bhumidhar on a mutually agreed terms. He also pointed out that so far as sections 104 & 105 of Code, 2006 are concerned; Section 104 provides transfer in contravention of this Code to be void and further Section 105 of Code, 2006 provides consequences of transfer by bhumidhar in contravention of this Code. He also pointed out Rule 103 of Rules, 2016 provides procedure to follow in case any application is filed under Sections 104 or 105 of Code, 2006. He next submitted that Section 105(e) clearly provides that provisions of this section shall not apply to any lease made under Section 94 of Code, 2006. He also submitted that after reading Sections 104 & 105 of Code, 2006 read with Rule 103 of Rules, 2016, it is apparently clear that this would be applicable for a lease of State land and not for a lease executed by a private person, therefore, Section 105(e) is inserted later on to clarify this fact that provision of Section 105 of Code, 2006 shall not be applicable to a lease executed under Section 94 of Code, 2006 and in light of that, provision so given in Rule 103 of Rules, 2016 would also not be applicable.

6. He further submitted that Section 144 of Code, 2006 is having provision to file declaratory suits which clearly says that any person claiming to be Bhumidhar or asami of any holdings exclusively or jointly with any other person may file suit for declaration of his right in such holding or part. He further submitted that ratio of Section 144 of Code, 2006 shall also be

applicable for filing suit for cancellation of lease deed. In absence of claiming to Bhumidhar or asami or any right over the land in question, no suit for cancellation of lease deed may be filed.

7. In light of said facts, he firmly submitted that only person having locus i.e. either lessor or lessee in private lease deed may proceed to cancel or terminate the lease deed and in present case, undisputedly, petitioner is only co-applicant for allotment of retail outlet of Indian Oil and has nothing to do with private lease deed i.e. neither he is lessor nor lessee, therefore, he cannot challenge the private lease deed, therefore, impugned orders have rightly been passed.

8. I have considered rivals submissions advanced by learned counsels for parties and perused the records.

9. Undisputed fact of the case is that petitioner is having no concern with the land in dispute, neither he is owner nor co-sharer and his interest is involved only for allotment of Retail Outlet of Indian Oil after submission of application form. Therefore, issue is as to whether petitioner is having any locus to challenge the private lease executed in terms of Section 94 of Code, 2006 or not. Argument so advanced before the Court is based upon interpretation of Sections 94, 104, 105 & 144 of Code, 2006 and Rule 103 of Rules, 2016. For ready reference, Sections 94, 104 & 105 of Code, 2006 and Rule 103 of Rules, 2016 are being quoted below:-

“Code, 2006

94. Private lease by a Bhumidhar.- (1) A Bhumidhar may lease out his holding or any part thereof to any

person, firm, company, partnership firm, limited liability partnership firm, trust, society or any other legal entity for agriculture or for setting up a solar energy plant. Such lease shall be known as the private lease by a bhumidhar.

(2) Private lease by a Bhumidhar means a contract based on an agreement, with mutually agreed terms and conditions, between Lessor, who may be a Bhumidhar and the Lessee who wishes to undertake agricultural activities or set up a solar energy plant, by which the Lessor grants permission to the Lessee to use the land or holding or any part thereof for agricultural purposes or for establishment of solar energy plant, against a consideration in cash or kind or a share of produce, payable to the Lessor as per the lease agreement.

(3) Period of private lease by a bhumidhar— maximum period of the private lease by a Bhumidhar shall not exceed fifteen years at a time:

Provided that, after the expiration of the first lease period, the duration of lease period may be further extended by mutual consent of the Lessor and the Lessee: Provided further that for purpose of establishing a solar energy plant, the maximum period may be upto thirty years.

(4) Conditions of the private Lease by a bhumidhar- The terms and conditions of the private lease by a bhumidhar shall be as mutually agreed between the Lessor and Lessee. The general conditions of the lease shall be in the manner as may be prescribed.

95. Lease- how made, its termination and any dispute arising thereon. -Private lease by a bhumidhar may

be oral or in writing or Registered.-(1) Private Lease by a bhumidhar for a single crop or for period upto one year may be either oral or in writing. Lease agreement for period exceeding one year shall be made by a registered instrument only.

(2) Private Lease by a bhumidhar to be recorded in remarks column of Record of Rights - In case of written or registered lease agreement, a copy of the agreement or deed shall be made available to Revenue Inspector concerned, who shall pass order for recording the details of the private lease by a bhumidhar lease agreement (names and other details of Lessor and Lessee; date of agreement; period of lease; proposed use of land; and annual lease rent) in the Remarks column of Record of Rights (khatauni).

(3) Private Lease by a bhumidhar shall not create any type of Tenancy Right- An agreement of private lease by a Bhumidhar either registered under the Registration Act 1908 or countersigned by a Revenue Officer or Gram Pradhan or notarized by a Notary or oral, shall not create or confer any rights or interest in favour of the Lessee over the leased land, including protected tenancy or occupancy right or any other right against eviction or lease termination, other than those contained in this Act or Rules, the lease agreement shall not be used by the Lessee to establish and permanent right over the leased land in any Court of Law.

(4) Resumption of Land- After expiration of the private lease by a bhumidhar period of or termination of such private lease, the instrument of private lease by a bhumidhar shall be a nullify and if the period of such private lease is not extended, the leased land shall

automatically revert to the Lessor and the Lessee shall hand over peaceful possession of the land, free from all encumbrances, to the Lessor and shall cease to have any right, title or interest in the land so leased out. Explanation- Regardless of any dispute, arising out of private lease made under Section 94, pending before any Court of Law, the Lessor shall be entitled to get peaceful possession of the leased land after the expiration of the private lease period and the Lessee shall have no right to retain possession over the leased land.

(5) Effect of Private Lease by a bhumidhar – The Provisions contained in the Code regarding private lease by a bhumidhar shall not have retrospective effect.

(6) Termination of the private lease by a bhumidhar - (a) Unless extended by mutual consent between the Lessor and Lessee, the private lease agreement would terminate on expiry of the private lease period mentioned in the agreement.

(b) In case of non-payment of consideration amount or annual lease rent by the Lessee by the due date, or if any of the terms and conditions of the private lease are violated by him, the private lease by a bhumidhar agreement may be terminated by the Lessor, prior to-expiry of the lease period, after giving due notice to the Lessee in writing.

(c) In case the private lease agreement is proposed to be terminated prematurely by the Lessor, then the Lessee shall be entitled to remove such structures, machinery etc. that were created or installed by the Lessee on the leased land. The Lessee would also be entitled to recover such damages and compensation

from the Lessor, as agreed upon and laid down in the private lease agreement.

(d) In case the Lessee wishes to terminate the lease agreement prematurely or surrenders the land during the private lease by a bhumidhar period, then he shall have to give at least six months' notice to the Lessor and shall also be liable to pay the annual rent for the remaining part of the year to the Lessor, in addition to such other compensation, as agreed upon and laid down in the private lease by a bhumidhar agreement or as prescribed.

(e) In case after expiration of the private lease by a bhumidhar period or termination of the lease agreement, the Lessee fails to handover peaceful possession of the leased land to the Lessor, the Lessee shall be treated as unauthorised occupant and shall be liable to be ejected from the leased land. The Lessee shall also be liable to pay such penal rent or damages to the Lessor for the period of unauthorised occupation, as provided in the private lease by a bhumidhar agreement, in addition to the cost of such ejection.

(f) The Lessor and Lessee may terminate the private, lease by a bhumidhar on mutually agreed terms at any time.

(7) Disputes arising out of the private lease by a bhumidhar-

(a) In an event of a dispute arising out of the private lease agreement by a bhumidhar, or any terms and conditions thereof; the Lessee and the Lessor shall make all efforts to amicably resolve and settle the dispute amongst themselves or if mutually agreed, by using mediation by a third party arbitrator or

Gram Panchayat or Village Revenue Committee.

(b) If the dispute is not settled through the mechanism mentioned in Clause (a) either party may file a petition before the Sub-Divisional Officer.

(c) The Sub-Divisional Officer shall adjudicate the dispute using the summary procedure within a period of thirty days of its institution.

(d) An appeal against the order, other than an interim order, passed by a Sub-Divisional Officer, shall lie before the Commissioner. The decision of Commissioner shall subject to the provision of section 210, be final."

104. Transfer in contravention of this Code to be void.- Every Lease or transfer of interest in any holding or part thereof made by a bhumidhar or any asami in contravention of the provisions of this Code shall be void.

105. Consequences of transfer by bhumidhar in contravention of the Code.- (1) Where transfer of interest in any holding or part made by a bhumidhar is void under section 104, the following consequences shall, with effect from the date of such transfer, ensue, namely:-

(a) the subject matter of such transfer shall vest in the State Government free from all encumbrances;

(b) the trees, crops, wells and other improvements, existing on such holding or part shall vest in the State Government free from all encumbrances;

(c) the interests of the transferor and the transferee in the properties specified in clauses (a) and (b) shall stand extinguished;

(d) the extinction of interest of the transferor under clause (c) shall operate to extinguish the interest of any asami holding under him.

(e) the provisions of this section shall not apply to any lease made under section 94.

(2) Where any land or other property has vested in the State Government under sub section (1), it shall be lawful for the Collector to take over possession of such land and other property, and to direct that any person occupying such land or property be evicted there from, and for that purpose, the Collector may use or cause to be used such force as may be necessary and the provisions of section 59 mutatis mutandis shall apply to such property.

144. Declaratory suits by tenure holders. - (1) Any person claiming to be a bhumidhar or asami of any holding or part thereof, whether exclusively or jointly with any other person, may sue for a declaration of his rights in such holding or part.

(2) In every suit under sub-section (1) instituted by or on behalf of:-

(a) a bhumidhar, the State and the Gram Panchayat shall be necessary parties;

(b) an asami, the land-holder shall be a necessary party

Rule, 2016

103. Transfer in contravention of the provisions of the Code (Section 105).-(1) If a bhumidhar or an asami has transferred his interest in any holding or part thereof which is void under section

104, the Lekhpal shall promptly submit a report to the Sub-Divisional Officer containing particulars specified in rule 97(1).

(2) On receipt of the report of the Lekhpal under sub- rule (1), or on information received otherwise, the Sub-Divisional Officer shall call upon the parties to the transfer to show cause, why action under section 104 read with section 105 should not be taken in respect of the land in question.

(3) After hearing the parties and making such inquiries as may be considered necessary, if the Sub-Divisional Officer is satisfied that the transfer in question is void under section 104, he shall declare that:

(a) the subject matter of such transfer shall vest in the State Government;

(b) the trees, crops, well and other improvements existing on the holding or part shall vest in the State Government free from all encumbrances; and

(c) the interests of the transferor as well as of the transferee stood extinguished, from the date of such transfer.

(4) The Sub-Divisional Officer shall direct that the revenue records should be corrected accordingly and where the transfer in contravention of the provisions of the Code relates to a part of the holding, he shall also fix land revenue in respect of

the part left with the transferor in accordance with Chapter XI of these rules.

(5) Every order of the Sub-Divisional Officer under this rule shall be endorsed to the Samiti for necessary action.

(6) Where any property referred to in section 105 has vested in the State Government, the Collector may evict any person in unauthorised occupation of such property and deliver possession thereof to the Gram Panchayat concerned.”

10. From the perusal of Section 94 of Code, 2006, it is apparently clear that private lease deed can only be cancelled in terms of Section 95(6)(f) of Code, 2006. So far as Sections 104 & 105 of Code, 2006 and Rule 103 of Rules, 2016 are concerned, once Section 105(e) has been inserted excluding the applicability of the same upon the lease executed under Section 94 of Code, 2006, provisions of Sections 104 & 105 of Code, 2006 read with Rule 103 of Rules, 2016 would not be applicable. Again coming to the interpretation of Sections 104 & 105 of Code, 2006 and Rule 103 of Rules, 2016, no doubt on the point that lease may be executed either by private person or by State. In case it has been executed by State Government, every one is having right to inform the concerned authority if it is in violation of law, but once it is not the case, only person aggrieved is having right to challenge the private lease deed as provided in Section 95 of Code, 2006. Petitioner is deriving his locus from the cancellation of his application submitted for allotment of Retail Outlet of Indian Oil. In case supposing it that the suit is allowed, the consequences would be that the land would be again vested with the original owner and

petitioner would not be beneficiary in any way.

11. Therefore, petitioner cannot said to be person aggrieved and accordingly, he would have no *locus standi* to challenge the private lease deed executed under Section 94 of Code, 2006.

12. I have also perused Section 144 of Code, 2006. From perusal of same, it is absolutely clear that for declaratory suit, any person claiming to be Bhumidhar or asami either exclusively or jointly with any other person may file suit for declaration of his rights. In spirit, this section would also be applicable for filing suit for cancellation of any instrument executed under the provisions of Code, 2006. The intention of legislation is again very much clear that only person who is having any right over the land may file suit either for cancellation or for declaration of rights. Once the person is having no right over the land or property in dispute, neither he can file suit for cancellation nor for declaration of his rights.

13. Mr. Samir Sharma, learned Senior Counsel as amicus curiae appointed by this Court vide order dated 26.08.2025 has assisted the Court by vide interpretation of Sections 104, 105 & 144 of U.P. Revenue Code, 2006 and Rule 103 of U.P. Revenue Code Rules, 2016. This Court express its gratitude for his valuable assistance.

14. So far as cancellation of allotment of Retail Outlet of Indian Oil is concerned, petitioner is not the remedy less and for redressal of his grievance, he may challenge the allotment of Retail Outlet of Indian Oil even taking the ground of alleged illegal lease deed in contravention of Section 94 of Code, 2006.

15. For cancellation of lease deed executed under Section 94 of Code, 2006, petitioner has to show his locus first which is totally missing in present case in light of observations made here-in above. Therefore, Sub Divisional Officer has rightly rejected the application of petitioner, which was also affirmed by the Revisional Court.

16. Once, the Court has held that petitioner is having no locus to challenge the private lease deed executed under Section 94 of Code, 2006, provisions of Rule 186 of Rules, 2016 would not come in the rescue of petitioner as it can only be seen once the petitioner is having locus to challenge the private lease deed in question.

17. Therefore, I have found no infirmity or illegality in the impugned orders dated 10.07.2025 and 28.05.2025.

18. Accordingly, writ petition is dismissed.

19. No order as to costs.

(2025) 12 ILRA 300
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 04.12.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE MANJIVE SHUKLA, J.

Writ C No. 11593 of 2025

Ashok Pandey ...Petitioner
Versus
Sri Rahul Gandhi & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether a person whose conviction has been stayed by a higher court continues to suffer

disqualification under Article 102 of the Constitution of India read with Section 8(3) of the Representation of the People Act, 1951.

HEADNOTE

Constitution of India – Art. 102 – Representation of the People Act, 1951 – S. 8(3) – Writ petition under Art. 226 seeking writ of quo warranto against a sitting Member of Parliament – Conviction under Section 499 IPC and sentence of two years – Stay of conviction granted by the Supreme Court pending appeal – Contention that disqualification under Section 8(3) continues notwithstanding stay of conviction – Distinction between stay of execution of sentence and stay of conviction – Effect of stay of conviction on statutory disqualification – Maintainability of writ of quo warranto.

HELD:

Once an order of conviction is stayed, the bar under Section 8(3) of the Representation of the People Act would not apply. A stay of execution of sentence is not synonymous to stay of conviction; in the former case the bar under Section 8(3) would apply, but in the latter case, since the conviction has been stayed, the bar would not apply. The moment a higher court stays a conviction, the anathema of conviction goes out of the window and the person against whom such conviction is stayed, though not absolved, cannot be stated to be a convicted person. It is only when the appeal is decided that it could be ascertained whether he would be a convicted person or an acquitted person. Disqualification under sub-sections (1), (2) or (3) of Section 8 of the Representation of the People Act will not operate from the date of the order of stay of conviction passed by the appellate court or the High Court. The writ petition was accordingly dismissed.

[Paras 13, 16, 17, 18 & 19] (E-5)

CASE LAW CITED

Lily Thomas v. Union of India, (2013) 7 SCC 653;
 Ravikant S. Patil v. Sarvabhousma S. Bagali, (2007) 1 SCC 673;
 B.R. Kapur v. State of Tamil Nadu, (2001) 7 SCC 231.

List of Acts

Constitution of India;
Representation of the People Act, 1951;
Indian Penal Code, 1860;
Code of Criminal Procedure, 1973.

List of Keyword

Quo warranto; Disqualification of Member of Parliament; Stay of conviction; Section 8(3); Article 102; Conviction versus sentence; Electoral disqualification; Res integra.

CASE ARISING FROM**Challenge to the continuance in office of a Member of Parliament****Appearances for Parties**

Advs For Petitioner: Ashok Pandey (In person)
Advs For Respondents: A.S.G.I., Anupriya Srivastava.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Manjive Shukla, J.)

1. Heard Shri Ashok Pandey, the petitioner appearing in person, Shri Surya Bhan Pandey, learned Senior Advocate assisted by Shri Anand Dwivedi, learned counsel appearing on behalf of Opposite Party No. 2, that is Union of India and Shri O.P. Srivastava, learned Senior Advocate assisted by Ms. Anupriya Srivastava, learned counsel appearing for Opposite Party No. 3, that is Election Commission of India.

2. This is a petition under Article 226 of the Constitution of India where the writ petitioner appearing in person is seeking a writ of quo warranto against a Member of Parliament. The prayers in the writ petition have been delineated below:-

"(I.) Issue a writ, order or direction in the nature of Quo Warranto thereby asking the Respondent No. 1 Sri Rahul Gandhi as to under what authority of law, he is holding the office of Member of

Lok Sabha from Raibareli in spite of the fact that because of conviction and sentence of two years recorded by Surat court, he was disqualified to be chosen as member of Parliament in view of the provision contained in article 102 r/w section 8 (3) of R.P. Act 1951.

(II.) To direct the speaker of Lok Sabha to recover the penalty from Sri Rahul Gandhi as provided in the constitution as he participated in the proceedings of Lok Sabha without being a valid member of it.

(III.) Issue a writ in the nature of Mandamus directing the Election Commission of Bharat to declare Sri Dinesh Kumar Singh as the elected member of Lok Sabha from Raibareli Lok Sabha seat as the returned candidate Sri Rahul Gandhi was disqualified to be chosen as Member of Lok Sabha on the date of the election impugned."

3. The petitioner appearing in person has submitted that Mr. Rahul Gandhi was convicted by the trial court for an offence punishable under Section 499 of the Indian Penal Code, 1860, for which there is simple imprisonment of two years or fine or both. This order was subsequently challenged in the higher courts and the Gujarat High Court dismissed the revision petition of Mr. Rahul Gandhi and accordingly rejected the prayer for stay of conviction. When the matter went up before the Supreme Court by way of a Special Leave Petition bearing number S.L.P. (Cri.) No. 8644 of 2023, the Supreme Court passed the following order:-

"1. Leave granted.

2. Heard Dr. Abhishek Manu Singhvi, learned senior counsel for the

appellant and Shri Mahesh Jethmalani, learned senior counsel for the respondent No. 1, on the question of interim protection.

3. The present appeal challenges the judgment and order passed by the learned Single Judge of the High Court dismissing the revision petition, which was in turn filed challenging the order of the learned Sessions Judge, thereby rejecting the prayer for stay of conviction.

4. The appeal filed by the present appellant challenging the order of conviction and sentence passed by the learned Trial Judge is pending before the Appellate Court. The arguments advanced by both Dr Abhishek Manu Singhvi, and Shri Mahesh Jethmalani, learned senior counsel, touch the merits of the matter. We, therefore, refrain from observing anything about the said arguments, inasmuch as it may adversely affect the rights of either of the parties in the appeal which is pending before the learned Appellate Court.

5. Insofar as grant of stay of conviction is concerned, we have considered certain factors. The sentence for an offence punishable under Section 499 of the Indian Penal Code, 1860 (for short "IPC") is simple imprisonment for two years or fine or both. The learned Trial Judge, in the order passed by him, has awarded the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by this Court in contempt proceedings (Contempt Petition (Crl) No.3/2019 in Yashwant Sinha and Others v. Central Bureau of Investigation through its Director and another, reported in (2020) 2 SCC 338) no other reason has been assigned by the learned Trial Judge while imposing the maximum sentence of two years. It is to be

noted that it is only on account of the maximum sentence of two years imposed by the learned Trial Judge, the provisions of sub-section (3) of Section 8 of the Representation of the People Act, 1950 (for short, "the Act") have come into play. Had the sentence been due a day lesser, the provisions of sub-section (3) of Section 8 of The Act would not have been attracted.

6. Particularly, when an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years.

7. Though the learned Appellate Court and the learned High Court have spent voluminous pages while rejecting the application for stay of conviction, these aspects have not even been touched in their orders.

8. No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. However, as has been observed by this Court while accepting affidavit of the appellant herein in aforementioned contempt proceedings, the appellant herein ought to have been more careful while making the public speech. May be, had the judgment of the Apex Court in the contempt proceedings come prior to the speech made by the appellant, the appellant would have been more careful and exercised a degree of restraint while making the alleged remarks, which were found to be defamatory by the Trial Judge.

9. We are of the considered view that the ramification of sub-section (3) of

Section 8 of the Act are wide-ranging. They not only affect the right of the appellant to continue in public life but also affect the right of the electorate, who have elected him, to represent their constituency.

10. We are of the considered view, taking into consideration the aforesaid aspects and particularly that no reasons have been given by the learned Trial Judge for imposing the maximum sentence which has the effect of incurring disqualification under Section 8(3) of the Act, the order of conviction needs to be stayed, pending hearing of the present appeal.

11. We, therefore, stay the order of conviction during the pendency of the present appeal.

12. However, we clarify that the pendency of the present appeal would not come in the way of the Appellate Court in proceeding further with the appeal. The appeal would be decided on its own merits, in accordance with law.

13. The parties would be at liberty to approach the learned Appellate Court for expeditious disposal of the appeal, which request would be considered by it, on its own merits."

4. The petitioner appearing in person submits that the stay of order of conviction does not allow the Respondent No. 1 to contest in elections because Article 102 of the Constitution of India read with Section 8(3) of the Representation of Peoples Act, 1951, creates a disqualification for being chosen as or for being a Member of Parliament.

5. Mr. Ashok Pandey further submits that the Supreme Court in Criminal Appeal

No. 3838 of 2023 (Arising out of Special Leave to Appeal (Crl.) No. 11129 Of 2023), also stayed the conviction of Afzal Ansari but in the order passed in that case, the Supreme Court in specific words permitted Mr Ansari to contest the elections which is clear from Para 24 (iv) of the judgment. The relevant part of the order passed by the Supreme Court in the matter of Afzal Ansari is being quoted below for ready reference:-

"The appellant shall not be disqualified to contest future election (s) during the pendency of his criminal appeal before the high court and if he is elected, such election will be subject to outcome of the first criminal appeal."

6. He further submitted that in view of the above mentioned position of facts and law it is clear that Rahul Gandhi and Afzal Ansari, both were disqualified to be chosen as MP but as the Supreme Court had permitted Mr Ansari to contest the elections and so Mr Afzal Ansari can contest the elections in spite of being disqualified but Mr Rahul Gandhi cannot as in his matter, the Supreme Court has not permitted him to contest the election (s) as in the case of Afzal Ansari. The submission is that in case merely the stay conviction entitles a person, who is otherwise disqualified, to contest the election(s), then the specific order to Afzal Ansari was not required.

7. That in view of above mentioned position of facts and law, the submission of the petitioner is that Mr Rahul Gandhi was disqualified to be chosen as MP and so his nomination paper was wrongly accepted and his name was wrongly put for voting amongst the voters of Wayanad and Raibareli Lok Sabha seats.

8. That subsequently, on 4th June 2024, the Returning Officer, Raibareilly went ahead and declared the election results whereby declaring the Sri Rahul Gandhi as winner candidate from Raibareilly.

9. That after being declared elected, Sri Rahul Gandhi started working as the member of Lok Sabha and because of being a member of Lok Sabha, he was also nominated as Leader of Opposition and is working as such till date.

10. That in this view of the matter, it is clear that Mr Rahul Gandhi, in spite of being disqualified to be chosen as MP, was chosen as such and so the petitioner submits that he is holding the office created by the Constitution without any authority of law and is accordingly usurping a public office created by the Constitution without any authority of law.

11. Per contra, Shri O.P. Srivastava, learned Senior Advocate appearing for Respondent No. 3 submits that since there is a stay of conviction of the Respondent No. 1, there is no bar under Section 8(3) of the Representation of Peoples Act, 1951 for him to contest in the elections or to remain as a Member of Parliament. He relies on the judgment of the Supreme Court of India in *Lily Thomas Vs. Union of India* reported in (2013) 7 SCC (LS) 811, to contend that in the event a conviction is stayed by a higher Court, the bar under Section 8(3) would not apply. He relies on Paragraph 21 of the judgment to buttress his argument which is delineated below:-

"21. We do not also find merit in the submission of Mr. Luthra and Mr. Kuhad that if a sitting member of Parliament or the State Legislature suffers

from a frivolous conviction. by the trial, court for an offence given under Sub-section (1), (2) or (3) of Section 8 of the Act, he will be remediless and he will suffer immense hardship as he would stand disqualified on account of such conviction in the absence of Sub-section (4) of Section 8 of the Act. A three-Judge Bench of this Court in Rama Narang v. Ramesh Narang and Ors. [MANU/SC/0623/1995 (1995) 2 SCC 513] has held that when an appeal is preferred Under Section 374 of the Code of Criminal Procedure [for short 'the Code'] the appeal is against both the conviction and sentence and, therefore, the Appellate Court in exercise of its power Under Section 389(1) of the Code can also stay the order of conviction and the High Court in exercise of its Inherent jurisdiction Under Section 482 of the Code can also stay the conviction if the power was not to be found in Section 389(1) of the Code. In Ravikant S. Patil v. Sarvabhoutma S. Bagali [MANU/SC/8600/2006 (2007) 1 SCC 673], a three-Judge Bench of this Court, however, observed

"It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the Appellant would incur : disqualification to contest the election. The

High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the Respondent that the disqualification arising out of conviction continues to operate even after stay of conviction."

In the aforesaid case, a contention was raised by the Respondents that the Appellant was disqualified from contesting the election to the Legislative Assembly under Sub-section (3) of Section 8 of the Act as he had been convicted for an offence punishable Under Sections 366 and 376 of the Indian Penal Code and it was held by the three-Judge Bench that as the High Court for special reasons had passed an order staying the conviction, the disqualification arising out of the conviction ceased to operate after the stay of conviction. Therefore, the disqualification under Sub-section (1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the Appellate Court Under Section 389 of the Code or the High Court Under Section 482 of the Code."

12. We have heard learned counsels appearing on behalf of the parties and analyzed the position of law. Before going into the issue, it would be apt to lay down the relevant provisions of law in relation to the present issue. Accordingly, Article 102 of the Constitution of India and Section 8(3) of the Representation of Peoples Act, 1951 are provided below:-

"Article-102. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court,

(c) if he is an undischarged insolvent,

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State,

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.--For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Section-8 Disqualification on conviction for certain offences.

8(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

13. Upon a perusal of the above provision and after sifting through the judgments of the Supreme Court relied upon by the parties, it is clear that once an order of conviction is stayed, the bar under Section 8(3) of the Representation of Peoples Act would not apply. The reason behind the same is very simple -- a person convicted of an offence and sentenced to imprisonment for not less than two years is the bar provided under Section 8(3) of the Representation of Peoples Act. However, when such a conviction has been stayed by a higher court, the indelible mark of a convict cannot be assigned to such a person till the appeal is decided. It may be noted that in several cases, the higher court does not stay the conviction of a person but merely may stay the execution of the sentence and may even grant bail to the petitioner. Such a stay of the execution is not synonymous to stay of conviction. In the former case, the bar under Section 8(3) would apply but in the latter case, since the conviction has been stayed, the bar would not apply.

14. The petitioner has also relied on the judgment of a Constitutional Bench of the Supreme Court in ***B.R. Kapur Vs. State of Tamil Nadu & others*** reported in (2001) 7 SCC 231, and specifically relied on Paragraph 40 to buttress his argument. Paragraph 40 of the said judgment is delineated below:-

"40. In much the same vein, it was submitted that the presumption of Innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second Responderit. Before we advert to the four judgments relied upon in support of this submission, let us clear the

air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well."

15. The petitioner has specifically placed great emphasis on the last three lines of the said paragraph that states as follows:- "That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well." It is the argument of the petitioner that a conviction unless set aside would continue to operate, and therefore, the bar under Section 8(3) of the Representation of Peoples Act, 1951 would continue to apply.

16. With great humility and respect, we would submit that we are not at consensus ad idem with the argument raised, as we are of the view that the statement made in the said paragraph was

in reference to a factual matrix wherein execution of the sentence had been stayed and not where there has been a stay of conviction. The moment a higher court stays a conviction, the anathema of conviction goes out of the window and the person against whom such conviction is stayed, though not absolved, cannot be stated to be a convicted person. It is only when the appeal is decided that it could be ascertained as to whether he would be a convicted person or an acquitted person.

17. Our opinion is also fortified by the judgment in *Lily Thomas (Supra)* wherein the Division Bench of the Supreme Court has categorically held that the disqualification under Sub-section (1), (2) or (3) of Section 8 of the Representation of Peoples Act will not operate from the date of order of stay of conviction passed by the Appellate Court under Section 389 of the Code or the High Court under Section 482 of the Code.

18. In light of the same, we are of the view that the present writ petition is devoid of merit. The petitioner has also sought from us a certificate for appeal to the Supreme Court under Article 134-A of the Constitution of India.

19. On consideration of the said prayer, we are of the view that no substantial question of law arises in the present matter, as the matter has been categorically settled by the Supreme Court and is no longer res integra, as discussed above. Accordingly, the said prayer is also rejected.

20. The writ petition is **dismissed** in the aforesaid terms.

(2025) 12 ILRA 307

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.12.2025

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Writ C No. 35171 of 2025
&
Connected With Other Cases

Akanksha & Anr. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

The main issue was whether major consulting adults living together in a live-in-relationship are entitled to protection of their life and personal liberty from interference by family members or the state, even if such a relationship is not socially accepted or is considered immoral by society.

Headnotes

Constitution of India, 1950-Article 226-Bhartiya Shaksya Adhiniyam, 2023-section 119(1)-Legality of live-in relationships-While live in relationships may be viewed as immoral or a social taboo in India, they are not prohibited by any law-Once individuals attain the age of majority, they are sui juris and have the right to choose their partner-notions of social morality are subjective and cannot be used by criminal law to interfere with personal autonomy-section 119(1) of BSA states that if couples live together for a significant amount of time as husband and wife, they will be presumed to be married-writ petition allowed.(Para 42 to 53) (E-6)

Held

The court established that a live in relationship between two consenting adults of heterogenic sex does not amount to any offence- Furthermore, the legislature has recognized such relationship through the Protection of women from domestic violence Act, 2005, treating them as "relationship in the nature of marriage."

Case law cited

Badri Prasad Vs Deputy Director of Consolidation , AIR 1978 SC 1557;(1978 3 SCC 527, Payal Sharma @ Kamla Sharma Vs Superintendent, Nari Niketan, Agra, AIR 2001 ALL 254, Tulsa & Ors Vs Durghatiya & Ors (2008) 4 SCC 520,S.Khushboo Vs Kanniammal & Anr, (2010) 5 SCC 600,Gian Devi Vs The Superintendent, Nari Niketan Delhi & Ors (1976) 3 SCC 234, Lata Singh Vs State of UP 2006 Cr.L.J. 3309, Bhagwan Dass Vs State (NCT of Delhi), (2011) 6 SCC 396, D. Velusamy Vs D. Patchaimmal (2010) 10 SCC 469,Soni Gerry Vs Grry Douglas, (2018) 2 SCC 197, Dhanu Lal Vs Ganesh Ram, (2015) 12 SCC 301, Nandakumar & Anr. Vs State of Kerala, (2018) 16 SCC 602,Indra Sarma Vs V.K.V Sarma (2013 15 SCC 755, Shafin Jahan Vs Asokan K.M & Ors (2018) 16 SCC 368,S.B. Criminal Writ Petition No. 1730 of 2024 (Rekha Meghwanshi & Anr. Vs State of Rajasthan & Ors), S.B Criminal Writ Petition No. 1537 of 2025 (XXX Vs State of Rajasthan & Ors)., CRWP No. 4725 of 2021 (Seema Kaur & Anr. Vs State of Punjab & Ors), Anjali Kushwah & Ors Vs The State of M.P. Writ Petition No. 41033 of 2024, Writ-C 27338 of 2023 (Razia & Anr Vs State of U.P. & Three Ors.),Writ-C No. 11108 of 2020 Kamini Devi & Anr. Vs State of U.P. & Ors, Kiran Rawat & Anr Vs State of U.P., 2023 (7) ADJ 679-referred to.

List of Acts

Constitution of India,1950, Protection of Women from Domestic Violence Act,2005, Indian Penal Code,1860.

List of Keywords

Live-in relationship, Right to life and personal liberty, Protection from Interference, Major Consenting Adults, Social morality, Legality.

Case Arising fom

Civil Jurisdiction-WRIT-C No. – 35171 of 2025
Akanksha & Anr. Vs. State of U.P. & 3 Ors.
 From the Judgment and Order dated 17.12.2025 of the High Court of Judicature at Allahabad.

Appearances for parties**Adv. for Petitioner:-**

Rajeev Kumar Saxena

Adv. for Respondent:-

C.S.C

(Delivered by Hon'ble Vivek Kumar Singh, J.)

1. Heard Sri Swetashwa Agarwal, learned Senior Counsel, appeared as Amicus Curiae and assisted by Sri Subir Lal, Shri Sausthav Guha, Sri Dhanraj Singh Yadav, Sri Ajay Kumar and Sri Abhay Kumar Shukla, learned counsels appearing on behalf of the petitioners and Sri Yogesh Kumar, Sri Pramit Kumar Pal and Sri Suresh Babu, learned Standing Counsels for the State of U.P., in all the writ petitions.

2. By means of the present writ petition, the petitioners have prayed for a writ in the nature of mandamus directing the respondents not to interfere in their peaceful life and also for a direction to provide protection.

3. A large number of petitions are being filed in this Court wherein the petitioners have decided to stay together in a live-in relationship and they claimed that they have an apprehension of life threat from the private respondents and the Police of concerned Districts have been approached by them, but no heed was paid, therefore, they have approached this Court by way of filing these writ petitions. In all the writ petitions, the petitioners have prayed that the Police of their District be directed to provide protection from private respondents as well as other family members/relatives/associates of the private respondents from causing any harm to the petitioners.

4. Since controversy involved in all the writ petitions are similar, hence they are being decided by a common judgment.

5. This Court, taking note of the involvement of the important issue in the matter, requested Mr. Shweta Ashwani Agarwal, learned Senior Advocate, to assist this Court, as *amicus curiae*, which was accepted by the learned Senior Counsel and he argued the matter with the assistance of learned counsels named above.

6. Learned Senior Counsel started his argument that in India live-in relationship is not unlawful though, it is not accepted in many parts of the society because people think it may increase adultery. According to Article 21 of the Constitution of India, every citizen's right to marry is an alienable fundamental right. They can be married or be in a live-in relationship. It is their choice and no one can interfere in their peaceful living.

7. Learned Senior Counsel further argued that Article 21 of the Constitution of India grants the personal choice of whether to marry or not and be in a live-in relationship. A major person has a right to marry a person of his/her choice or to live with his/her partner/they have a right to live out of the wedlock.

8. It is further argued by the learned Senior Counsel that live-in relationship may be considered to be an immoral act. Morality may differ from person to person. It is according to each person and perception whether a particular thing is moral or immoral. The live-in relationship is not prohibited by any law. The legality of the live-in relationship arose from Article 19 and 21 of the Constitution of India, therefore, one can live anywhere and with anyone of their choice, with or without marriage. According to law, a live-in relationship cannot be said illegal, however, some people may call it immoral. It is also submitted that

the Indian Parliament has never passed any Legislation that declares a live-in relationship as illegal or unlawful. The Supreme Court and the High Courts in various judgments, have accepted the live-in relationship.

9. The learned Senior Counsel citing several judgments of Supreme Court as well as High Courts, stated that it is verdict that a live-in relationship between consenting adults of heterogenic sex does not amount to any offence. It is also submitted that Article 14 of the Indian Constitution guarantees equal protection of law in the territory of India and Article 21 protects the citizen's right to life and liberty. In these cases, the petitioners, claimed to be in a live-in relationship, have crossed the age of majority which is a legal age to enter into any relationship with protection, according to their prayer. The learned Senior Counsel has relied upon various judgments of the Supreme Court as well as High Courts in support of his contention, which shall be discussed by this Court in succeeding paragraphs of this judgment.

10. Learned Additional Chief Standing Counsel and learned Standing Counsel for the State of U.P. stated that the Indian society cannot accept the live-in relationship in replacement of marriage. Married couples often have many societal responsibilities of finances, taking care of each other's family members and performing the duties organized by the society. In a live-in relationship there is no need to please parents and relatives, and the couples are free from such responsibilities which will arise out of marriage.

11. It is also stated by learned counsel for the State that live-in relationship cannot be accepted at the cost of our country's social fabric. These parties are not binding

by any law and either of the partners can walk out of the said relationship as and when they like to do so. It is a contract of live-in together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at any point of time. There is no legal status of such type of relationship and the legal status of the children born out of such relationship would not be determined and it will create a lot of complications in the life of live-in partners, therefore, before seeking any relief from the Court, they should marry first.

12. It is also submitted by the learned counsel for the State of U.P. that if the petitions are allowed, that would impose an impermissible obligation upon the State to supervise, affirm and protect personal choices of the petitioners. It is further submitted that protection may be granted to the couples who have solemnized marriage against the wishes of their parents and relatives but no protection can be granted to non-marital couples. The apprehensions of the petitioners are vague, speculative and unsupported by any contemporaneous complaint to local police authorities. There is no real and immediate threat to life or limb of the petitioners. The State's obligation to protect arises only when a real and immediate threat exists; the Constitution does not compel prophylactic, generalized or anticipatory protection for private arrangements. The police cannot be compelled to serve as personal security for non-marital cohabitation. Protection by the police is warranted only when there exists a credible and immediate threat.

13. In last, it is submitted by learned counsel for the State that moral values and traditions of the Indian Society in name of

modernisation cannot be accepted and no relief can be granted by this Court considering the status of the parties/petitioners. The learned counsel for the State have also relied upon following judgments:

"1. Director of Settlements vs. M.R. Apparao, (2002) 4 SCC 638.

2. Shanti Fragrances v. Union of India, (2018) 11 SCC 305.

3. Municipal Committee, Amritsar vs. Hazara Singh, (1975) 1 SCC 794.

4. Common Cause vs. Union of India, (2018) 5 SCC 1.

5. Indra Sarma vs. V.K.V. Sarma, (2013) 15 SCC 755.

6. State of Punjab vs. Gurdial Singh, (1980) 2 SCC 471.

7. K.K. Bhalla vs. State of M.P., (2006) 3 SCC 581.

8. Poonam Verma vs. Delhi Police, (1996) 4 SCC 565.

9. Divisional Manager, Aravali Golf Club vs. Chander Hass, (2008) 1 SCC 683."

14. I have heard rival submissions of the parties and perused the records.

15. Marriage is a sacred relationship in India. Marriage has its legal consequences, entitles both the persons to cohabit, children born out of a legal wedlock have legitimacy as legal heirs, the wife is entitled to maintenance during and after the

dissolution of marriage. To avoid these responsibilities and to enjoy the benefit of living together, the concept of living together has come into picture. Live-in relationship provides for a life free from responsibilities and commitment unlike in a marriage. In this relationship, an unmarried couple lives together under the same roof in a way it resembles a marriage, but without getting legally married.

16. Live-in relationship is not socially accepted in our country. On the other hand, it is considered as taboo in India. The door for western ideas is always welcome in India and the concept of live-in relationship is one of such ideas. Live-in relationship is still facing social stigma and moral debate, especially regarding traditional values, children, differing religious/cultural perspectives. For some, it is immoral while others see it as a valid choice for compatibility.

17. In modern era, the concept of live-in relationship means a male and a female living together under a roof without marriage. This Court has been approached by live-in couples for protection from the private respondents, therefore, without going into the morality of the act of the petitioners, the Court has to see as to whether any illegal act has been committed by the petitioners and in this context, it has to be seen as to whether they are entitled to any relief.

18. **Badri Prasad vs. Deputy Director of Consolidation, AIR 1978 SC 1557; (1978) 3 SCC 527**, was the first case in which the Hon'ble Supreme Court of India has recognized live-in relationship and interpreted it as a valid marriage. In this case the Hon'ble Supreme Court gave the legal validity to the 50 years old relationship of a

couple. The Supreme Court held that the parties were in a live-in relationship for more than 50 years and their relationship would be considered as husband and wife, presuming the relationship was valid.

19. In the case of **Payal Sharma @ Kamla Sharma vs. Superintendent, Nari Niketan, Agra, AIR 2001 ALL 254**, the Division Bench of Allahabad High Court, clearly stated that a man and women even without getting married can live together if they wish. This may be regarded immoral by the society but it is not illegal. There is a difference between the law and morality. The petitioner was set at liberty by the Division Bench of High Court, Allahabad, and it was observed that she can go anywhere and can live with anyone as she desires. The police was also directed to ensure security of the petitioner.

20. In the case of **Tulsa And Others vs. Durghatiya And Others, (2008) 4 SCC 520**, the Hon'ble Supreme Court has remarked that where partners live jointly for an extended period of time, a belief would emerge in a substantial marriage. Subsequently, there is no rule which shows that living together with someone is unlawful, also children conceived out of such relationship will no more be considered as illegitimate.

21. In the case of **S. Khushboo vs. Kanniammal And Another, (2010) 5 SCC 600**, the Hon'ble Supreme Court held that adults willingly engaging in sexual relations outside the marital setting is not an offence. Paragraph Nos. 31 and 46 of the **S. Khushboo (supra)** are reproduced as under:

"31. While it is true that the mainstream view in our society is that sexual contact should take place only

between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of "adultery" as defined under Section 497 IPC. At this juncture, we may refer to the decision given by this Court in Lata Singh Vs. State of U.P. & Anr., AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of "adultery"), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that "no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court".

46. Admittedly, the appellant's remarks did provoke a controversy since the acceptance of premarital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal

mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive"

22. Here an important issue raised in these petitions is regarding the fundamental rights of the petitioners guaranteed under Article 21 of the Constitution of India. Can this Court be a silent spectator when its extraordinary jurisdiction under Article 226 of the Constitution of India invoked seeking its protection for personal liberty and a young couple whose only fault is that they have crossed the bridge which is not socially acceptable by our society.

23. The Hon'ble Apex Court has considered this issue and has laid down law that partners, living in a relationship has not committed any offence.

24. In the case of **Gian Devi v. The Superintendent, Nari Niketan, Delhi and Others, (1976) 3 SCC 234**, the three-Judge Bench of the Hon'ble Supreme Court has held that if a girl is major then no fetter can be placed upon her choice of the person with whom she is to stay nor any restriction can be imposed regarding the place where she should stay. The Supreme Court further observed that relatives can also have no right to interfere in such matter. It is enough to extract relevant part of the judgment which reads as under:

"7. ... Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the

person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

25. In **Lata Singh vs. State of UP 2006 Cr.L.J. 3309**, while dealing with a case of harassment by the parents of the boy and girl, who had entered into inter-caste marriage, Hon'ble Supreme Court has issued directions to the Administration/Police authorities throughout the country in the following terms:-

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

26. In **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396** Hon'ble

Supreme Court held in paragraph 28 and 29 as under:-

"28. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in Lata Singh case that there is nothing "honourable" in "honour" killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behavior. All persons who are planning to perpetrate "honour" killings should know that the gallows await them.

29. Let a copy of this judgment be sent to the Registrars General/ Registrars of all the High Courts who shall circulate the same to all the Judges of the Courts. The Registrars General/ Registrars of the High Courts will also circulate copies of the same to all the Sessions Judges/ Additional Sessions Judges in the States/Union Territories. Copies of the judgment shall also be sent to all the Chief Secretaries/ Home Secretaries/ Directors General of Police of all States/ Union Territories in the country. The Home Secretaries and Directors General of Police will circulate the same to all SSPs/SPs in the States/Union Territories for information."

27. The anguish expressed by the Supreme Court in the case of **Bhagwan Dass (supra)** is a matter of serious concern for our democratic polity. Organizing Khaps on the caste basis and implementing

their decisions instantly will turn the democracy into mobocracy. It will turn India into a banana republic. As noticed by the Supreme Court, honour killing has become commonplace in several parts of India. If the tendency to overreach the rule of law is not nipped in the bud, it would corrode the very foundation of our Constitution on which its grand edifice rests. The consequences are fraught with danger of collapse of our institutions and rule of law that will lead to anarchy.

28. The Supreme Court in the case of **D. Velusamy v. D. Patchaiammal**, reported in (2010) 10 SCC 469, has considered the live-in relationship or a relationship in the nature of marriage and laid down some ingredients, which can be treated like a common law marriage. The relevant paragraph of the judgment reads as under:

"31. In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time."

29. A three Judge Bench of the Hon'ble Apex Court in **Soni Gerry vs.**

Gerry Douglas, (2018) 2 SCC 197, where the daughter of appellant and respondent, who had attained the age of majority, expressed her desire to reside in Kuwait with her father, where she was pursuing her education, held:

"10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

30. In **Dhanu Lal vs. Ganesh Ram**, (2015) 12 SCC 301, the Apex Court has held that couples in live in relationships will be presumed legally married. It was also held that the woman in live in relationship would be eligible to inherit the property after the death of a partner.

31. In **Nandakumar and Another vs. State of Kerala**, (2018) 16 SCC 602, the Apex Court emphasized that live in relationship is now recognized by the legislature itself and it has found its place under the provisions of Protection of Women from Domestic Violence Act, 2005. The relevant paragraphs of **Nandakumar (supra)** are reproduced as under:

"We need not go into this aspect in detail. For our purposes, it is sufficient to note that both Appellant 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself

is disputed), they have right to live together even outside the wedlock. It would not be out of place to mention that "live-in relationship" is now recognized by the legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."

32. The matter in issue has already been dealt with in great detail by the Hon'ble Supreme Court in the case of **Indra Sarma vs. V.K.V. Sarma, (2013) 15 SCC 755**, wherein it was held that live-in relationships may last for a considerable time and can lead to standards of dependency and vulnerability and with the increase in number of live-in relationships there must be sufficient protection, specially for women and those children who are born out of such relationships. The law cannot promote premarital sex, and live-in relationships are personal and people can give their opinion in favour or against it. The legislature must consider this issue and enact separate legislation so that protection for women and children born out of live-in relationships can be provided. The relevant paragraphs of the aforesaid judgment are reproduced hereinunder:

"37. The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. The relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that

relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".

38. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

38.1. (a) Domestic relationship between an unmarried adult woman and an unmarried adult male.- Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

38.2. (b) Domestic relationship between an unmarried woman and a married adult male.- Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

38.3. (c) Domestic relationship between a married adult woman and an

unmarried adult male.- Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

38.4. (d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male.- An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

38.5. (e) Domestic relationship between same sex partners (gay and lesbians).- The DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

39. Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic

violence, entitling any relief under the DV Act.

40. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage". Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression "relationship in the nature of marriage", of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression "in the nature of marriage". Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in para 38.1 (a) and para 38.4 (d) *supra*. Women, who fall under categories (b) and (c) (paras 38.2 and 38.3), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 38.2 of the Judgment.

41. We have, therefore, come across various permutations and combinations, in such relationships, and to

test whether a particular relationship would fall within the expression "relationship in the nature of marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.

42. Section 2(f) of the DV Act defines "domestic relationship" to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as defacto relationship, marriage ? like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship), etc.

43. The courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. Legislatures too, of late, through legislations started giving benefits to heterosexual cohabitants."

*33. In the case of **Shafin Jahan vs. Asokan K.M. And Others**, (2018) 16 SCC 368, the Hon'ble Apex Court has held that right to marry a person of own choice is integral part of Article 21 of the Constitution of India. There is a complete freedom to choose life partner of any faith, belief, religion, caste etc. Neither State, nor law, nor society can dictate the choice of partner. The right cannot be taken away except through law which is substantially and procedurally*

*fair, just and reasonable. The relevant paragraphs of **Shafin Jahan (supra)** are reproduced as under:*

*"26. In **Ummu Sabeena vs. State of Kerala and Others**, (2011) 10 SCC 781, the Court further ruled that the principle of habeas corpus has been incorporated in our constitutional law and in a democratic republic like India where judges function under a written Constitution and which has a chapter of fundamental rights to protect individual liberty, the judges owe a duty to safeguard the liberty not only of the citizens but also of all persons within the territory of India; and the same exercise of power can be done in the most effective manner by issuing a writ of habeas corpus.*

27 . Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right Under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. Once that aspect is clear, the enquiry and determination have to come to an end.

52. It is obligatory to state here that expression of choice in accord with

law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

53 . Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripetal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.

54. In the case at hand, the father in his own stand and perception may feel that there has been enormous transgression of his right to protect the interest of his daughter but his view point or position cannot be allowed to curtail the fundamental rights of his daughter who, out of her own volition, married the Appellant. Therefore, the High Court has completely erred by taking upon itself the burden of annulling the marriage between the Appellant and the Respondent No. 9 when both stood embedded to their vow of matrimony."

34. The Rajasthan High Court while deciding **S.B. Criminal Writ Petition No. 1730 of 2024 (Rekha Meghwanshi And Another vs. State of Rajasthan And Others)**, dealt with the identical situation and granted protection to the live-in couples, vide order dated 21.8.2024.

35. In another latest judgment, Rajasthan High Court while deciding **S.B. Criminal Writ Petition No. 1537 of 2025 (XXX vs. State of Rajasthan And Others)**, granted protection to live-in couples vide order dated 01.12.2025, relying upon the judgments of **Rekha Meghwanshi (supra)**, **Nandakumar (supra)** and **Lata Singh (supra)**. Paragraph nos. 10, 12 and 13 of the judgment dated 01.12.2025 passed by the Rajasthan High Court are reproduced as under:

" 10. In the case of **Mafi & Anr. Vs. State of Harayana & Ors.** while deciding **CRWP No.691/2021** vide order dated 25.01.2021 has held as under:

"In the present case, this Court, without expressing any opinion on the validity of the relationship of the

petitioners, is required to consider whether the apprehension of the petitioners needs to be redressed. Petitioner No.1 in the present case is more than 18 years of age and is a major. She is well within her right to decide what is good for her and what is not. She has decided to take a step to be in a live-in relationship with petitioner No.2, who is also major, though may not be of a marriageable age. Be that as it may, the fact remains that both the petitioners in the present case are major and have a right to live their lives on their own terms. The private respondent Nos.4 to 8 being relatives of petitioner No.1, who is a major, cannot dictate to her how and with whom she should spend her life. Parents cannot compel a child to live a life on their terms. Every adult individual has a right to live his or her life as he or she deems fit. The petitioners are both major and have every right to live their lives as they desire within the four corners of the law. The society cannot determine how an individual should live her or his life. A person with whom someone chooses to spend his or her life with cannot be determined by what society wants. Parents don't accept their daughter's choices only because of fear that it is not acceptable to the society.

The Constitution of India guarantees every individual the right to life and the choice of a partner is an important facet of the right to life. The petitioners are seeking protection of their lives and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her personal liberty except as per the procedure established by law. No doubt petitioner No.2 is not of marriageable age, however, admittedly, he

is a major. Merely because of the fact that petitioner No.2 is not of a marriageable age the petitioners cannot possibly be denied enforcement of their fundamental rights as envisaged under Article 21 of the Constitution of India. The petitioners, both being major, have decided to live together in a live-in relationship and there possibly cannot be any legally justifiable reason for the respondents to object to the same."

12. Article 21 of the Constitution of India guarantees the right to life and personal liberty under the ambit of the fundamental rights, and any threat to these rights constitutes violation of the same.

13. It is a well settled legal position, as expounded by the Hon'ble Supreme Court in the cases of **Lata Singh Vs. State of UP & Anr.**, reported in **AIR 2006 SC 2522**, **S. Khushboo Vs. Kanniammal & ors.**, reported in **(2010) 5 SCC 600**, **Indra Sarma Vs. V.K.V. Sarma** reported in **(2013) 15 SCC 755** and **Shafin Jahan Vs. Asokan KM & Ors.** reported in **(2018) 16 SCC 368** and passed by the Co-ordinate Bench of this Court in the case of **Suman Meena vs. State of Rajasthan** while deciding **S.B. Criminal Writ Petition No.792/2024** decided on 03.03.2025, that the life and personal liberty of individuals has to be protected, except according to procedure established by law, as mandated by Article 21 of the Constitution of India. Further, as per Section 29 of the Rajasthan Police Act, 2007 every police officer is duty bound to protect the life and personal liberty of the citizens."

36. The Punjab and Haryana High Court while deciding **CRWP No. 4725 of 2021 (Seema Kaur and Another vs. State of Punjab And Others)**, granted protection to live-in partners vide order

dated 03.06.2021. The relevant paragraphs of **Seema Kaur (supra)** are reproduced as under:

*"This Court in the past and also recently has allowed protection to those runaway couples, even though they were not married and were in a live-in relationship, and in cases where the marriage was invalid (as one of the parties though a major, was not of age as per Section 5 of the Hindu Marriage Act). Reference in this regard can be made to the judgment rendered by the Division Bench in **Rajwinder Kaur and another Versus State of Punjab, 2014 (4) RCR (Criminal) 785** where it was held that marriage is not a must for security to be provided to a runaway couple. The police authorities were directed to ensure that no harm was caused by any one to the life and liberty of the couple. Similar views have been taken by the Coordinate Benches in the case of **Rajveer Kaur Versus State of Punjab, 2019 (3) RCR (Civil) 478** and in **Priyapreet Kaur Versus State of Punjab, 2021 (1) RCR (Civil) 604** amongst others. Different High Courts too have allowed protection to runaway couples who are not married. Again reference can be made to a recent judgement rendered by the Allahabad High Court in **Kamini Devi vs. State of UP, 2021(1) RCR (Civil) 421** and in **Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396**.*

The concept of a live in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence. Even under The Protection of Women from Domestic Violence Act, 2005, a woman who is in a 'domestic relationship' has been provided

protection, maintenance etc. It is interesting to note that the word 'wife' has not been used under the said Act. Thus, the female live-in-partners and the children of live-in-couples have been accorded adequate protection by the Parliament.

*Article 21 as enshrined in the Constitution of India provides for its citizen to a right to life and personal liberty, with a stipulation that they shall not be deprived of it except according to a procedure established by law. In the case of **Shakti Vahini Versus Union of India and others, 2018 (5) R.C.R (Criminal) 981**, the Supreme court has held "The right to exercise Assertion of choice is an inalienable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-"Liberty, taking the word in its concrete sense consists in the ability to choose." At this stage, one cannot also lose sight of honour killings which are prevalent in northern parts of India, particularly in parts of States of Punjab, Haryana, Rajasthan and Uttar Pradesh. Honour killing is a result of people marrying without their family's acceptance, and sometimes for marrying outside their caste or religion. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is for the State at this juncture, to ensure their protection and their personal liberty. It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage and such persons have to face dire consequences at the hands of persons from whom protection is sought. In case such a course is adopted and protection denied, the courts would also be failing in their duty to provide its*

citizens a right to their life and liberty as enshrined under Article 21 of the Constitution of India and to uphold to the Rule of law.

*The petitioners herein have taken a decision to reside together without the sanctity of marriage and it is not for the courts to judge them on their decision. The Supreme Court in its decision rendered in **S. Khushboo v. Kanniammal, (2010) 5 SCC 600** has held that live in relationship is permissible and the act of two adults living together cannot be considered illegal or unlawful, while further holding that the issue of morality and criminality are not co-extensive. If the petitioners herein have not committed any offence, this court sees no reason as to why their prayer for grant of protection cannot be acceded to. Therefore, with due respect to the judgments rendered by the Coordinate Benches, who have denied protection to couples who are in live in relationship, this court is unable to adopt the same view.*

Without entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, I dispose of this petition with directions to respondent No.2-Senior Superintendent of Police, Bathinda to decide the representation of the petitioners (Annexure P-3) within a period of one week from the date of receipt of a copy of this order and grant them protection, if any threat to their life and liberty is perceived. It is made clear that this order shall not be taken to protect the petitioners from legal action for violation of law, if any committed by them."

37. The M.P. High Court, in case of **Anjali Kushwah And Ors. vs. The State of M.P., Writ Petition No. 41033 of 2024**, decided on 30.12.2024, has protected the

live-in couple. The following observation was made by the M.P. High Court:

" In view of the aforesaid and also looking to the judgement of the Supreme Court in the case of Lata Singh v. State of U.P. reported in (2006) 5 SCC 475 and Navtej Singh Johar v. Union of India reported in (2018) 7 SCC 192, this Court is inclined to allow the present petition despite the fact that petitioner No. 1 is less than 21 years of age because both the petitioners are shown to be major being above 18 years of age and their choice needs to be protected from the external forces. However, this Court expresses its concern over the choice of the petitioners to enter into live in relationship as at such a tender age they may not be emotionally fully mature and economically fully independent. The petitioners are expected to exercise maturity while getting such protection from this Court.

In terms of the above, petition is allowed and the respondents Nos. 2 to 4 are directed to look into the grievance raised by the petitioners and shall examine the grievance of the petitioner regarding their life and liberty. They will be at liberty to verify the factum of age of the petitioners."

38. Even the Allahabad High Court while deciding **Writ-C No. 27338 of 2023 (Razia And Another vs. State of U.P. And Three Others)**, protected the live-in couples vide order dated 05.09.2023, and held that the petitioners are at liberty to live together and no person would be permitted to interfere in their peaceful live-in relationship. Paragraph no. 13 of **Razia (supra)** is reproduced as under:

"13. From the above discussion and the rulings of the Supreme Court, it is clear that a boy or girl, who have attained

majority, is free to marry or live with a person of his/her choice and no one including his/her parents or anyone on their behalf can interfere in their right to freedom of choosing a partner which emanates from Right to Life and Personal Liberty guaranteed under Articles 19 and 21 of the Constitution of India."

39. The Division Bench of Allahabad High Court has also protected live-in couple in **Writ-C No. 11108 of 2020, Kamini Devi and Another vs. State of U.P. and Others**, decided on 23.11.2020. Paragraph nos. 6 and 10 of the said judgment are reproduced as under:

"6. Apart from the same Hon'ble Apex Court in a long line of decisions has settled the law that where a boy and a girl are major and they are living with their free will, then, nobody including their parents, has authority to interfere with their living together. Reference may be made to the judgements of the Supreme Court in the cases of **Gian Devi v. The Superintendent, Nari Niketan, Delhi and others, (1976) 3 SCC 234; Lata Singh v. State of U.P. and another, (2006) 5 SCC 475; and, Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396**, which have consistently been followed by the Supreme Court and this Court, as well as of this Court in **Deepika and another v. State of U.P. and others, 2013 (9) ADJ 534**. The Supreme Court in *Gian Devi (supra)* has held as under: -

"7. ... Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age.

As the petitioner is sui juris no fetters can be placed upon her choice of the

person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

10. Having regard to the facts and circumstances of the case, we are of the view that the petitioners are at liberty to live together and no person shall be permitted to interfere in their peaceful living. As right to life is a fundamental right insured under Article 21 of the Constitution of India in which it is provided that no person shall be deprived of his right to life and personal liberty. In case any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the Senior Superintendent of Police, Farrukhabad i.e. the second-respondent, with self attested computer generated copy of this order downloaded from the official website of High Court Allahabad, who shall provide immediate protection to the petitioners."

40. Learned counsel appearing on behalf of the State has placed reliance upon a judgment of Division Bench of this Court in the case of **Kiran Rawat And Another vs. State of U.P., 2023 (7) ADJ 679**, decided on 28.4.2023, and submitted that this Court has refused to provide protection to the couples residing together in a live-in relationship.

41. From perusal of judgment of this Court in **Kiran Rawat (supra)**, it is apparent that the Court has not held that all the couples residing in a live-in relationship are not entitled to protection of the Court. The judgment was not passed in consonance with the judgments passed by the Hon'ble Supreme Court and the facts of

the present cases are entirely different from the facts of the case of **Kiran Rawat (supra)**.

42. In none of the judgment of Hon'ble Supreme Court, relied upon by the State counsels, the live-in relationship was criticized/deprecated or refused to protect the live-in partners. On the contrary, it was recognized by the Hon'ble Supreme Court in various judgments discussed above. A perusal of the aforesaid judgments manifest that the Apex Court has consistently respected the liberty of an individual who has attained the age of majority. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human rights but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India.

43. Learned counsel for the State has relied upon several judgments of the Hon'ble Supreme Court. They have relied upon **Shanti Frangrances (supra)**, which is related to taxation matters; **Common Cause (supra)**, which is related to euthanasia; **K.K. Bhalla (supra)** which is related to town planning and **Divisional Manager (supra)**, which is also not related to live-in relationship.

44. Except the judgment of **Kiran Rawat (supra)**, learned counsel for the State could not produce any judgment of the Hon'ble Apex Court wherein live-in relationship was deprecated or criticized or the protection was not granted to live-in partners. Even in the case of **Kiran Rawat (supra)**, the Division Bench of this Court considered the legality and validity of interfaith couple, which is not the subject matter herein.

45. The concept of a live-in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of the marriage constitutes an offence. Even under the Protection of Women from Domestic Violence Act, 2005, a woman who, is in a domestic relationship has been provided protection, maintenance etc. The word "wife" has not been used under the said Act.

46. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is the bounden duty of the State, as per the Constitutional obligations casted upon it, to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or major, married or unmarried. Mere fact that the petitioners have not solemnized marriage, would not deprive them of their fundamental right as envisaged in the Constitution of India being citizens of India. This Court has no hesitation to hold that the Constitutional's fundamental right under Article 21 of the Constitution of India stands on a much higher pedestal. Being sacrosanct, under the Constitutional scheme it must be protected, regardless of the solemnization of marriage or even the absence of any marriage between the parties.

47. The petitioners herein, who are major, have taken a decision to reside together without the sanctity of the marriage and it is not for the Courts to judge them on their decision. If the petitioners herein have not committed any offence, this Court sees no reason as to why

their prayer for grant of protection cannot be acceded to. Therefore, with due respect to the judgments rendered by the co-ordinate Benches, who have denied protection to couples, who were in a live-in relationship, this Court is unable to adopt the same view.

48. It is well settled legal position as expounded by the Hon'ble Supreme court in the case of **Lata Singh (supra)**, **S. Khushboo (supra)**, **Indra Sarma (supra)** and **Shafin Jahan (supra)** and other judgments passed by various High Courts including ours, that the life and liberty of the individuals has to be protected, except according to procedure established by law, as mandated by Article 21 of the Constitution of India.

49. In the opinion of the Court, a person, who has attained the age of majority as per Section 3 of the Majority Act, is able to understand his/her welfare and, therefore, he/she could not be restricted to go wherever he/she likes. He/she is free to live with anybody and could not be restrained from doing so.

50. Section 114 of the Indian Evidence Act/Section 119(1) of Bhartiya Sakshya Adhiniyam, 2023, states that if couples live together for a significant amount of time as husband and wife, they will be presumed to be married. The Courts shall apply this presumption to protect the rights of the parties in a live-in relationship, i.e. women and the children born as a result thereof.

51. Having regard to the facts and circumstances of the case, this Court is of the view that the petitioners are at liberty to live together peacefully and no person shall be permitted to interfere in their peaceful living. As right to life is a fundamental life

ensured under Article 21 of the Constitution wherein it is provided that no person shall be deprived of his right to life and personal liberty except according to procedure established by law.

52. In case, any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the Commissioner of Police/SSP/SP concerned with certified copy of this order and the Police Officer after being satisfied that the petitioners are major and willingly living together, will provide immediate protection to the petitioners. If the petitioners are educated and they produce their educational certificates and other certificates admissible under law, from which it is evident that they have attained the majority and they are living with their free will then no Police Officer shall take any coercive action against them unless an F.I.R. is registered against them in respect of any offence whatsoever. If they do not have any documentary proof regarding age and they come from rural background and or illiterate/semi-literate, the Police Officer can subject such boy or girl to ossification test to verify their correct age and he can also follow the other procedure permissible under the law.

53. Accordingly, aforesaid writ petitions are **allowed**.

54. No order as to cost.

55. Before parting with these cases, I would render my gratitude and appreciation for the invaluable assistance provided to the Court by Mr. Swetashwa Agarwal, learned Senior Advocate, as Amicus Curiae, ably assisted by Sri Subir Lal and Sri Sausthav Guha, learned counsels for the petitioners.

56. The hard work as well as arguments advanced by above named State counsels, are also appreciable.

(2025) 12 ILRA 325

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 05.12.2025

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 39066 of 2025

Sant Harvinder Singh ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

The matter pertains to maintainability of title suits during the pendency of mutation matters and the limits of rejecting a plaint at the threshold.

Headnotes

Constitution of India,1950-Article 226 U.P. Revenue Code,2006-section 34, 144 & Code of Civil Procedure, 1908-Order VII Rule 11-The court held that the pendency of summary mutation proceedings under section 34 of the U.P. Revenue Code,2006 does not constitute a legal bar to a declaratory suit for title under section 144 of the same code-The court clarified that the jurisdiction under Order VII Rule 11 CPC should not be utilized as a "trial before the trial"-If a controversy involves purely legal questions without disputed facts, the High Court may entertain a writ petition under Article 226 despite the availability of an alternative statutory remedy-writ petition allowed.(Para 22 to 33) (E-6)

Held

The court ruled that once a report of succession is made, the bar under section 37 is removed, the conclusion of section 34 proceedings is not a prerequisite for a section 144 suit. The court set aside the order dated 20,2025. The matter was

remanded to the SDM to re-decide the Order VII Rule 11 application within two months. In the eventuality the application is rejected, he shall proceed to conclude the title suit within a period as contemplated para 458 of U.P. Revenue Court Manual.

Case law Cited

Qamar Abbas Vs Additional Commissioner 2024(1) ADJ 640 MANU/UP/4161/2023, Smt. Kalawati Vs Board of Revenue 2022 (155) RD 169, Nehru Junior High School Taryasujan Vs State of U.P. & Ors 2023 (161) RD 31-referred to.

List of Acts

Constitution of India,1950, U.P. Revenue Code,2006, Code of Civil Procedure, 1908.

List of Keywords

Declaratory Suit, Mutation Proceedings, Alternative remedy, Summary Nature, Cause of Action

Case Arising from

Civil Jurisdiction-WRIT-C No. – 39066 of 2025
Sant Harvinder Singh Vs. State of U.P. & 3 Ors

From the Judgment and Order dated 05.12.2025 of the High Court of Judicature at Allahabad.

Appearances for parties

Adv. for Petitioner:-

Ajay Shankar, Triveni Shanker

Adv. for Respondent:-

C.S.C., Sher Bahadur Singh

(Delivered by Hon'ble Siddharth Nandan, J.)

In Re: Civil Misc. Amendment
Application No. Nil of 2025

1. Amendment application has been filed to correct the description of respondent no.4.

2. Learned Additional Chief Standing Counsel has no objection.

3. Counsel for the petitioner is permitted to correct the array of parties during the course of the day.

4. Accordingly, the same is allowed.

Order on petition

1. Sri Ajay Shankar has filed an affidavit of service in pursuance of the order of this Court dated 28 November, 2025; in Court today; the same is taken on record.

2. As per the para 4 of the affidavit Dasti Summons have been served upon the respondent no.4.

3. Heard Sri Ajay Shankar, learned counsel for the petitioner and Sri S.N. Srivastava, learned Additional Chief Standing Counsel for the State-respondents.

4. By the consent of the parties, the present writ petition is being finally decided at the admission stage, since the question involved is only legal in nature.

Facts

1. The petitioner is said to have inherited the property in pursuance of the Will dated 20.1.2015 which was executed in his favour by the erstwhile owner late Makhan Singh, with respect to his 1/4th share in Khata No.00112, Gata No.129 area (1.08 hec.) i.e. 0.271 hec. of Village Ankhey, Puranpur, Pilibhit.

2. According to the petitioner his cause of action arose on account of a Will dated 12.1.2023 which was setup by respondent no.4. He has attracted the attention of the Court to para 12 of his plaint filed in Case No.5788 of 2024 (Sant

Harvindar Singh vs. Amandeep Singh and others) filed under Section 144 of the U.P. Revenue Code, 2006, (hereinafter referred as Code, 2006). For the convenience of ready reference para 2 and 4 are quoted below:-

“2. यह कि मखन सिंह पुत्र बहादुर सिंह नि०ग्राम पंजाग्राई कलां तह० कोटकपूरा जिला फरीदकोट के रहने वाले थे जिन्होंने ग्राहस्थ जीवन त्याग कर सन्यास ग्रहण कर लिया इनका सम्बन्ध प्राकृतिक वारिसों से टूट गया इनकी सम्पत्ति उसी दिन से विधिक वारिसों की हो गई इनकी प्राकृतिक मृत्यु हो गई मानी जायेगी।

(I) शीतल दास Vs संतराम 1954 S.C. 606 में उद्धरित है जो सन्यासी बन जाता है। वह अपने प्राकृतिक परिवार के सदस्यों से नाता तोड़ देता है। विरासत से बाहर रखा गया है। धार्मिक व्यवस्था में प्रवेश नागरिक मृत्यु के समान है। यही मन्तव्य हिन्दू लॉ (मुल्ला) के पैरा-111 व जमुना प्रसाद वनाम परमेश्वरदीन 1977 आर०डी० 606 में उद्धरित है। इस प्रकार जो व्यक्ति विधिक वारिसों के लिए 1984 से पूर्व मृतक हो गया उसके पश्चात् क्रय भूमि में विरासत प्राप्त करने का प्रश्न ही नहीं पैदा होता है। जो विधिक वारिसों के लिए 1984 से पूर्व मृतक हो गया है। वह उनके पक्ष में 2023 में वसीयत कैसे निष्पादित कर सकता है

4. यह कि यदि किसी गद्दी नशीन महन्त द्वारा अपने चले के पक्ष में वसीयत की जाती है वह गद्दी प्राप्त करता है तो भेक को ही अधिकार है कि वह वसीयत को स्वीकार या अस्वीकार करें। यदि किसी महन्त की मूल्य बिना नामित किये हो जाती है। तो भी भेक के पास महन्त की नियुक्ति का अधिकार होगा। कोर्ट को भेक का सम्मान करना चाहिए यहां पर भेक द्वारा दिनांक 19.02.23 को हरविन्दर सिंह को गद्दी नशीन महन्त घोषित किया है। भेक द्वारा इनकी वसीयत 20.01.15 को प्रभावी माना है जिस कारण अन्य किसी वसीयत पर विचार किये जाने का प्रश्न ही नहीं पैदा होता है। इस प्रकार भेक द्वारा हरविन्दर सिंह को गद्दी नशीन महन्त घोषित किया है। उनके पक्ष में निष्पादित वसीयत मान्य व प्रभावी है। अन्य शून्य व निष्प्रभावी होगी, क्योंकि स्वयं द्वारा हरविन्दर सिंह को गद्दी नशीन महन्त घोषित करने के बाद वसीयत का प्रश्न ही नहीं पैदा होता है, क्योंकि जिस दिन हरविन्दर सिंह गद्दी नशीन महन्त घोषित हुये थे सम्पूर्ण सम्पत्तियों का पूर्ण हस्तांतरण (Absolute Transfer) उसी दिन हरविन्दर सिंह के पक्ष में हो गया था। उसके बाद भूतपूर्व महन्त के द्वारा कोई भी दस्तावेज किसी के पक्ष में निष्पादित नहीं किया गया था।”

3. It transpires that the respondent no.4 filed his objection and also subsequently he filed an application under Order VII Rule 11 of C.P.C. dated 16th May, 2025 inter alia taking a ground that the proceedings under Section 34 of the Code, 2006 is pending and in view of the same Suit under Section 144 of the Code, 2006 is not maintainable. For convenience the relevant paragraph 3 of the objection dated 16.5.2025 is quoted below.

“3: यह कि वादी द्वारा धारा 34 यू०पी०आर०सी० के अन्तर्गत तहसीलदार महोदय पूरनपुर के द्वारा पारित आदेश दिनांक-26.06.2024 के विरुद्ध एक निगरानी माननीय राजस्व परिषद इलाहाबाद के समक्ष दिनांक-08.07.2024 को प्रस्तुत की गयी है जो कि वर्तमान समय में विचाराधीन है उक्त निगरानी अभी राजस्व परिषद इलाहाबाद द्वारा अन्तिम रूप से निर्णित नहीं की गयी है इस कारण धारा 34 के अन्तर्गत मुकदमें बाली भूमि के सम्बन्ध में वाद के विचाराधीन रहते हुये धारा 144 उ०प्र० राजस्व संहिता वादी का उपरोक्त वाद पोषणीय नहीं है क्योंकि एक ही रेमेडी के लिये दो न्यायालय में एक साथ कार्यवाही नहीं की जा सकती है।”

4. The said application under Order VII Rule 11 of C.P.C. was allowed by the impugned order dated 20.9.2025, hence the present petition.

Issues:-

(I) whether the impugned order by way of which an application under Order VII Rule 11 of C.P.C. has been allowed, is amenable to writ jurisdiction, in view of Section 207 of the Code, 2006, which provides for an appeal;

(II) whether a suit under Section 144 of the Code, 2006 can be said to be barred by law on account of the pendency of the proceedings under Section 34 of the Code, 2006.

Arguments-Issue No. I

5. Sri S.N. Srivastava, learned Additional Chief Standing Counsel has raised a preliminary objection that the order passed on application under Order VII Rule 11 of C.P.C. is appealable under Section 207 of the Code, 2006; and accordingly the petitioner may be relegated to avail the alternative remedy, which according to him is an efficacious remedy and in view of the facts stated in the present writ petition, the same is liable to be dismissed on the ground of alternative remedy.

6. Per contra Sri Ajay Shankar, learned counsel for the petitioner has submitted that since the authority concerned has exceeded its jurisdiction and has considered the pendency of proceedings under Section 34 of the Code, 2006 to be a bar which is in the teeth of the settled position of law and being a purely question of law; the present writ petition is maintainable. He has relied upon the judgement in the case of **Qamar Abbas Vs. Additional Commissioner 2024(1) ADJ 640 MANU/UP/4161/2023**. For the convenience of reference, para 9 and 10 are quoted below:-

“9. *The Hon'ble Supreme Court, in the case of Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and others; 2023 SCC OnLine SC 95, has held that where the controversy is a purely legal one and it does not involve disputed questions of fact but only question of law, then it should be decided by the high Court instead of dismissing the writ petition on the ground of an alternative remedy being available.* The relevant paragraphs 6 to 8 are extracted here-in-below :

“6. *At the end of the last century, this Court in paragraph 15 of the its*

decision in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1, carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision in Assistant Commissioner of State Tax v. M/s. Commercial Steel Limited, 2021 SCC OnLine SC 884, has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court in State of Uttar Pradesh and others v. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724 and Union of India v. State of Haryana, (2000) 10 SCC 482. What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless

exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high Court instead of dismissing the writ petition on the ground of an alternative remedy being available."

10. In view of above law laid down by the Hon'ble Supreme Court and also admitted to the parties that only question of law is involved in this petition, it is being entertained, instead of relegating to the alternative remedy, and this Court proceeds to decide it considering the rival contentions.

7. The perusal of the aforesaid judgement reaffirms the settled position of law that in case of violation of (i) fundamental rights (ii) violation of statutory principles or (iii) where the order or the proceedings are wholly without jurisdiction or (iv) where the vires of an Act is challenged (v) where there is a violation of principles of natural justice; and (vi) where the question is pristinely legal, it cannot be said that the writ petition should be dismissed on the ground of alternative remedy alone.

*8. Learned counsel for the petitioner has further relied upon on the case of **Smt. Kalawati vs. Board of Revenue 2022 (155) RD 169** to contend that 'rule of alternate remedy' in the context of*

maintainability of the writ petition under Article 226 of the Constitution of India being examined, demonstrates that the power under Article 226 of the Constitution of India to issue Writs can be exercised not only for enforcement of fundamental rights but for any other purpose as well. The High Court has the discretion not to entertain the writ petition and one of the restrictions placed on the power of the High Court is where an effective alternative remedy is available to the aggrieved persons; but the same are subject to various exceptions, as already examined herein above. He has further contended that the Rule of exhaustion of an alternative remedy has been held to be a rule of policy, convenience and discretion and existence of an alternative remedy cannot be said to be an absolute bar, in exercise of power under Article 226 of the Constitution of India.

9. Accordingly, I find that from time to time the 'rule of alternative remedy' has been examined by this Court as well as the Apex Court and the consistent view is that the same is only to be construed as a policy and not a complete bar to exercise powers under Article 226 of the Constitution of India.

10. In the facts of the present case in order to give a reasonable meaning to the question referred herein above, we proceed to examine the **Order VII Rule 11 of the C.P.C.**; and again for the convenience of reference the same is quoted herein below:-

“ 11. Rejection of plaint.— *The plaint shall be rejected in the following cases:*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

1[(e) where it is not filed in duplicate;]

2[(f) where the plaintiff fails to comply with the provisions of rule 9:]

3[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

11. For the purposes of rejecting the plaint what is to be examined is whether the plaint discloses a cause of action or the relief claimed is under valued and in spite of the opportunity the plaintiff had failed to make good the under valuation; or the plaint is insufficiently stamped and the plaintiff has failed to supply requisite stamp-paper within the time fixed by the

Court; or whether the suit appears from the statement in the plaint to be barred by any law.

12. At this stage the petitioner has attracted the attention of the Court to the impugned order wherein primarily the application under Order VII Rule 11 of the C.P.C. has been allowed on the pretext that the proceedings under Section 34 of the Code, 2006 is pending; and submits that the proceedings under section 34 being summary in nature, has no bearing on the proceedings under Section 144 of the Code, 2006; and accordingly the impugned order is in the teeth of law. He further contends that the said question is purely legal in question and there are no disputed question of facts; and such the Writ Petition under Article 226 of the Constitution of India, is maintainable.

13. Per contra the learned Additional Chief Standing Counsel has tried to justify the impugned order by stating that the rejection was not merely on the said contingency but also the authorities had come to the conclusion that no cause of action has been spelled out in the plaint.

Conclusion

14. I have examined the plaint and find that the plaintiff had spelled out his cause of action categorically in the plaint, by stating that a Will dated 12.1.2023, which is allegedly in favour of a third person could not have been executed for want of title and accordingly the same was void; and furthermore that the registered Will dated 20.1.2015 which has been executed in his favour is a valid Will and consequently a cause of action for a suit of declaration of title, arises, for which proceedings under Section 144 of Code, 2006 has been initiated.

Arguments-II

15. The second argument which was advanced by the learned Additional Chief Standing Counsel was relying upon the provisions of Section 207 of the Code, 2006 and the availability of the alternative remedy, to state that the present writ petition is not maintainable and there is an efficacious alternative remedy.

Conclusion

16. From the perusal of the impugned order, I find that the authority has proceeded to hold that since the proceedings under Section 34 of the Code, 2006 has not attained finality, therefore, the application under Order VII Rule 11 of C.P.C. is bound to be allowed. I find that it is a patent error of law and it is also in conflict with the provisions of **Order VII Rule 13 of C.P.C.** For ready reference the **Order VII Rule 13** is quoted below:-

13. Where rejection of plaint does not preclude presentation of fresh plaint. —The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

17. A reading of Order VII Rule 11 and Order VII Rule 13 of C.P.C. conjointly, provides a procedural coherence, that in a contingency where a plaint is rejected under Order VII Rule 11 of the C.P.C., it shall not of its own course preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action that both the provisions has to be interpreted in a manner, to not make the other provisions obsolete.

18. Since the question which is to be determined is purely a legal question; and further that the reliance placed by the authority is on a decision of Board of Revenue, which is eventually the Second Appellate Authority, I do not find the availability of the remedy of appeal under Section 207 of the Code, 2006 and second appeal under Section 208 of the Code, 2006, an efficacious remedy.

19. In view of the aforesaid discussion, the preliminary objection with respect to availability of the alternative remedy, I find that the same is liable to be rejected in the facts of the present case.

Issue no. II (Arguments)

20. Counsel for the petitioner has taken the Court through the impugned order dated 20.9.2025, to contend that non application of mind is evident from the fact that firstly the authority has quoted the entire plaint and thereafter the objection/application under Order VII Rule 11 of C.P.C.; and eventually without any discussion on the issue, has directly concluded that the plaint does not disclose any cause of action and while allowing the application under Order VII Rule 11 of C.P.C., it had merely stated that since the proceedings under Section 34 of the Code, 2006 is pending, therefore, till the same attains finality, the present proceedings under Section 144 of the Code, 2006 is liable to be rejected.

21. Per contra learned Additional Chief Standing Counsel placing reliance on the plaint as well as the application under Order VII Rule 11 of C.P.C. has contended that the authorities had duly applied its mind, while concluding that the plaint does not disclose any cause of action.

Discussion

22. A pointed query was put to the learned Additional Chief Standing Counsel that whether the conclusion which has been relied upon by the State while justifying the impugned order dated 20.9.2025, to the effect that the plaint does not disclose any cause of action; is based on any discussion or not, he could not point out any such discussion or consideration in the impugned order dated 20.9.2025. At this stage he had specifically stated that in the personal affidavit which has been filed on behalf of the respondent no.2, he has categorically taken a stand that due to an oversight, inadvertently the reliance which has been placed on the decision of Board of Revenue, was misplaced; and but for the same, he would have examined the correct position of law and in future he undertakes to be more vigilant.

23. Learned counsel for the petitioner has relied on the judgment passed by the coordinate Bench of this Court in the case of **Nehru Junior High School Taryasujan Vs. State of U.P. and others 2023 (161) RD 31** to contend that the jurisdiction under Order VII Rule 11 C.P.C. is not to be utilized as trial before the trial; while relying upon para 20 and 22 of the said judgement. For ready reference para 20 and 22 are quoted below:-

“20. The exercise of jurisdiction under Order VII Rule 11 C.P.C. in respect to the suit under Section 229 - B of U.P. Z.A. & L.R. Act, this Court in the case reported in 2019(145) RD 411 Roshan Singh @ Bunti Vs.Board of Revenue and Others has held that jurisdiction under Order VII Rule 11 C.P.C. is not to be utilised as a trial before the trial. Paragraph No.6 of the judgment is relevant for perusal which is as under:-

“6. This Court has perused the plaint, a copy of which is annexed as Annexure-3 to the writ petition. A perusal of paragraphs 5, 6, 7 and 8 of the plaint shows that the plaintiff has come forward seeking declaration of his rights to Khasra No.213, admeasuring 1 Bigha, 9 Biswa and 6 biswansi situate at Village Kheda, Pargana Dasna, District Hapur, (then Ghaziabad) and to hold the Will dated 06.06.1977 void. The cause of action clearly indicates that the petitioner alleges fraud played upon him by the defendants. It has been averred in paragraph-6 of the plaint that the fact that the name of the defendants had been recorded over the property in dispute, was kept back from the plaintiff until the month of May, 2006. It is claimed that the plaintiff Charan Singh, never knew it before the said date. It is claimed by the plaintiff that he is a co-sharer along with deceased, Balbeer Singh through whom the defendants claim, on the basis of a Will. It is also averred in paragraph-8 that the entire mutation proceedings, wherein the order dated 18.11.1998 has been passed in favour of the defendant, were all taken behind his back. These are pleadings which prima facie require to be examined on the basis of evidence, even if the cause of action is ultimately held to be barred by limitation. It is not a case where on a reading of the plaint, the cause of action is ex facie barred by limitation. The law about exercise of jurisdiction under Order VII Rule 11 CPC is settled beyond the slightest doubt. It is that, that allegations in the plaint alone are to be seen, in order to determine whether the plaint is to be rejected, on any of the grounds mentioned in Order VII Rule 11 CPC. The defence put forward by the defendant or the evidence is not at all to be considered. The jurisdiction under Order

VII Rule 11 CPC is not to be utilized as a trial before the trial.

22. *The aforementioned paragraph nos. 3,4,5 and 6 of the plaint discloses the cause of action to the plaintiff to file suit for declaration of her right under Section 144 of U.P. Revenue Code, 2006 as such rejection of plaint or dismissal of suit under Section 144 of U.P. Revenue Code, 2006 at the very initial stage will be illegal.”*

24. Learned counsel for the petitioner has further contended that in order to ascertain the intent of the legislature, no provision can be interpreted in isolation and the same has to be read as a whole. He has pointed out that Section 37 of the Code, 2006 is not attracted once a report under Section 33 or Section 34 has been made. He has also contended that once such a report has been made, the bar under Section 37 of the Code, 2006 cannot be said to be attracted and the same is also not contingent upon the conclusion of the said proceedings. For ready reference Section 37 of the Code, 2006 is quoted below:-

“37. Bar Against Certain Suits:
No suit or other proceeding shall lie in any revenue court at the instance of any person obtaining possession of any land by succession or transfer, until he has made a report under section 33 or section 34, as the case may be.”

25. Learned counsel for the petitioner has further relied upon Section 39 of the Code, 2006 to contend that no order passed by the Revenue Inspector in mutation proceedings shall debar any person from establishing his right to the land by means of a suit under Section 144 of the Code, 2006.

Conclusion

26. I find substance in the arguments that once an incumbent has reported the factum of succession or acquisition of his right as contemplated under Section 33 read with Section 34 of the Code, 2006, the bar as contemplated under Section 37 of the Code, 2006 cannot be said to be attracted or that the conclusion of the said proceedings can act as a bar. It may also be noted at this juncture that even if an order under Section 34 of the Code, 2006 goes against the incumbent, the same may also not have any impact on the proceedings under Section 144 of the Code, 2006, as the proceedings under section 34 of the Code, 2006 are summary in nature and does not give title to the incumbent whose name is mutated in the said proceedings. The said proceedings are merely for the purpose of revenue and does not decide title.

27. Once the aforesaid provisions are interpreted harmoniously, there is an inescapable conclusion that proceedings under Section 34 of the Code, 2006 and Section 144 of the Code, 2006 are distinct proceedings and does not impact each other. However, in the scale, Section 144 of the Code, 2006 carries weight since it eventually adjudicates on the title and the same can be done only after framing issues and leading evidence, while Section 34 are summary in nature and can be undertaken, only based on Memo of Evidence.

28. In the aforesaid framework, it can only be construed that once the proceedings under Section 144 of the Code, 2006 is initiated, if otherwise it does not attract any legal bar, the same has to be brought its logical end after framing issues and leading evidence.

29. I am also in respectful agreement with the judgement of the coordinate Bench of this Court, in the case of **Nehru Junior High School Taryasujan (Supra)** which hold that jurisdiction under Order VII Rule 11 C.P.C. is not to be utilized as trial before the trial and if plaint discloses cause of action, the same cannot be rejected as such under Order VII Rule 11 C.P.C.

30. In view of the aforesaid facts and circumstances, issue no. 2 is decided in favour of the petitioner and consequently it is held that the pendency of proceedings under Section 34 of the Code, 2006 cannot be construed to be a bar to the proceedings under Section 144 of the Code, 2006.

31. Accordingly, in view of the affidavit of compliance which has been filed today in Court on behalf of respondent no.2 and the observations made herein above, the parties have consented that illegality which has been committed by the impugned order dated 20.9.2025 can be cured, in case the matter is remanded back to the respondent no.2 for fresh adjudication on the proceedings initiated by the petitioner under Section 144 of the Code, 2006, keeping in view the observation made herein above.

Relief/Directions

32. In view of above, the impugned order dated 20.9.2025 is set aside and the matter is remanded back to the S.D.M. Tehsil Puranpur, District Pilibhit with the following directions:-

(i) he may decide the application dated 16.5.2025 under Order VII Rule 11 C.P.C. within a period of two months from the date of production of certified copy of

this order is filed before him after giving due opportunity to the affected parties;

(ii) In the eventuality the application under Order VII Rule 11 C.P.C. is rejected, he shall proceed to conclude the proceedings of Case No.5788 of 2024 (Sant Harvinder Singh vs. Amandeep Singh and others) filed under Section 144 of the U.P. Revenue Code, 2006, within a period as contemplated para 458 of U.P. Revenue Court Manual.

33. With the aforesaid observations the writ petition is **allowed**, with no order as to costs.

Exemption Application

In view of the order passed today, the application is disposed of. The presence of respondent no.2 is exempted.

(2025) 12 ILRA 334
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.12.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000129 of 2002

Ram Ygya **...Petitioner**
Versus
Addl. Commissioner J Faizabad & Ors.
...Respondents

Issue for Consideration

Matter pertains to rejection of objection under *S. 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act* in respect of Gata No. 613, on the ground that the declaratory decree dated 03-01-1978 was post cut-off date 24-01-1971, and whether the ceiling authorities were

justified in ignoring the decree, mutation entries and long possession without adjudication on merits. (Paras 2, 6, 7, 22)

Headnotes

Imposition of ceiling on land holdings act, 1960 - S. 11(2) - Objection by third party/claimant - Maintainability - Persons claiming to be tenure-holders, third parties or those who assert possessory rights are entitled to file objections under S. 11(2) of the Ceiling Act and their objections are required to be adjudicated on merits - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Declaratory decree under S. 229-B - Finality - Effect in ceiling proceedings - Cannot be brushed aside mechanically - Cut-off date (24-01-1971) - Post cut-off transactions - Distinction between fraudulent orders and final unchallenged decrees - Revenue entries (Class-9, Khasra, Khatauni) - Evidentiary value - Procedural compliance under Land Records Manual - Requirement of factual determination - Double entry of land in ceiling khata and tenure-holder's khatauni - Effect - Vitiates ceiling determination if proved - Fraud - Allegation of - Nullity doctrine - Requirement of adjudication - Cannot be presumed. (Paras 23 - 38)

Held: A decree which has attained finality and has not been challenged ordinarily must be given effect to and is a relevant piece of adjudicatory material - Persons claiming to be tenure-holders, third parties or those who assert possessory rights are entitled to file objections under S. 11(2) of the Ceiling Act and their objections are required to be adjudicated on merits - The statutory bar against taking into account transactions occurring after the cut-off date 24.01.1971 is not an instrument for obliterating antecedent rights - Procedural irregularity is a question of fact to be established by cogent material - and a summary dismissal of the petitioner's objection without examining such material is impermissible - Double-recording of the same plot, if proved to be a result of error or misidentification, vitiates the ceiling determination - Neither authority conducted a full factual inquiry - The consequence is that the petitioner's right to have his objections decided on merits was

denied - The impugned orders suffer from non-application of mind and failure to consider governing judicial precedents - The impugned order dated 30.03.2002 and the order dated 28.10.2002 are hereby quashed. (Paras 23-28,39-42) (E-7)

Case Law Cited

Dirvijay Singh v. State of U.P., **1984 LCD 324**; *Shafir v. District Judge, Gonda*, **1985 LCD 290**; *Abdul Hafiz Khan v. District Judge, Bahraich*, **1986 LCD 477**; *Hari Ram v. Special Addl. District Judge, Faizabad*, **1989 LCD 85**; *Ravindra Kaur Grewal v. Manjeet Kaur*, **(2019) 8 SCC 729**; *S.P. Chengalvaraya Naidu v. Jagannath*, **(1994) 1 SCC 1**; *A.V. Papayya Sastri v. Govt. of A.P.*, **(2007) 4 SCC 211**; *Mohd. Raza v. D.D.C. Banda*, **1990 AWC 605**; *Gurmukh Singh v. D.D.C.*, **1997 (2) AWC 649**; *Sabhai v. D.D.C. Faizabad*, **2024 (1) AWC 812 (LB)**.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960; U.P. Zamindari Abolition and Land Reforms Act, 1950; Specific Relief Act, 1963; Limitation Act, 1963

List of Keywords

Surplus land; bhumidhar; Class-9 entries; PA-10 notice; fraud; final decree; double entry; Ceiling Act; Section 229-B; Adverse Possession; Khatauni; Khasra; Mutation.

Case Arising From

ORIGINAL JURISDICTION: Writ C No. 3000129 of 2002, challenging the orders of the Prescribed Authority (Ceiling) and the Additional Commissioner (Appellate Authority) regarding the determination of surplus land in Village Rampur Puwari, District Faizabad (now Ayodhya).

Appearances for Parties

Advs. for the Appellant (Petitioner):

Dr. R.S. Pande, Senior Advocate
Assisted by Sri Virendra Bhatt

Advs. for the Respondents:

Sri S.P. Maurya, Learned Standing Counsel

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Dr. R.S. Pande, learned Senior Advocate assisted by Sri Virendra Bhatt, learned counsel for the petitioner and Sri S.P. Maurya, learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner has prayed as under :-

"(i) a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 30-3-2002 passed by opposite party No.2 contained in Annexure No-2 and order dated 28-10-2002 passed by opposite party No-1 contained in Annexure No-1 to this petition.

(ii) ...

(iii) ..."

3. The dispute pertains to Gata No. 613, measuring 19 biswa and 5 biswansi, situated in village Rampur Puwari, Pargana Amsin, Tehsil and District Faizabad (now Ayodhya). Originally, the land was recorded in the name of late Shankar Singh after the abolition of zamindari, and was thereafter cultivated by Sita Ram, father of the petitioner, since the year 1953. His name was recorded in the Khasra and subsequently in Khatauni Part-II under Class-9 entries on the basis of continuous possession.

4. On 9-8-1965, Smt. Dukharaji filed a suit under Section 209 of U.P. Z.A. & L.R. Act, 1950 seeking declaration and possession. Her claim of Sirdari rights was dismissed. On 3-1-1978, Sita Ram obtained a decree under Section 229-B of the U.P. Z.A. & L.R. Act, wherein he was declared bhumidhar of Gata No. 613. Based on this

decree, his name was entered in Khatauni for the years 1387-1392 Fasli. In ceiling proceedings, Plot No. 613 was included as surplus land by order dated 9-12-1976.

5. Sita Ram thereafter filed a correction application on 1-12-1978, asserting that Gata No. 615, and not Gata No. 613, should be treated as surplus. The Prescribed Authority passed a correction order on 17-04-1979, declaring Gata No. 615 surplus in place of Gata No. 613.

6. The petitioner filed an objection under Section 11(2) of the Ceiling Act on 23-07-1997, asserting (i) that Gata No. 613 was wrongly treated as surplus because the land had already been decreed in favour of his father on 3-1-1978, (ii) that the entries in the revenue records supported continuous possession since 1953, and (iii) that the case involved a double entry, one in ceiling Khata No. 473 and another in petitioner's Khatauni.

7. The Prescribed Authority rejected the objection on 30-03-2002, holding that (i) Gata No. 613 belonged to the original tenure-holder Smt. Dukhrani, (ii) the decree dated 03-01-1978 was passed after the cut-off date 24-01-1971, and any transaction or declaration after the cut-off date is to be ignored under Section 5(6) of the Ceiling Act.

8. The Additional Commissioner dismissed the appeal on 28-10-2002, observing that (i) the order dated 03-01-1978 conferred no benefit upon the petitioner, (ii) the correction order dated 17-04-1979 was obtained by suppression of material facts and without hearing the State or original tenure-holder, (iii) and the ceiling notice (Form 3) originally proposed to declare both Gata 613 and Gata 615 surplus.

9. Submission of learned counsel for the petitioner is that the declaratory decree dated 03-01-1978 in Suit under Section 229-B has attained finality and established Sita Ram's rights as bhumidhar. The said decree has never been challenged, and the name of father of petitioner stood duly mutated in revenue records.

10. Learned counsel for the petitioner submits that the petitioner asserts possession since 1953, corroborated by Class-9 entries in Khasra and Khatauni Part-II, thus, Gata 613 could not have been treated as surplus land.

11. It is contended that Gata No. 613 was wrongly recorded twice—once in ceiling Khata No. 473 and again in the petitioner's Khatauni. Such double entry, it is submitted, vitiates the ceiling determination.

12. Further submission of petitioner's counsel is that the Prescribed Authority, upon being satisfied that surplus land had been wrongly identified, rightly corrected the record by substituting Gata 615 in place of Gata 613.

13. It is further urged that the ceiling authorities failed to consider the decree of 1978 and the mutation entries which had attained finality since 1953.

14. In support of the submission advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

(i) **Dirvijay Singh Vs. State of U.P. (1984 LCD 324)**. Relevant paragraph 3 is being quoted below :-

"3. I have heard the learned counsel for the parties. Under the Act the third party has a right to file the objection

u/s 11 (2) of the Act. The petitioner being a third party could file the objection. Only the question of delay was required to be considered. The objection could not be rejected merely because the matter was contested by the recorded tenure holder upto High Court. That will not put to an end to the right of the claimant. The view taken by the prescribed authority and the District Judge is manifestly erroneous and cannot be sustained."

(ii) Shafir Vs. District Judge Gonda (1985 LCD 290). Relevant paragraphs 8, 9 and 10 are being quoted below :-

"8. Learned counsel for the petitioners has urged that the Prescribed Authority has rejected the objection filed by the petitioner under Section 10(2) of the Act merely on the ground that in the ceiling proceedings the Prescribed Authority cannot determine the claim of the petitioners who have claimed sirdari rights over certain plots of the disputed holding on the ground of adverse possession for more than the prescribed period of limitation. It was urged that the Prescribed Authority has wrongly refused to consider the claim of the petitioners on merits which should have been considered and decided on merits according to law in view of the decision of the Full Bench of this Court in the Case 'Upper Ganges Sugar Mills Ltd.', reported in 1967 ALJ 556 and also in Dilbagh Singh's case reported in 1978 ALJ 717. I find much substance in the contention of the learned counsel for the petitioners.

9. In Dilbagh Singh's case (Dilbagh Singh v. State of U.P.) it was held by the Division Bench that Section 11(2) permits a tenure-holder to file

objections. Such tenure-holders may be those who have been served with a notice and a statement under Section 10(2). It also includes tenure-holders who have not been given or served with any such notice or statement. The construction put by the Full Bench also embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other person wish to challenge that declaration or notification thereof in the gazette under Section 14. They are all entitled to file an objection under Section 11(2) and get an adjudication thereon as required by Section 12.

10. In this view of the matter I find that the objection which the petitioners had filed required to be decided on merits under Section 12. The petitioners have claimed that they are tenure-holders of certain plots of the disputed holding recorded in the name of opposite party No. 4. They thus claimed that opposite party No. 4 is not tenure-holder of those plots and the petitioners have acquired rights by adverse possession having remained in adverse possession for more than the prescribed period. Thus those plots could not be shown in the notice issued to the opposite party No. 4 under Section 10(2) of the Act nor the same could be treated to be holding of the opposite party No. 4 and declared surplus land in his hands because in the event petitioners succeed in establishing their Sirdari rights and title by adverse possession over the land in dispute it could not be treated to be part of the holding of opposite party No. 4. The Prescribed Authority, therefore, was required to determine this question on merits as to whether the plots, which were claimed by the petitioners as their Sirdari land could be factually and legally

sustained or not. The Prescribed Authority should, therefore, consider the claim of the petitioners after giving them full opportunity to lead evidence in support of their claim. The opposite party No. 4 will also be given opportunity to contest the claim of the petitioners. Even in the case which has been remanded by the learned District Judge for considering the claim of opposite party No. 4 for being decided by now on merits, the Prescribed Authority will consider the objections filed by the Petitioners on merits in respect of the plots in which they have claimed rights by adverse possession. The objection would be treated to be maintainable as one under Section 11(2) of the Act as held by this Court in the aforesaid decisions and will be decided on merits even if the land in which petitioners have claimed title by adverse possession has been notified under Section 14(1) of the Act because the deletion of Section 14(2) will not bar maintainability of such objection, as held in Ram Kumar Singh v. State of U.P., [Writ Petition No. 981 of 1976.] decided on 10-10-1984."

(iii) Abdul Hafiz Khan & another Vs. District Judge Bahraich & others (1986 LCD 477). Relevant paragraphs 7, 8 and 9 are being quoted below :-

"7. So far as the question regarding maintainability of objection under Section 11(2) of the Act after the surplus land had been notified under Section 14(1) of the Act, is concerned, I find that it stands concluded by a Full Bench Decisions of this Court in Baldeo Singh v. State of U.P., [1980 L.L.J. 31.] . According to the majority view expressed in the said decision an objection can be entertained under Section 11(2) of the Act even after the surplus land had been

notified under Section 14(1) of the Act. The deletion of Sub-section (3) of Section 14 of the Act will not affect the tenability of that objection. In this view I do not find any merit in the contention of the learned Standing Counsel that the petitioners had no right to file objection under Section 11(2) of the Act. Even if the name of the objectors is not recorded over the land in dispute as tenure-holder they could file an objection under Section 11(2) of the Act as held by the Full Bench of this Court in Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor [1969 A.L.J. 556.] ,

8. In the present case the petitioner had filed an objection on 28th October, 1978 (Annexure-4) asserting that they are the tenure-holders of the land which they had received in the aforesaid decree for partition and that the opposite party No. 4 Nazim Ali Khan is not the tenure-holder of the land situate in village Kanjarwa and his surplus land be determined excluding the land of village Kanjarwa, which belongs to the petitioner. This objection was filed under Section 13-A of the Act though in fact it purported to be an objection under Section 11(2) of the Act and deserved to be treated as such for deciding it on merits. It is well settled that wrong mentioning of the section or nor mentioning a correct section in the objection filed would not by itself disentitle an objector to appropriate relief which the Prescribed Authority could grant to the objector in accordance with the law. In Ram Kumar Singh v. State of U.P. [1985 L.L.J. 81.] . I had an occasion to consider similar question, whether an objection filed under sub-section (3) of Section 14 could or could not be treated to be one under Section 11(2) of the Act. It was held in Ram Kumar Singh's case (supra) that even without formal application for amendment

the Prescribed Authority (Ceiling) should have proceeded to decided the objection treating it to be one under Section 11(2) of the Act because wrong mentioning of section or not mentioning of correct section in the objection not by itself disentitle the objector to the appropriate relief which the Prescribed Authority could grant in accordance with the law.

9. In *Abdul Rahman v. The Prescribed Authority* [1979 A.C.J. 10.] a similar question arose for consideration before the Division Bench and it was held :-

“Although the application made by the petitioners purported to be under Section 13-A of the Act it was substantially an objection under Section 11(2), of the Act.”

The Prescribed Authority in the aforesaid case was, therefore, directed to consider the claim of the petitioners treating the application as an objection under Section 11(2) of the Act.”

(iv) **Hari Ram v. Special Additional District Judge Faizabad & others (1989 LCD 85).** Relevant paragraph 7 is being quoted below :-

“In view of the discussion held above, it is clear that the petitioners had to be heard and their objections had to be treated as objections under Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act, specifically when the land was recorded in the revenue records in their names in pursuance of an order of mutation passed in their favour. It will not affect their case if earlier any order was passed in proceedings between Chandra Bhan Singh and others and the State. As a

matter of fact, under the first proviso to Rule 8 of the U.P. Imposition of Ceiling on Land Holdings Rules, a notice should have been issued to the petitioners as well. The opposite parties have dismissed the objections and the appeal preferred by the petitioners erroneously. The matter had to be considered on merits on the objections filed by the petitioners.”

(v) **Ravindra Kaur Grewal v. Manjeet Kaur [(2019) 8 SCC 729]** on adverse possession. Relevant paragraphs 13, 14 and 20 are being quoted below :-

“13. In Somnath Burman v. S.P. Raju [Somnath Burman v. S.P. Raju, (1969) 3 SCC 129 : AIR 1970 SC 846] , this Court has recognised the right of a person having possessory title to obtain a declaration that he was the owner of the land in a suit and an injunction restraining the defendant from interfering with his possession. This Court has further observed that Section 9 of the Specific Relief Act, 1963 is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment is sufficient title even if the suit is brought more than six months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by showing that the title and the right to possession vested in a third party. This Court has observed:

“10. In Narayana Row v. Dharmachar [Narayana Row v. Dharmachar, ILR (1903) 26 Mad 514] a Bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ. held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the

Specific Relief Act is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The same view was taken by the Bombay High Court in Krishnarao Yashwant v. Vasudev Apaji Ghotikar [Krishnarao Yashwant v. Vasudev Apaji Ghotikar, ILR (1884) 8 Bom 871] . That was also the view taken by the Allahabad High Court—see Umrao Singh v. Ramji Das [Umrao Singh v. Ramji Das, 1913 SCC OnLine All 56 : ILR (1914) 36 All 51] , Wali Ahmad Khan v. Ajudhia Kandu [Wali Ahmad Khan v. Ajudhia Kandu, 1891 SCC OnLine All 38 : ILR (1891) 13 All 537] . In Subodh Gopal Bose v. Province of Bihar [Subodh Gopal Bose v. Province of Bihar, 1949 SCC OnLine Pat 30 : AIR 1950 Pat 222] the Patna High Court adhered to the view taken by the Madras, Bombay and Allahabad High Courts. The contrary view taken by the Calcutta High Court in Debi Churn Boldo v. Issur Chunder Manjee [Debi Churn Boldo v. Issur Chunder Manjee, ILR (1883) 9 Cal 39] ; Ertaza Hossein v. Bany Mistry [Ertaza Hossein v. Bany Mistry, ILR (1883) 9 Cal 130] , Purmeshur Chowdhry v. Brij Lal Chowdhry [Purmeshur Chowdhry v. Brij Lal Chowdhry, ILR (1890) 17 Cal 256] and Nisa Chand Gaita v. Kanchiram Bagani [Nisa Chand Gaita v. Kanchiram Bagani, ILR (1899) 26 Cal 579] , in our opinion does not lay down the law correctly.”(emphasis supplied)

It is apparent from the aforesaid decision that a person is entitled to bring a suit of possessory title to obtain possession

even though the title may vest in a third person. A person in the possessory title can get injunction also, restraining the defendant from interfering with his possession.

14. Given the aforesaid, a question to ponder is when a person having no title, merely on the strength of possessory title can obtain an injunction and can maintain a suit for ejectment of a trespasser. Why a person who has perfected his title by way of adverse possession cannot file a suit for obtaining an injunction protecting possession and for recovery of possession in case his dispossession is by a third person or by an owner after the extinguishment of his title. In case a person in adverse possession has perfected his title by adverse possession and after the extinguishment of the title of the true owner, he cannot be successfully dispossessed by a true owner as the owner has lost his right, title and interest.

20. There is an acquisition of title by adverse possession as such, such a person in the capacity of a plaintiff can always use the plea in case any of his rights are infringed including in case of dispossession. In Mandal Revenue Officer v. Goundla Venkaiah [Mandal Revenue Officer v. Goundla Venkaiah, (2010) 2 SCC 461 : (2010) 1 SCC (Civ) 466 : (2010) 1 SCC (Cri) 1501] this Court has referred to the decision in State of Rajasthan v. Harphool Singh [State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652] in which the suit was filed by the plaintiff based on acquisition of title by adverse possession. This Court has referred to other decisions also in Annakili v. A. Vedanayagam [Annakili v. A. Vedanayagam, (2007) 14 SCC 308] and P.T. Munichikkanna Reddy v. Revamma

[P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] . It has been observed that there can be an acquisition of title by adverse possession. It has also been observed that adverse possession effectively shifts the title already distanced from the paper owner to the adverse possessor. Right thereby accrues in favour of the adverse possessor. This Court has considered the matter thus:

“48. In State of Rajasthan v. Harphool Singh [State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652] , this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State Government were dismissed by the lower appellate court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the respondent-plaintiff could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below: (SCC p. 660, para 12)

‘12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a

third-party encroacher title where he had none. The decision in P. Lakshmi Reddy v. L. Lakshmi Reddy [P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314] , adverted to the ordinary classical requirement — that it should be nec vi, nec clam, nec precario — that is the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus.’

50. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In Annakili v. A. Vedanayagam [Annakili v. A. Vedanayagam, (2007) 14 SCC 308] , the Court observed as under: (SCC p. 316, para 24)

‘24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period

prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title.'

51. In *P.T. Munichikkanna Reddy v. Revamma* [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59], the Court considered various facets of the law of adverse possession and laid down various propositions including the following: (SCC pp. 66 & 68, paras 5 & 8)

'8. ... to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

2. Specific positive [Ed.: The matter between two asterisks has been emphasised in original as well.] intention to dispossess [Ed.: The matter between two asterisks has been emphasised in original as well.] on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as [Ed.: The matter between two asterisks has been emphasised in original as well.] intent to dispossess [Ed.: The matter between two asterisks has been emphasised in original as well.] is an express statement of urgency and intention in the upkeep of the property. (emphasis in original)'"

(emphasis supplied)"

15. On the other hand, learned Standing Counsel submits that any

declaratory decree, transfer, application or correction made after 24-01-1971 must be ignored while determining surplus land. The decree dated 03-01-1978 and correction order dated 17-04-1979 are, therefore, legally irrelevant.

16. It is further submitted by learned Standing Counsel that Gata No. 613 was declared surplus on 09-12-1976, which was never challenged by the original tenure-holder, Smt. Dukhrani. The authorities validly took possession under Section 14. The respondents contend that the application dated 01-12-1978 was based on incorrect facts, that no opportunity of hearing was given to the State or original tenure-holder, and the order dated 17-04-1979 was passed on misrepresentation and is void.

17. In support of his submission, he placed reliance upon the following judgments :-

(i) **S.P. Chengalvaraya Naidu v. Jagannath** [1994 (1) SCC 1]. Relevant paragraphs 5 and 6 are being quoted below :-

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of

fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered

copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(ii) **A.V. Papayya Sastri v. Govt. of A.P. [2007 (4) SCC 211]**. Relevant paragraphs 22, 26, 38 and 39 are being quoted below :-

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law

after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior."

18. It is submitted that entries not made as per the procedure in Land Records Manual have no evidentiary value. The Class-9 entries relied upon by petitioner were made without proper notice to the original tenure-holder.

19. Learned Standing Counsel further placed reliance on the following judgments :-

(i) Mohd. Raza Vs. D.D.C. Banda (1990 AWC 605). Relevant paragraphs 14, 15 and 16 are being quoted below :-

"14. The other case in Srinath v. D.D.C., 1983 Rev. Dec. 53 : (1983 All LJ 453), it was held that the procedure under Para A-80 and A-81 of the U.P. Land Records Manual not having been followed on the relevant date such entries cannot be relied upon the also no mention of the oral evidence which was not material would not be sufficient ground for interference in writ jurisdiction.

15. In Ganga Ram v. D.D.C., (1981) UPLTNO 213) decided by Hon. K.N. Misra, J. (supra) it was held that the right of adverse possession cannot be acquired on the basis of such entries in which P.A. 10 notice were not served on the recorded tenure holder.

Similarly in Ram Sakal v. State of U.P., 1987 Rev. Dec. 264 : (1987 All LJ 1218) it was held that entries, if not made in the revenue record in accordance with the procedure prescribed under law cannot confer any right in case P.A. 10 notice were not issued and served on the main tenant whose rights are short to be extinguished by the trespasser.

16. In view of the discussions made above I am of the view that the entries in the revenue papers in favour of the petitioner were not prepared by following the procedure prescribed under Paras A-80, A-81 and Para 423(5) of the U.P. Land Records Manual and P.A. 10 notice were not served on the main tenant respondent No. 2. Such entries were of no evidentiary value and would not confer any right to the petitioner nor they can be of

any assistance leading to the extinguishment of the right of the tenure-holder, the respondent No. 2. As regards the oral evidence of petitioner, the person claiming right under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act, and the statement of respondent No. 2 the person who was main tenant and whose rights were tried to be proved to have come to an end under Section 210 have been considered. It cannot be said that the Deputy Director of Consolidation has overlooked or failed to consider the material oral evidence on the record. I accordingly do not find any substance in the submission of the learned counsel for the petitioner and the objection of respondent No. 2 under S. 9(2) of the Act was correctly allowed. There has been no ground made out for interference in the impugned order under Article 226 of the Constitution of India."

(ii) Gurmukh Singh & another Vs. D.D.C./ A.D.M. (F. & R.) Nainital & others [1997 (2) AWC 649]. Relevant paragraphs 6 and 10 are being quoted below :-

"6. It is clear from para 102-C of the Land Records Manual that the entries will have no evidenciary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure holder

was duly given notice in prescribed form P.A. 10. Para A-81 itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman, Land Management Committee as well as from the recorded tenure holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure holder had knowledge of such adverse possession.

10. The petitioners led evidence to prove adverse possession. They relied upon the Khatauni 1375-1377 F and also twelve year Khasra, 1386-1397 F. Surjan Singh, father of the petitioners also tendered oral evidence. Khatauni 1375 F indicated that respondent No. 3 Mangal Singh, father of respondent No. 4 was recorded as sirdar of the land in dispute. In column No. 9 there is entry that Jagtar Singh is in possession and has been shown in column No. 9 in respect of plot No. 150. This entry is alleged to have been made by the Supervisor Qanungo. The petitioners did not lead any evidence to show that before making such entry the Supervisor Qanungo had issued any notice to the recorded tenure-holder. The petitioner did not file any copy of Khasra which could show that in the remarks column the date of the Partial and the date of issuance of P.A. 10 was made. The diary of the Lekhpal was also not summoned. The petitioner was relying upon these entries to prove his

adverse possession. The person who is recorded as tenure-holder is otherwise entitled to notice when an authority makes an entry regarding possession against him, which in effect creates a right in favour of another person in respect of the and for which the entry is made in the Khasra. Secondly, respondent No. 2 has believed the oral evidence adduced on behalf of the respondents 3 and 4 that Jagtar Singh was related to them. Respondent No. 3 is brother in law of Jagtar Singh and respondent No. 4 is his nephew. The findings recorded by the respondents are not illegal."

(iii) Sabhai & another Vs. D.D.C. Faizabad & others [2024 (1) AWC 812 (LB)]. Relevant paragraphs 24, 43 and 44 are being quoted below :-

"24. A perusal of the facts indicated in the order dated 27.03.1982, which have not been refuted by the petitioners by filing the copy of the memo of revision, it is apparent that before the Revisional Authority the petitioners did not take plea related to the finding of the Assistant Settlement Officer of Consolidation, according to which, Dukhi and Khelawan were held as sons of Ghurai. On other hand, it appears that plea of adverse possession was taken to claim their rights over the land of Khata No. 162. The revisional authority, after observing that there is no evidence on record from which it can be deduced that the notice (PA-10) was served on the main tenants, held that the claim of revisionist(s)/petitioners is not sustainable and thereafter dismissed the revision vide order dated 27.03.1982. The relevant portion of the same reads as under: —

"Learned counsels for the parties were heard and the records were perused

carefully. Revisionists set up two cases. Their first case was that their father was in virtual occupation of the land in 1356 F 1359 F and that on the basis of above entries, they became Sirdar from Adhivasi after the abolition of Zamindari. Alternatively they pleaded in their second case tht they have perfected their title on the basis of adverse possession. With regard to the first case, the revisionists have filed extract of Khasra for 1359 F in which their father Sahdeva is recorded in remarks column as Marfat Sahdeva. No other evidence is there on the record in this aspect. AS opposed to it, Dukhi and others have filed extracts of Khatauni for 1356F and 1359F. These pieces of evidence show that they are recorded in class 4 in these years over the disputed land. In addition to this, they have filed rent receipts in supports of their case. Musai etc. too have admitted in their statements that Dukhi etc. are in possession over the land. In view of this there does not appear to be any force in the first case of the revisionists. As regards the case of adverse possession, revisionists have filed extracts of Khasra for 1366F to 1367F and again from 1368F and 1379F and 1379F. In 1366F and 1367 F, Sahdeva is recorded qubiz with date diary and PA-10 over plot No. 373/2 and qubiz over other plots. Same is the position in 1367 F. There after he is recorded under clause 9 upto 1379F. Lower appellate Court has said that these entries are not in accordance with the provisions Land Record Manual. Revisionists have not brought on record any piece of evidence to show that PA-10 was ever served on the main tenant. So these entries will certainly not be termed to be regular. Another important circumstances in this respect leads me to conclude that the revisionists have not come, with clear hands in this court. Musai etc. directed their appeal

against Dukhi etc. but not against Sabhai etc. for reasons best known to them. Lower appellate court seems to be correct in holding that Musai etc. are in collusion with Sabhai etc. to grab the disputed land one way or the other. In view of these findings, I do not find any force in this revision."

43. The decision of Board of Revenue in the case of Hazari v. Mathura (B.R.), 1991 SCC OnLine BoR (UP) 27; 1992 RD 79; is not an authority on the question that where the person is claiming rights over the land on the basis of plea of adverse possession and relies upon the recorded entries, he is not to establish that the entries were made in accordance with the mode and manner prescribed under law. In the instant case, the claim of the petitioners based upon the plea of adverse possession was based upon the entries in Khasra and Khatauni, as such, they were required to prove the said entries and they failed to prove the same by adducing proper evidence.

Thus, for the reasons aforesaid, the findings recorded by the Assistant Settlement Officer of Consolidation and Deputy Director of Consolidation, according to which, the entries in Khasra and Khatauni produced by the petitioners were not made in the revenue record in terms of mode and manner prescribed in U.P. Land Records Manual and that no evidence was produced by the petitioners to prove that before making entries PA-10 was issued and served upon the recorded tenure holder and Land Management Committee, are justified."

20. It is further argued by learned Standing Counsel that the decree of 03-01-1978 was passed without serving PA-10

notice on the original tenure-holder, ex parte in the absence of Smt. Dukhrani and contrary to the ongoing ceiling proceedings. Such decree, the respondents submit, cannot override the statutory scheme of the Ceiling Act.

21. After having heard the rival submissions advanced by learned counsel for the parties, I perused the material on record as well as the law reports cited by the parties.

22. The writ jurisdiction of this Court is invoked to examine whether the authorities below proceeded in accordance with law in rejecting the petitioner's objection and dismissing the appeal.

23. A decree which has attained finality and has not been challenged ordinarily must be given effect to and is a relevant piece of adjudicatory material. Decrees which determine possessory rights or bhumidharship are relevant for assessing the character of the holding and the claim of the person in possession. The 1978 decree, in the absence of any challenge on record, operates as a final adjudication between the parties to the suit and cannot be brushed aside mechanically in ceiling proceedings without dealing with its effect.

24. Persons claiming to be tenure-holders, third parties or those who assert possessory rights are entitled to file objections under Section 11(2) of the Ceiling Act (and allied provisions) and their objections are required to be adjudicated on merits. The statutory scheme does not permit summary rejection of bona fide objections without affording an adequate opportunity to adduce evidence or without considering documentary evidence such as a final decree and mutation entries.

25. The statutory bar against taking into account transactions occurring after the cut-off date 24.01.1971 is an important consideration in ceiling determination. However, the bar is not an instrument for obliterating antecedent rights, orders or possession which have been established and which are not vitiated. Where orders or decrees have been obtained by playing fraud or by material suppression, they may be treated as nullities. Conversely, where a decree is final and unchallenged and corroborated by continuous possession and mutation entries, the ceiling authorities are required to consider such material and adjudicate objections accordingly.

26. Entries in Khasra and Khatauni have evidentiary value when made in accordance with the procedural safeguards set out in the Land Records Manual (including service of P.A.10 notices, Lekhpal diary notings, etc.). If entries are found not to have been made in accordance with prescribed procedure, a court may treat them with caution. That said, procedural irregularity is a question of fact to be established by cogent material — and a summary dismissal of the petitioner's objection without examining such material is impermissible. In view of the above, the impugned orders are bad in law and are liable to be set aside.

27. The record on file shows an apparent inconsistency in the manner in which Gata No. 613 has been treated in the ceiling Khata and in the petitioner's Khatauni. Double-recording of the same plot, if proved to be a result of error or misidentification, vitiates the ceiling determination and requires rectification after adjudication on merits.

28. On the facts of the present case, the order of the Prescribed Authority dated

30.03.2002 records the existence of the 1978 decree but rejects the objection on the ground that the decree was passed post cut-off and therefore irrelevant; the Appellate Authority in its order dated 28.10.2002 upheld that view and further observed that the correction order was obtained by suppression. Neither authority, however, conducted a full factual inquiry into (i) whether the 1978 decree was obtained with clean hands, (ii) whether PA-10 and other procedural steps required for the entries were complied with, and (iii) whether the correction order dated 17.04.1979 was vitiated by fraud or misrepresentation. The consequence is that the petitioner's right to have his objections decided on merits was denied.

29. The petitioner has relied on a consistent line of authority recognising (i) the maintainability of objections under Section 11(2) even post-notification, (ii) the duty of the Prescribed Authority to adjudicate such objections on merits, and (iii) the relevance of long-standing possession and decrees declaring bhumidhar rights.

30. In **Dirvijay Singh** (Supra), the Court held that objections under Section 11(2) cannot be rejected merely because earlier proceedings had attained finality inter se the recorded tenure-holder. This authority reinforces the principle that third-party claimants are entitled to a full adjudication on merits—precisely what has been denied to the petitioner herein.

31. In **Shafir** (Supra), the Division Bench held that the Prescribed Authority must adjudicate the claim of a person asserting tenure-rights or adverse possession on merits and cannot refuse to consider such claims merely because

ceiling proceedings had advanced or a notice under Section 10(2) had been issued. The ratio applies squarely to the present case, where the petitioner's claim of possession and declaratory decree was disregarded without substantive adjudication.

32. **Abdul Hafiz Khan** (Supra) reiterates that objections under Section 11(2) are maintainable even after Section 14 notification and that wrong citation of provision does not vitiate an objection when the substance discloses a valid claim. This Court notes that the petitioner's objection dated 23.07.1997, though challenged on procedural grounds by the respondents, did raise substantive grounds requiring examination.

33. In **Hari Ram** (Supra), the Court required authorities to treat objections as maintainable under Section 11(2) where mutation entries existed pursuant to orders in favour of the objectors. This directly supports the petitioner's contention that the 1978 decree and consequent entries could not be ignored.

34. The petitioner also relied on the Supreme Court judgment in the case of **Ravinder Kaur Grewal** (Supra), reiterating the jurisprudence on possessory title and adverse possession, affirming that even a possessor without documentary title may assert and defend rights against all except the true owner. This judgment underscores the legal relevance of long, continuous possession alleged since 1953.

35. On the other hand, the respondents rely heavily on the doctrine that orders obtained by fraud are nullities and that post—cut-off transactions must be ignored in ceiling determination.

36. The respondents cite **S.P. Chengalvaraya Naidu** (Supra), where the Supreme Court held that an order obtained by suppression or misrepresentation is void and non est. This Court affirms the correctness of that proposition of law; however, whether the correction order dated 17.04.1979 or the 1978 decree were obtained through fraud is a factual determination which was never adjudicated by the authorities below.

37. The respondents further relied on **Mohd. Raza** (Supra); **Gurmukh Singh** (Supra); and **Sabhai** (Supra), to submit that entries not prepared in accordance with the Land Records Manual (particularly without PA-10 notice) lack evidentiary value. These authorities indeed require strict proof of compliance with revenue record procedures. However, neither the Prescribed Authority nor the Appellate Authority undertook a factual inquiry to test whether the entries relied upon by the petitioner were procedurally compliant. Summary rejection on assumptions cannot substitute a factual finding. The Supreme Court as well as the High Courts in catena of judgments have held that reasons are heartbeat to derive at a conclusion and without reasons, the order is lifeless.

38. Thus, when all cited authorities are considered collectively, two principles emerge which decisively govern this case: (i) The petitioner's objection under Section 11(2) was maintainable and required full adjudication on merits, including examination of possession, mutation entries, the 1978 decree, and allegations of fraud; and (ii) Revenue entries and decrees may be disregarded only after a factual finding of procedural illegality or fraud—neither of which has been determined by the authorities below.

39. Therefore, the impugned orders suffer from non-application of mind and failure to consider governing judicial precedents which impose a duty of adjudication.

40. For the reasons recorded above, this Court is satisfied that the authorities below committed jurisdictional error in rejecting the petitioner's objection and in dismissing the appeal without full adjudication on the key factual issues.

41. Consequently, the impugned order dated 30.03.2002 passed by the Prescribed Authority (Annexure-2) and the order dated 28.10.2002 passed by the Additional Commissioner/Appellate Authority (Annexure-1) are hereby quashed.

42. The writ petition succeeds and is allowed.

(2025) 12 ILRA 350
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.12.2025

BEFORE

THE HON'BLE ASHUTOSH SRIVASTAVA, J.

Criminal Misc. Bail Application No. 32689 of
2025

Amit Tripathi Alias Mukund ...Applicant
Versus
State of U.P. ...Respondent

Issue for Consideration

Matter pertains to whether having regard to the nature and gravity of allegations u/ss. 8/20/29 of NDPS Act, 1985, the quantity of contraband allegedly recovered, the stage of the proceedings, and the statutory rigour governing grant of bail in NDPS offences, the applicant had made out a case for enlargement on bail during the pendency of trial u/s 483 of Bharatiya

Nagarik Suraksha Sanhita, 2023, despite the rejection of his bail application by the Court below.

Headnotes

Narcotic Drugs And Psychotropic Substances, Act, 1985 - ss. 8, 20, 29 - NDPS (seizure, storage, sampling and disposal) Rules, 2022 - R. 10 - The applicant was arrested for offences punishable u/ss. 8/20/29 of the NDPS Act, 1985, pursuant to a raid conducted on 26.03.2025 on the basis of prior information regarding storage of illegal ganja at certain premises, during which a total of approximately 1300 kilograms of contraband ganja was allegedly recovered from three vehicles and a room within the said premises - The applicant was apprehended from one of the vehicles, including a vehicle registered in his name, and was remanded to judicial custody, following which his bail application was rejected by the learned Special Judge (NDPS Act), prompting him to approach the High Court seeking regular bail on the grounds of false implication, alleged non-compliance of mandatory provisions of ss. 42, 50, 52A of NDPS Act, absence of independent witnesses, and procedural irregularities in sampling and seizure - The State opposed the prayer for bail by contending that the recovery was of commercial quantity, the investigation was complete, the charge-sheet had been filed, and prima facie material disclosed the applicant's involvement in the offence.

Held: From the perusal of the evidences, collected during investigation so far, prima facie, the involvement of the accused in the instant case cannot be ruled out - No reason is found to falsely implicate the applicant/accused - Therefore, there is no good ground to release the applicant/accused on bail at this stage - All the contentions raised by the learned counsel for the applicant pertain to the merits of the case and the same cannot be considered while considering application for grant of bail - Accordingly, the bail application rejected. [Paras 8, 9] (E-13)

Case Law Cited

Amani Fidel Chris v. Narcotics Control Bureau, **2020 SCC OnLine Del 2080**; Sakeer K. v. State of Kerala and another, **Bail Application No. 1253 of 2024, decided on 25.04.2024**; Union of India v. Bal Mukund, **2009 (12) SCC 161**; Chinku Gupta v. State of U.P., **Jail Appeal No. 2811 of 2016, decided on 24.8.2018**; Narcotics Control Bureau v. Kasif, **Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Crl.) No. 12120 of 2024), decided on 20.12.2024**; Bharat Ambale v. State of Chattisgarh, **2025 INSC 78 - referred to.**

List of Acts

Narcotic Drugs And Psychotropic Substances, Act, 1985; NDPS (seizure, storage, sampling and disposal) Rules, 2022

List of Keywords

Bail application; Enlargement on bail; Contraband ganja; Commercial quantity; Ulterior motives; Raid; Recovery; Seizure; Apprehension; Judicial custody; Charge-sheet; Investigation; Prima facie involvement; Non-compliance of mandatory provisions; Procedural irregularity; False implication; Criminal antecedents; Independent witnesses; Conscious possession; Rejection of bail.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 32689 of 2025

From the Judgment and Order dated 23.05.2025 of the Court of Addl. Sessions Judge/Special Judge NDPS Act, Court No. 9, Prayagraj

Appearances for Parties

Advs. for the Applicant:

Ajay Kumar, Diwanshu Tiwari, Mujeeb Khan, Nitin Sharma, Zain Abbas

Adv. for the Opposite Party:

G.A.

(Delivered by Hon'ble Ashutosh
Srivastava, J.)

1. Heard Shri Manish Tiwary, learned Senior Counsel assisted by Shri Ajay

Kumar, learned counsel for the applicant, Shri Shashank Singh, learned Brief Holder for the State and perused the records.

2. The instant bail application under Section 483 of the BNSS, 2023 has been filed seeking enlargement on bail in Case Crime No. 163 of 2025, under Sections 8/20/29 of the NDPS Act, 1985, Police Station Handia, District Prayagraj during the pendency of the trial before the Court below. The bail application of the applicant before the Court below was rejected by the learned Addl. Sessions Judge/Special Judge NDPS Act, Court No. 9, Prayagraj vide order dated 23.5.2025 and the applicant is languishing in jail since 26.3.2025.

3. Shri Manish Tiwary, learned Senior Counsel appearing for the applicant has vehemently argued that the applicant is entirely innocent and has been falsely implicated in this very case crime number for ulterior motives. On getting information that huge quantity of illegal Ganja is available in the house of Ghanshyam Tripathi in village Chaura Bereda, a raid was carried out on 26.3.2025 at 12:39 hours on the premises in question and the applicant was apprehended from the driver seat of a vehicle Tata-X Gold without number plate. On checking the vehicle Tata-X Gold, 25 sacks of Ganja contained in 19 sacks each having 20 packets of 1 Kg., each and 06 sacks containing 32 packets of 1 Kg. each total quantity 572 Kg. Ganja was recovered from the said vehicle registered in the name of co-accused Rohit Tripathi son of Ghanshyam Tripathi. From another vehicle found on the premises i.e. Nissa Kicks bearing registration No. UP-70-FW-0553 from which 01 sacks containing 14 packets of Ganja each weighing 1 Kg was recovered from the dickey, while 02 sacks containing

27 packets of 1 Kg. each Ganja total 68 Kg. Ganja was recovered from the back seat of the vehicle. The Nissan Kicks was found to be registered in the name of the applicant. Likewise, from a third vehicle found on the premises i.e. Scoda vehicle without number plate, 01 sacks were found from the dickey of the vehicle containing 25 packets of 01 Kg., Ganja besides 03 sacks from the backseat also containing 25 packets of 01 Kg. Ganja total quantity 125 Kg. were recovered. Besides the recovery from the vehicles, on the premises in question, 525 Kg. Ganja contained in 17 sacks (30 packets of 1Kg.) and 1 sack containing 25 packet of 01 Kg. Ganja was recovered. The total quantity of the contraband Ganja recovered was 1300 Kgs. The accused persons are stated to have confessed their crimes.

4. Shri Manish Tiwary, learned Senior Counsel has vehemently argued that the prosecution of the applicant and other co-accused persons is being done under the wrong provisions of the NDPS Act and as such, the entire prosecution is vitiated and the applicant is entitled to be enlarged on bail. Shri Tiwary, contends that the applicant is being prosecuted for an offence under Section 8/20/29 of the NDPS Act. The FIR was lodged under Section 18/20 of the NDPS Act. Section 18 of the NDPS Act deals with the punishment for contravention in relation to opium poppy and opium. Since, in the case at hand neither opium poppy and opium was involved, the applicant and other co-accused persons were wrongly being prosecuted. Shri Tiwary submits that the prosecution only on 26.4.2025 while recording the CD No. 12 converted sections 18/20 of the NDPS Act to Section 8/20/29 of the NDPS Act and sought remand of the accused in the converted sections. It is next

contended that there is no independent witnesses of the alleged recovery and arrest which establishes the falsity of the prosecution case. The mandatory provisions of Sections 42, 50, 52A of the NDPS Act have not been followed. It is argued that 50 sacks containing Ganja were recovered from the premises in question and merely two samples were taken from each sacks and sent for chemical analysis. It is also argued that till date the FSL report has not been received to establish whether the recovered material was in fact Ganja. Much emphasis has been placed upon the Rule 10 of the NDPS (seizure, storage, sampling and disposal) Rules, 2022 which deals with drawing of samples to contend that clear violations of the Section 52A and the Rules, 2022 have been made rendering the prosecution vitiated. It has also been argued that the alleged recovery of the contraband Ganja is from the ancestral house in which approx 25-30 families reside. The raid was carried out at approx 4:45 AM which is a time when ordinarily every every person is expected to be present at their respective resides. Despite the raid having been conducted at such an early hour, the co-accused persons who were residing in the same house were not arrested, which creates doubt about the place and manner of arrest of the applicant which according to him has been effected from a car at Jhunsi and not from Handia as alleged by the prosecution. It is also argued that the applicant was subjected to unlawful and unwarranted physical assault by the Police due to which, he sustained injuries. The confiscated vehicles have since been released finding prima facie case in favour of the applicant. The co-accused persons, namely, Manju Mishra, Mohit Tripathi, Rohit Tripathi, Govind Mishra and Ghanshyam Tripathi have been granted stay of arrest. Reliance has been placed

upon the decision reported in **2020 SCC Online Del 2080**, decision dated 25.4.2024 by the High Court of Kerala at Ernakulam in **Bail Application No. 1253 of 2024 (Sakeer K. Versus State of Kerala and another)**; decision of Apex Court reported in **2009 (12) SCC 161** as also the decision of this Court dated 24.8.2018 rendered in **Jail Appeal No. 2811 of 2016 (Chinku Gupta versus State of U.P.)** to buttress the submissions that statutory provisions must be scrupulously complied with to sustain prosecution under the NDPS Act. It is also argued that there is no credible evidence against the applicant to establish the complicity in the commission of the alleged offence. The recovery is a planted one. The applicant has no criminal antecedents and undertakes to cooperate in the trial and shall not misuse the liberty of bail. Hence, bail is prayed for.

5. Per contra, Shri Shashank Singh, learned Brief Holder appearing for the State-respondent has vehemently opposed the bail plea by submitting that the applicant deserves no indulgence by this Court and is not liable to be released on bail inasmuch as in the raid conducted 1300 Kg. of contraband Ganja has been recovered from 03 vehicles and one room of the premises being the house of the accused persons. Samples were collected and sent for FSL examination and has been found to be Ganja. Charge sheet has been filed on 21.7.2025. The applicant if released on bail shall not cooperate in the trial and most likely influence the trial. Reliance has been placed upon the decision of the Apex Court rendered in the case of **Bharat Aambale versus State of Chattisgarj, Union of India versus Ajai Kumar Singh** to submit that the applicant is not entitled to be released on bail.

6. With regard to non compliance of mandatory provisions of search and seizure of narcotics substance as per the provisions of the NDPS Act is concerned, learned Brief Holder submits that the Apex Court in **Criminal Appeal No. 5544 of 2024 (Special Leave Petition (Crl.) No. 12120 of 2024) Narcotics Control Bureau versus Kasif, decided on 20.12.2024** has held that sub-section (2) of Section 52A lays down the procedure as contemplated in sub-section (1) thereof, and any lapse or delayed compliance thereof would be merely a procedural irregularity which would neither entitle the accused to be released on bail nor would vitiate the trial on that ground alone.

7. The Apex Court recently in the case of **Bharat Ambale versus State of Chattisgarh**, reported in **[2025 INSC 78]** while dealing with the plea that conviction stood vitiated on account of non compliance of Section 52A of the NDPS Act in Para 50 of its judgment has held as under:-

"50. We summarize our final conclusion as under: -

(1) Although Section 52A is primarily for the disposal and destruction of seized contraband in a safe manner yet it extends beyond the immediate context of drug disposal, as it serves a broader purpose of also introducing procedural safeguards in the treatment of narcotics substance after seizure inasmuch as it provides for the preparation of inventories, taking of photographs of the seized substances and drawing samples therefrom in the presence and with the certification of a magistrate. Mere drawing of samples in presence of a gazetted officer would not constitute sufficient compliance of the

mandate under Section 52A sub-section (2) of the NDPS Act.

(II) Although, there is no mandate that the drawing of samples from the seized substance must take place at the time of seizure as held in *Mohanlal* (supra), yet we are of the opinion that the process of inventorying, photographing and drawing samples of the seized substance shall as far as possible, take place in the presence of the accused, though the same may not be done at the very spot of seizure.

(III) Any inventory, photographs or samples of seized substance prepared in substantial compliance of the procedure prescribed under Section 52A of the NDPS Act and the Rules / Standing Order(s) thereunder would have to be mandatorily treated as primary evidence as per Section 52A sub-section (4) of the NDPS Act, irrespective of whether the substance in original is actually produced before the court or not. (IV) The procedure prescribed by the Standing Order(s) / Rules in terms of Section 52A of the NDPS Act is only intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

(V) Mere non-compliance of the procedure under Section 52A or the Standing Order(s) / Rules thereunder will not be fatal to the trial unless there are discrepancies in the physical evidence rendering the prosecution's case doubtful, which may not have been there had such compliance been done. Courts should take a holistic and cumulative view of the discrepancies that may exist in the evidence adduced by the prosecution and appreciate the same more carefully keeping in mind the procedural lapses.

(VI) If the other material on record adduced by the prosecution, oral or

documentary inspires confidence and satisfies the court as regards the recovery as-well as conscious possession of the contraband from the accused persons, then even in such cases, the courts can without hesitation proceed to hold the accused guilty notwithstanding any procedural defect in terms of Section 52A of the NDPS Act.

(VII) Non-compliance or delayed compliance of the said provision or rules thereunder may lead the court to drawing an adverse inference against the prosecution, however no hard and fast rule can be laid down as to when such inference may be drawn, and it would all depend on the peculiar facts and circumstances of each case.

(VIII) Where there has been lapse on the part of the police in either following the procedure laid down in Section 52A of the NDPS Act or the prosecution in proving the same, it will not be appropriate for the court to resort to the statutory presumption of commission of an offence from the possession of illicit material under Section 54 of the NDPS Act, unless the court is otherwise satisfied as regards the seizure or recovery of such material from the accused persons from the other material on record.

(IX) The initial burden will lie on the accused to first lay the foundational facts to show that there was non-compliance of Section 52A, either by leading evidence of its own or by relying upon the evidence of the prosecution, and the standard required would only be preponderance of probabilities.

(X) Once the foundational facts laid indicate non-compliance of Section 52A of the NDPS Act, the onus would thereafter be on the prosecution to prove by cogent evidence that either (i) there was substantial compliance with the mandate of

Section 52A of the NDPS Act OR (ii) satisfy the court that such non-compliance does not affect its case against the accused, and the standard of proof required would be beyond a reasonable doubt."

8. In the light of the facts and circumstances of the present case, it would be inappropriate to discuss the evidence in depth at this stage because it is likely to influence the trial of the accused. But, from the perusal of the evidences, collected during investigation so far, prima facie, the involvement of the accused in the present case cannot be ruled out. No reason is found to falsely implicate the applicant/accused. Therefore, there is no good ground to release the applicant-accused on bail at this stage. All the contentions raised by the learned counsel for the applicant pertain to the merits of the case and the same cannot be considered while considering application for grant of bail. This court is unable to form an opinion at this stage that the accused has not committed an offence.

9. In the ultimate conclusion, considering the facts and circumstances of the case, gravity of the offence, severity of punishment, in my opinion, no case for bail is made out. Accordingly, the bail application is hereby **rejected**.

10. It is clarified that the observations made regarding the bail application is limited to the decision of the bail application and any observations made herein shall not effect the trial of the case.

(2025) 12 ILRA 355

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 03.12.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Misc. Writ Petition No. 20055 of 2025

Manoj Kumar Niranjana ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether in exercise of its extraordinary writ jurisdiction under Article 226 of Constitution (read with s. 528 BNSS / s. 482 Cr.P.C.), the High Court could issue a writ of mandamus directing the investigating authorities to specifically consider and incorporate the documents and evidence produced by the petitioner during the course of investigation in a disproportionate assets case u/s 13(1)(b) read with s.13(2) of Prevention of Corruption Act, 1988, and conclude the investigation within a time-bound framework, on the ground of alleged non-consideration of exculpatory material, violation of paragraph 107 of U.P. Police Regulations, breach of Explanation-I to Section 13(1) of Act, infringement of principles of natural justice, and denial of petitioner's fundamental right to speedy justice under Article 21 of Constitution.

Headnotes

Prevention of Corruption Act, 1988 - ss. 13(1) (b), 13(2) - Constitution of India, 1950 - Article 226 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 528 -The petitioner, presently serving as an Executive Engineer in the Uttar Pradesh Jal Nigam, challenged the ongoing investigation initiated against him under provisions of Prevention of Corruption Act, registered by Vigilance Establishment, Bareilly Sector - An Open Vigilance Inquiry had earlier been instituted on 08.12.2020 to examine allegations of possession of disproportionate assets during the check period from 01.01.2012 to 30.06.2017 - Upon conclusion of inquiry, a report was submitted recommending registration of a case, after that sanction was granted on 16.12.2022 and impugned FIR was lodged on 18.03.2023 alleging excess income to the tune of ₹14,37,427/- from unknown

sources - The petitioner asserts that throughout the inquiry and subsequent investigation he fully cooperated, furnished detailed documentary evidence explaining his lawful sources of income including salary, agricultural earnings, rental income, and other receipts and thereafter submitted representations to competent authorities alleging non-consideration of such material in violation of paragraph 107 of U.P. Police Regulations and Explanation-I to Section 13(1) of Act - Petitioner's grievance is that despite directions dated 27.05.2024 issued by higher authority to consider his representations and supporting evidence, the investigating officer failed to duly evaluate the same and has prolonged the investigation for over two years, thereby acting arbitrarily and in derogation of principles of natural justice and the petitioner's right to fair and expeditious investigation under Article 21 of the Constitution of India.

Held: Perusal of record shows that an FIR dated 18.03.2023 u/s 13(1)(b) r/w 13(2) of Prevention of Corruption Act, 1988 was registered on the basis of inquiry report conducted by Uttar Pradesh Vigilance Establishment, Bareilly Sector Bareilly, in compliance of Uttar Pradesh Vigilance Establishment, confidential letter No.1464/39-1-20-2M(1)/2019 dated 08.12.2020, in regard to an excess income of petitioner from unknown sources of Rs.14,37,427/- for the check period of 01.01.2012 to 30.06.2017 - Respondent no.4 is Inspector/investigating officer of Vigilance Establishment, Bareilly Sector, Bareilly - The petitioner in his petition has admitted the fact that he had received notice on 17.11.2023, issued by office of respondent no.3 for getting recorded his statement in investigation of the crime and his statement was recorded on 20.11.2023 - The petitioner further stated that he has submitted the entire relevant documents and evidence pertaining to his source of income during the check period before the respondent no.3/ Superintendent of Police, Vigilance Establishment, Bareilly Sector, Bareilly - It is clear that he has availed the opportunity of putting his case before the investigating officer

and he had also provided all the relevant evidence and documents for the check period in question to the respondent no.3 - In his petition the petitioner has stated that the respondent no.4 had refused to take the relevant documents and evidence pertaining to source of income of the petitioner during the check period - In the light of averments made by petitioner in his petition and the law laid down by Supreme Court in the case of Nitya Dharmananda Case (infra), it is not necessary to direct the investigating officer to reconsider the evidence/documents produced by the petitioner in investigation of case - Thus, petition lacks merit, dismissed. [Paras 5, 6, 8] (E-13)

Case Law Cited

Nitya Dharmananda v. Gopal Sheelum Reddy, (2018) 2 SCC 93 - followed

List of Acts

Constitution of India, 1950; Bharatiya Nagarik Suraksha Sanhita, 2023; Prevention of Corruption Act, 1988

List of Keywords

Writ Petition; Writ of Mandamus; Article 226 of Constitution of India; s. 528 BNSS / s. 482 Cr.P.C.; Investigation; Investigating Officer; ss. 13(1)(b), 13(2) of Prevention of Corruption Act, 1988; Disproportionate Assets; Open Vigilance Inquiry; Check Period; Vigilance Establishment; Permission for Registration of FIR; Representations; Consideration of evidence/documents; Violation of mandatory provisions; Explanation-I to s. 13(1); Paragraph 107 of U.P. Police Regulations; Principles of Natural Justice; Arbitrary; Right to Speedy Justice; Fundamental Right under Article 21; Pending Investigation; Time-bound conclusion of investigation; Interference in investigation; Evidence intensive case; Trial stage; Opportunity to explain source of income; Miscarriage of justice; Mala fide; Dismissal of petition; Lack of merit.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 20055 of 2025

From the FIR dated 18.03.2023 in Case Crime No.0001 of 2023, lodged at Police Station

Bareilly Sector (Vigilance Establishment), District U.P. Vigilance Establishment.

Appearances for Parties

Adv. for the Petitioner:

Prem Prakash

Adv. for the Respondent:

G.A.

(Delivered by Hon'ble Achal Sachdev, J.)

1. Heard learned counsel for the petitioner and learned AGA for the State.

2. Present writ petition has been filed by the petitioner with following prayer:-

"(i) To issue a writ order or direction in the nature of mandamus directing the respondent nos.2, 3, 4 to consider the evidence/documents produced by the petitioner in investigation of Case Crime No.0001 of 2023, under section 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988, Police Station Bareilly Sector (Vigilance Establishment), District U.P. Vigilance Establishment according to the provision of para-107 of the U.P. Police Regulation and in pursuance of the order dated 27.05.2024 of respondent no.1.

(ii) To issue a writ order or direction in the nature of mandamus commanding the respondent no.4 to conduct and conclude investigation of Case Crime No.0001 of 2023, under section 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988, Police Station Bareilly Sector (Vigilance Establishment), District U.P. Vigilance Establishment, within stipulated time as may be fixed by this Hon'ble Court."

3. The petitioner in his petition has submitted that on 15.10.2009 he was

appointed as Assistant Engineer in Uttar Pradesh Jal Nigam and after getting promotion now he is discharging his duties as Executive Engineer. During entire service period of petitioner neither any illegalities nor irregularities have been found against the petitioner or any complaint were filed or made against him by anyone and his entire service record was unblemished. On 08.12.2020 the respondent no.1 has ordered for initiating Open Vigilance Inquiry against the petitioner regarding disproportionate asset which is numbered as Open Inquiry No.183 of 2020 for the check period 01.01.2012 to 30.06.2017. Thereafter the vigilance inquiry was conducted and concluded by the Vigilance Establishment, Bareilly Sector Bareilly and report was submitted before the respondent no.1 regarding the inquiry on 18.03.2021. The petitioner has cooperated in the inquiry and had supplied all the relevant documents regarding the assets acquired during the check period, including his salary, agriculture income, income from rents and income received from other sources etc., however inquiry officer has not considered the same and submitted report with recommendation for permission of investigation under section 13(1)(b) read with 13(2) of the Prevention of Corruption Act as amended. On 16.12.2022 the respondent no.1 has granted permission for registering the FIR and conducting investigation under the provision of Prevention of Corruption Act, hence the Vigilance Inquiry Officer has lodged FIR on 18.03.2023 against the petitioner which is registered as Case Crime No.0001 of 2023, under section 13(1)(b) read with 13(2) of the Prevention of Corruption Act as amended, at Police Station Bareilly Sector (Vigilance Establishment), District U.P. Vigilance Establishment. Thereafter on 07.11.2023 the

petitioner has received notice issued by the office of the respondent no.3 for getting recorded the statement in investigation of the aforesaid criminal case. In pursuance of the notice dated 07.11.2023 the petitioner got his statement recorded on 20.11.2023 and also submitted the entire relevant documents/evidence pertaining to the source of income during the check period. The investigating officer of the case i.e. respondent no.4 also has not considered the documents/evidences produced by the petitioner before him for explaining satisfactorily about the source of income of the petitioner. In such compelling circumstances the petitioner has moved the representations before the respondent no.1 on 05.01.2024, 25.4.2024 and 01.05.2024 and also submitted entire evidence for explaining source of income. Thereafter respondent no.1 considering the representations of petitioner has passed an order on 27.05.2024 and directed the respondent no.2 i.e. Director, Vigilance to consider and include the points mentioned in the representations and also consider the evidence in the investigation of the aforesaid criminal case. During the investigation the respondent no.4 called for report from the Tehsil of home district of petitioner and the Tehsildar, Tehsil Jalaun District Jalaun has submitted detailed report dated 14.10.2024, which showed head wise income received from the different crops and also mentioned his income from cash crops. The impugned FIR shows that the petitioner had earned an amount of Rs.14,37,427/- in excess from the valid source of income and in this regard the petitioner in his statement before the investigating officer has categorically mentioned the income gain during check period with evidence, which was not considered during the open inquiry. This was in violation of the provisions of

paragraph no.107 of the Police Regulation. The mandatory provision of Explanation-I of section 13(1) of Prevention of Corruption Act had also not been complied with.

4. Aggrieved by the act of respondent no.4 the petitioner again made a representation before the respondent no.1 on 21.07.2025, citing violation of mandatory rules and regulations that had to be followed during investigation. It was also stated that the act of respondent no.4 was arbitrary and against the principal of natural justice. Non consideration of valid sources of income of the petitioner will adversely affect the petitioner in defending his case. The petitioner is innocent and law abiding person and has not committed any offence as alleged. The investigation of the aforesaid case is pending since 2023 and about 2 years have passed but the respondent no.4 was not intending to conclude the investigation of the case. The cardinal principle of law is that delay in justice amounts to denial of justice and the right to speedy justice is fundamental right of the petitioner.

5. Perusal of record shows that an FIR dated 18.03.2023 under section 13(1)(b) read with 13(2) of Prevention of Corruption Act, 1988 was registered on the basis of inquiry report conducted by Uttar Pradesh Vigilance Establishment, Bareilly Sector Bareilly, in compliance of the Uttar Pradesh Vigilance Establishment, confidential letter No.1464/39-1-20-2M(1)/2019 dated 08.12.2020, in regard to an excess income of the petitioner from unknown sources of Rs.14,37,427/- for the check period of 01.01.2012 to 30.06.2017. The respondent no.4 is Inspector/investigating officer of Vigilance Establishment, Bareilly Sector, Bareilly.

The petitioner in his petition has admitted the fact that he had received notice on 17.11.2023, issued by the office of respondent no.3 for getting recorded his statement in the investigation of the aforesaid case crime and his statement was recorded on 20.11.2023. The petitioner further stated that he has submitted the entire relevant documents and evidence pertaining to his source of income during the check period before the respondent no.3/ Superintendent of Police, Vigilance Establishment, Bareilly Sector, Bareilly.

6. From the above submission made by the petitioner in his petition it is clear that he has availed the opportunity of putting his case before the investigating officer and he had also provided all the relevant evidence and documents for the check period in question to the respondent no.3. Nowhere in his petition the petitioner has stated that the respondent no.4 had refused to take the relevant documents and evidence pertaining to source of income of the petitioner during the check period.

7. The High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India or under Section 528 BNSS / 482 Cr.P.C. cannot direct the investigating officer to collect the specific evidence or accept particular documents tendered by the accused. Hon'ble Supreme Court in the case of Nitya Dharmananda v. Gopal Sheelum Reddy, (2018) 2 SCC 93 has held that High Court in writ jurisdiction or in exercise of jurisdiction under section 528 BNSS/ 482 Cr.P.C. cannot micromanage investigation or convert themselves into investigating organizations. The disproportionate asset cases under section 13(1)(e) of the Prevention of Corruption Act, 1988 are evidence intensive. The prosecution must prove

assets disproportionate to the known sources of income, and the accused can explain the reason of the source of income at the trial stage. If the accused earlier was given notice/opportunity during investigation to submit explanation/document and he did so, the refusal by the investigating officer to accept further/later documents does not normally violate natural justice or fairness, as the accused can produce them as defence evidence during trial (313 CrPC/ 351 BNSS, defence witness under section 243 CrPC/ 266 BNSS in documents under section 294 CrPC/ 330 BNSS). In extraordinary circumstances, when refusal to accept documents may cause miscarriage of justice or is patently malafide and arbitrary, or violate rights under Article 21 of the India Constitution that the High Court may issue directions to consider the material evidence or conduct limited further inquiry.

8. In the light of averments made by the petitioner in his petition and the law laid down by Hon'ble Supreme Court in the case of Nitya Dharmananda Case(Supra), we do not find it necessary to direct the investigating officer to reconsider the evidence/documents produced by the petitioner in investigation of Case Crime No.0001 of 2023, under section 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988, Police Station Bareilly Sector (Vigilance Establishment), District U.P. Vigilance Establishment, hence the relief no.1, as prayed by the petitioner is declined.

9. In so far as the relief no.2 is concerned, giving direction to the investigating agencies to conclude the investigation in time bound manner, where the petitioner himself has repeatedly

SCC 364 : 2023 SCC OnLine SC 862; Bharat Aambale v. State of Chhattisgarh, (2025) 8 SCC 452.

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872.

List of Keywords

Heroin; Personal search; Gazetted Officer; S. 50 NDPS Act; S. 52-A NDPS Act; Recovery; Seizure memo; Chemical examination report; Voluntary handing over.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 374(2) Cr.P.C. arising out of judgment and order dated 28.05.1998 passed by IXth Additional District and Sessions Judge, Lucknow in Criminal Case No. 85 of 1995, Police Station - Narcotics Department, District - Lucknow.

Appearances for Parties

Advs. for the Appellant:

Shri Kunwar Sushant Prakash

Advs. for the Respondents:

Sri S. M. Singh Royekwar

(Delivered by Hon'ble Brij Raj Singh, J.)

1. The instant appeal under Section 374(2) Cr.P.C. has been filed challenging the judgment and order dated 28.05.1998 passed by IXth Additional District and Sessions Judge, Lucknow (in short "trial Court") in Criminal Case No. 85 of 1995, under Sections 8/21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act") Police Station - Narcotics Department, District - Lucknow whereby the appellant has been convicted and sentenced under Sections 8/21 of NDPS Act for a period of ten years rigorous imprisonment along with the fine of Rs. 1,00,000/- and in default of payment of fine, to undergo additional five years' rigorous imprisonment.

2. Heard Shri Kunwar Sushant Prakash, learned counsel for the accused-appellant and Sri S. M. Singh Royekwar, learned Counsel for the Union of India/Central Bureau of Narcotics.

3. The case of prosecution, as per material available on record, is that on 27.02.1995, at about 10:00 AM, a secret information was received that one person namely accused-appellant Vinai Kumar Sharma is staying in Room No. 25, Hotel Manisha, Ganesh Ganj, Lucknow, and that he has come from Delhi with the intention to purchase heroin. It was informed that Mohd. Islam @ Farooq Son of Mohd. Shami @ Haroon, resident of Tikra Patti, P.S. Jaidpur, District Barabanki, would bring heroin from his village and deliver the same to accused-appellant Vinai Kumar Sharma in Room No. 25 of Hotel Manisha, and that the monetary transaction would also take place in the said hotel. Believing the information, Rajdhari Singh, Sub-Inspector, Central Narcotics Bureau, Lucknow Camp, Zaidpur (Barabanki), after consulting his seniors at Lucknow, constituted a preventive team led by S.C. Sarkar, Superintendent (Preventive), Barabanki Zaidpur Camp. The team reached Hotel Manisha at about 12:00 noon and inspected the register at the Hotel Counter. They proceeded to Room No. 25 along with two public witnesses. The Room was found locked from inside. Upon knocking, one person opened the door who, on inquiry, disclosed his name as Vinai Kumar Sharma, son of Ram Charan Lal, resident of Room No. 88, Govind Park, Chander Nagar, P.S. Krishna Nagar, Delhi. On being further asked whether anybody else was present in the Room, he stated that another person known to him was also present, whose name is Mohammad Islam, resident of Village Tikra Patti, District

Barabanki. Upon being called, the second person came to the door and disclosed his name as Mohd. Islam @ Farooq, son of Mohd. Shami @ Haroon, resident of Village Tikra Patti, P.S. Zaidpur, District Barabanki. Since the names and particulars matched with those given in the secret information, both the persons were informed about the purpose of the visit and were asked whether they wished their personal search and search of the premises to be conducted before a Magistrate or a Gazetted Officer. Both accused-appellant Vinai Kumar Sharma and Mohd. Islam declined and consented to be searched by the preventive team itself. Thereafter, in the presence of witnesses, Rajdhari Singh, Sub-Inspector, and Faiyaz Ahmad along with witnesses, entered the Room and commenced search. During search, a red coloured hand bag was found under the pillow on the bed. On being asked, accused-appellant Vinai Kumar Sharma stated that the bag contained Rs. 23,000/-, which he admitted to be his own money, brought from his home, and that he intended to purchase heroin from Mohd. Islam @ Farooq, present in the Room. He further stated that one packet of heroin had already been given to him, while another packet remained with Mohd. Islam, and that he was about to check the purity of the heroin by consuming it, after which he intended to decide the price, but before that, the team arrived. On being asked to produce the heroin in his possession, he took out one plastic-wrapped packet from the right pocket of his blue jeans, which was opened by Constable Faiyaz Ahmad in the presence of witnesses, and found to contain brown-coloured, semi-moist substance, which was seized under Sections 8, 21 of NDPS Act. Thereafter, Mohd. Islam was asked whether he also possessed any heroin, to which he admitted, and

produced one plastic-wrapped packet from the left pocket of his brownish-khaki trousers, which, when was opened by Constable Faiyaz Ahmad in presence of witnesses, was found to contain brown-coloured, semi-moist substance, which was also seized under Sections 8, 21 of NDPS Act. Thereafter, both recovered packets were tested with the field testing kit, and the substance was found to be heroin. On weighing the substance on the weighing scale available at the spot, the heroin recovered from accused-appellant Vinai Kumar Sharma weighed 120 grams, and the heroin recovered from Mohd. Islam weighed 80 grams. From each packet, two samples of 5 grams each were drawn for chemical examination and were separately sealed in tin containers. The recovered heroin from Vinai Kumar Sharma was marked "A", and the two sample containers were marked "A1" and "A2". Similarly, the recovered heroin from Mohd. Islam @ Farooq was marked "B", and the two sample containers were marked "B1" and "B2". After apprising both accused persons of the offence under Sections 8, 21 of NDPS Act. Accused-appellant Vinai Kumar Sharma and Mohd. Islam were arrested along with the seized heroin. A recovery-cum-seizure memo was prepared on the spot, read over to all present, and upon admitting it to be correct, it was signed by the witnesses, accused persons and members of the team, with their signatures/thumb impressions.

4. Accused-appellant Vinai Kumar Sharma was summoned by the trial Court and the trial Court framed charge against the appellant under Sections 8C, 21 of the NDPS Act and the said charge was read over and explained to the accused-appellant, who thereafter, denied the possession of 120 gms heroin and claimed

trial. Upon denial, the appellant was put to trial.

5. To prove its case, the prosecution examined Seizing Officer Rajdhari Singh/PW-1, Superintendent S.C. Sarkar/PW-2, Independent Witness Manager Harishankar Agnihotri/PW-3, Investigating Officer P. K. Shah/PW-4, Malkhana Incharge G.K. Mukherji/PW-5 and Constable Subhash Chandra Dubey/PW-6.

6. In response to the question(s) put to the accused-appellant in terms of Section 313 Cr.P.C., the accused-appellant denied the case of prosecution. He also denied the incident and deposed before the Court that he has been falsely implicated and he also denied the factum of recovery. He accepted that at 08 O' clock in the morning, he was arrested at Hotel Manisha and recovery of Rs.30,765/- was made from him. He further made allegation against the employees of Narcotics Department that they wanted to grab the said amount, which was found in his possession. The accused-appellant made protest that is why he has been falsely implicated.

7. Thereafter, the trial Court after due consideration of the submissions advanced by the learned counsel for the parties and evidence available on record passed the judgment of conviction and sentenced, detailed in para 1 of this judgment, which has been assailed in the present appeal.

8. Seizing Officer Rajdhari Singh/PW-1, in examination-in-chief, has stated that on 27.02.1995, he was posted as Sub-Inspector, Zaidpur, District Barabanki. On that day he received a secret information that a person named Vinai Kumar, who had come from Delhi, was staying at Manisha

Hotel, Ganesh Ganj, Lucknow, and that he would purchase heroin from Mohd. Islam @ Farukh, resident of Village Tikra Patti, District Barabanki, and return to Delhi. He recorded this secret information in D.R.I. Form No. 1 in his own handwriting. The informer was brought along with Constable Faiyyaz Ahmad. This information is written in his own handwriting and bears his signatures. He also obtained the signatures of Faiyyaz Ahmad on it. This information is Exhibit Ka-1. After receiving the information, he and constable Faiyyaz Ahmad came to Lucknow, and after discussing with their officers, an immediate team was constituted consisting of S.C. Sarkar, Superintendent; Ashok Kumar, Inspector; Faiyyaz Ahmad, Constable; Om Prakash Gupta, Constable; Kamlakar Pandey, Constable; Ram Kripal, Constable, and they proceeded on government vehicle No. UP-32-0042 with driver K.K. Seth. They reached Manisha Hotel, checked the entry of Room No. 25 as pointed out by the informer at the counter, and along with hotel employees Harishankar Agnihotri and Sudhir Kumar Dixit reached Room No. 25 and knocked on the door. Accused-appellant Vinai Kumar opened the door. PW-1 asked him his name and address. He disclosed his name as Vinai Kumar S/o Ram Charan Lal R/o Govind Park, P.S. Krishna Nagar, Delhi. PW-1 then asked whether any other person was in the Room. He said that there was another person who had come to meet him. He was called and PW-1 asked his name and address. He disclosed his name as Mohd. Islam @ Farukh, resident of Village Tikra Patti, District Barabanki. After that, PW-1 told them that whether they wanted to be searched in the presence of a Magistrate or Gazetted Officer, but both consented to be searched by me and the team. Thereafter, PW-1 and Constable

Faiyyaz Ahmad, both witnesses, and our officers exchanged personal searches, and then entered the Room. Upon entering the Room and during search, a red hand bag was found below the pillow on the bed, which Vinai Kumar claimed as his own and stated that Rs. 23,000/- were kept in it and that the money belonged to him. The money was counted in his presence and verified. He stated that the money was brought to purchase heroin and take it to Delhi. When asked whether the heroin had arrived, he said that the other person, Mohd. Islam, had brought two packets of heroin, out of which one packet had been given to him, which he was testing for purity, and that the other packet was with Islam, and during that time they arrived. Thereafter, Vinai Kumar took out a packet of heroin from the right pocket of his jeans. It was opened and tested with the testing kit, and it was confirmed to be heroin. Then Mohd. Islam took out another packet of heroin from the left pocket of his pants, which was also opened and tested, and confirmed to be heroin. Both packets were weighed one by one on the scale. The heroin recovered from Vinai Kumar weighed 120 grams, and the heroin recovered from Islam @ Farukh weighed 80 grams. From both packets, two samples of 5 grams each were taken for chemical examination. The samples and the remaining material were sealed separately. A seizure memo (fard) was prepared at the spot in his handwriting and bearing his signature. The signatures of the witnesses were obtained, and accused Vinai Kumar signed and accused Mohd. Islam affixed his thumb impression. The seizure memo was also signed by his officer S.C. Sarkar, and one copy each was given to both accused, and their signatures and thumb impressions were obtained. The seizure memo is Exhibit Ka-2, written and signed by him, and is on record.

9. Superintendent S.C. Sarkar/PW-2 stated on oath that he is a Gazetted Officer. On 27.02.1995, he was posted as Superintendent, Central Narcotics Bureau, Jaidpur, Barabanki. On that day, he was present in Lucknow. On the same day, at about 11:00 a.m., S.I. Rajdhari Singh and Constable Faiyyaz Ahmad came to meet him in the office. They presented before him the written information DRI-1, Exhibit Ka-1, and apprised him of the information. He read Exhibit Ka-1 and signed and consulted the Deputy Narcotics Commissioner and formed a team to apprehend the accused persons. The team consisted of S.C. Sarkar, S.I. Rajdhari Singh, Constable Faiyyaz Ahmad, Kamalddhar Pandey, Ram Kripal, and Ashok Kumar, Inspector. They took the government jeep UP-32-0043 with driver K.K. Seth and proceeded to Manisha Hotel, Ganesh Ganj, Lucknow. They went to the hotel counter and checked the hotel register for Room No. 25 as informed by the informer. Taking the two hotel employees, Harishankar Agnihotri and Sudhir Kumar Dixit, they went to Room No. 25. They knocked on the door and got it opened. The accused-appellant Vinai Kumar Sharma opened the door. They asked his name and address. He disclosed his name as Vinai Kumar Sharma, son of Ramcharan Lal, resident of Govind Park, P.S. Krishna Nagar, Delhi. They also asked him whether anyone else was inside the Room. He said there was another person named Islam. He was also called and was asked his particulars. He stated his name was Islam @ Farooq, son of Haroon, resident of Village Tikra, District Barabanki. He introduced himself and told them that he is a Gazetted Officer and that he had information that they were in possession of heroin. He also asked them whether they wanted to be searched in the presence of

Magistrate or any other Gazetted Officer. They said that he could conduct the search. The officers and witnesses searched each other and then entered the Room. During the search, a red hand-bag was found under the pillow on the bed, which Vinai Kumar claimed to be his. It contained 23,000 rupees, which he stated belonged to him. On counting, the amount was confirmed. Upon further questioning, he stated that the money had been brought to purchase heroin. He took out a packet from his pocket and handed it over, saying that it contained heroin. He also stated that the second packet was with Islam. Islam took out a packet from the left pocket of his trousers and gave it, stating that it contained heroin. Both packets were tested with the testing kit and both were confirmed to contain heroin. The packets were weighed separately. From Vinai Kumar's packet, 120 grams of heroin was found and from Islam's packet, 80 grams of heroin was found. Two samples of 5 grams each were taken from each of the two packets. All four samples and the remaining heroin in both packets were sealed separately. The packets and samples were signed and thumb-marked by the officers, witnesses and the accused persons. The seizure memo, Exhibit Ka-2, was written by S.I. R.D. Singh. It bears the signatures and thumb impressions of all the officers, witnesses and the accused persons. One copy each was given to both accused persons, on which their signatures and thumb impressions were taken. Exhibit Ka-2 is the same memo on which his signatures also appear. The statements of both accused persons were recorded by Shri Rajdhari Singh. Whatever the accused stated was written down, read over to them, and their signatures and thumb impressions were taken. Both accused were arrested. Until the samples and the heroin remained

with them, no one was allowed to touch or tamper. On 01.03.1995, two samples-one of accused Vinai Kumar and one of accused Islam-were sent for examination to the Chemical Examiner, Government Opium Factory, Neemuch, Madhya Pradesh, through the letter, Exhibit Ka-9, which was typed under his direction; it is on record and bears his signature. The Chemical Examiner's Report is Exhibit Ka'10, which is also on record.

10. Independent Witness Manager Harishankar Agnihotri/PW-3 in examination-in-chief stated that on 27.02.1995, he was working as the Manager of Manisha Hotel. The accused-appellant Vinai Kumar was staying in Room No. 25 of his Hotel. On the same day, at about 12:00 noon, officers and staff of the Narcotics Department came to the hotel and inquired about Vinai Kumar. As per the register, they were informed about Room No. 25. He told them that Vinai was staying there. He, along with Sudhir Dixit, accompanied them to the Room. The door was knocked by them and Vinai Kumar opened the door. The officers asked his name. There was another person in the Room. They were told that their search would be conducted. They mutually searched each other and Vinai Kumar was searched. Vinai Kumar took out a packet from the pocket of his pants. It contained brownish substance. Some money was also recovered from the purse. He does not remember the exact amount, whether the amount was Rs. 23,000/- or Rs. 25,000/-. The material recovered from Vinai Kumar was weighed, and it might have been 120 grams, from which two samples were taken. The recovered material and samples were sealed. A partially typed carbon copy of the seizure memo was prepared on which his signatures exist. A written

statement was also taken, what was spoken was written, and it was read over to the person. Exhibit K-6 was recorded, on which my signatures also appear. His signatures were also obtained on the seized material and samples. The document Exhibit K-12 contains his handwriting and signatures.

11. Malkhana Incharge P.K. Shah/PW-4 identified signature of R.A. Rai on order dated 19.05.1995 (Ex.Ka.12) and deposed that R.A. Rai was no more. He also proved site plan (Ex.Ka.12) and complaint (Ex.Ka.15).

12. Constable G.K. Mukherji/PW-5, in-charge of Malkhana, was also examined and he deposed that the four samples were sent by Rajdhari Singh/PW-1 in Malkhana and he proved photocopy of Malkhana Register (Ex.Ka.16).

13. Subhash Chandra Dubey/PW-6 proved photocopy of receipt of sample (Ex.Ka.17).

14. Shri Kunwar Sushant Prakash, learned counsel for the appellant, on the basis of written submissions, has submitted that the matter pertains to year 1995. Almost 30 years have passed and present age of the accused-appellant is about 72 years. It has been submitted that there is no compliance of Section 50 as well as Section 52A of NDPS Act. In the statement of Rajdhari Singh/PW-1, it is mentioned that after searching the room of the Hotel, the accused-appellant was given two options whether he wanted to be searched before Gazetted Officer or before the Police Party itself. The accused-appellant had opted to be searched before Police Party.

15. Learned counsel has further pointed out that at page 27 of the paper-

book, Rajdhari Singh/PW-1 has stated that in the present case he did not obtain warrant from the Magistrate for the reason that a Gazetted Officer was present with him. He further deposed in cross-examination that the Gazetted Officers were always present with him. Therefore, there was no requirement to take any Magistrate. He further deposed before the Court that the accused-appellant was informed that Gazetted Officer was present with Raiding Party. When he was asked for search before Gazetted Officer or Magistrate, then the accused-appellant offered for search before Raiding Party. He further deposed that he did not write the fact that officer was present with him.

16. It has been further pointed out by learned counsel that from the statement of PW-1, it is admitted by prosecution witness that no information/application was given to the Magistrate, as per Section 52A of NDPS Act. The gazetted officer was present along with raiding party.

17. It has been further submitted that accused person was informed that Gazetted Officer is accompanying the Raiding Party, therefore, without taking separate consent from accused-appellant and without taking his consent in writing the search was conducted, which is a violation of Section 50 of the NDPS Act,

18. It has been further submitted by learned counsel that although it cannot be said by any stretch of imagination that prosecution complied with Section 50 of NDPS Act, but if for the sake of argument, if it's hypothetically presumed that prosecution did complied with the mandate of Section 50 of NDPS Act, even so, oral consent given by the accused-appellant was given in the impression that they were

being searched in the presence of Gazetted Officer and actually, he was misled to give his consent before Gazetted Officer, who was part of the Raiding Party, cannot, as per the law, search the accused person.

19. Learned counsel has further invited attention of the Court towards page-38 of the paper book, the statement of S.C. Sarkar/PW-2, wherein he has stated that he is a Gazetted Officer. He deposed before the Court that he introduced himself as Gazetted Officer and told accused-appellant that he was informed that accused-appellant was in possession of the heroin. He asked him whether he wished to be searched either before the Magistrate or before the Gazetted Officer, on which he had said that the Raiding Party could search him.

20. Learned counsel has submitted that aforesaid deposition of PW-2 indicates that he was present as a part of the Raiding Team. It has been submitted that the accused was not told that it is his right to be searched in presence of Magistrate or Gazetted Officer other than the one who is leading the Raiding Party and as such, this violates the mandatory provisions of Section 50 of the NDPS Act, which requires that accused should be informed about his right in clear terms that he has right to be searched in presence of a Gazetted Officer other than one who is accompanying the Raiding Party.

21. Learned counsel has placed reliance on the judgment of Hon'ble Supreme Court passed in the case of *Vijaysinh Chandubha Jadeja v. State of Gujarat*, (2011) 1 SCC 609 and judgment of Calcutta High Court passed in the case of *Mainul Haque v. Union of India*, 2014 SCC OnLine Cal 18359.

22. Learned counsel has further pointed out that at page 46 of the paper-book, PW-2, who admitted that a personal search of the accused did take place and the same resulted in the recovery of contraband from the pocket of the accused. In his words "फैयाज़ ने तलाश ली थी पहले उसके बैग से 23000 रुपये बरामद हुआ और उसने बताया कि हेरोइन खरीदने के लिए लाया हूँ। हेरोइन की बरामदगी विनय कुमार की पैंट की दहिनी जेब से हुई बरामदशुदा हेरोइन का वजन फैयाज के किया था 120 ग्राम विनय कुमार से तथा 80 ग्राम इस्लाम से हुई बरामद हुयी".

23. Learned counsel has further submitted that aforesaid admission of PW-2 indicates that the search of the accused-appellant was done prior to recovery. PW-3, Hari Shankar Agnihotri, the Manager of Manisha hotel, had nowhere stated about compliance of Sections 50 and 52A of the NDPS Act. However, at page 48 of the paper-book, he has stated in the cross-examination that the personal search of the accused-appellant had taken place.

24. It has further been submitted that after taking into consideration the statements of PW-2 and PW-3, it is apparent that personal search of the accused-appellant had taken place. Thus, there is violation of Section 50 of the NDPS Act.

25. By pointing page 86 of the paper book, learned counsel has submitted that recovered contraband produced in the Court was different from the one which was allegedly recovered from the accused and the aforesaid discrepancy was

unrebutted by prosecution. Had the prosecution complied with the provisions of Section 52A of the NDPS Act, such discrepancies would have been avoided.

26. Learned counsel has relied on the judgment of Honorable Supreme Court, passed in the case of **Ranjan Kumar Chadha v. State of H.P., 2023 SCC OnLine SC 1262**. Reliance has also been placed on paragraph 44 the judgment of Delhi High Court in **Dharambir v. State, 2018 SCC OnLine Del 12305**.

27. To support his argument with regard to Section 52A of the NDPS Act, he has relied on the judgments of Hon'ble Supreme Court passed in **Yusuf v. State, (2024) 14 SCC 217 : 2023 SCC OnLine SC 1328** and **Mangilal v. State of M.P., (2023) 19 SCC 364 : 2023 SCC OnLine SC 862**.

28. Per Contra, Sri S.M. Singh Royekwar, learned Counsel for the Union of India/Central Bureau of Narcotics, on the basis of written submissions, has submitted that in the present case, the contraband was handed over by the accused-appellant himself from the right pocket of his pant to the Raiding Team during general questioning by the members of the Raiding Team at the time of raid.

29. It has been further submitted that the contraband was not recovered as a result of body search of the accused-appellant, rather he himself has handed over the contraband substance to the Raiding Team. It was also not recovered from any other container which was in the possession of the accused-appellant. Hence, rigors of Section of 50 of NDPS Act would not be applicable in the present case.

30. It has been further submitted that from reading of the various judgments of the Hon'ble Supreme Court, though they deal with different facts and situations regarding recovery unlike the case in hand. The only safe and sure proposition is deduced that in case of voluntary handing over or surrendering of the contraband by the accused-appellant to the prosecution team, Section 50 of NDPS Act would not get attracted.

31. He has relied upon paragraphs 110 to 121 passed in **Ranjan Kumar Chadha (Supra)**.

32. It has been further submitted that factum of recovery as a result of appellant's own voluntary act of surrendering/handing over of the contraband to the Raiding Team has been proved by the prosecution witnesses. Statements of PW-1 (examination-in-chief at page nos. 17 of the paper book), PW-2 (examination-in-chief at page no. 40 of the paper book) and PW-3 (examination-in-chief at page no. 48 of the paper book).

33. It has been further submitted that during cross-examination also, no material contradiction in the testimony of the said prosecution witnesses could be elicited by the defence during trial. Minor variation in the narration of the facts in the oral testimonies of a few prosecution witnesses namely PW-2 (cross-examination at page no. 46 of the paper book) makes no serious dent to the prosecution story. PW-1 and PW-3 remained thoroughly intact during their cross-examination also.

34. It has been further submitted that no suggestion has been made to the said prosecution witnesses by the Defence, either in this behalf.

35. It has been further submitted that even if it is assumed that the contraband was not voluntarily handed over by the accused-appellant, even then since the recovery has been made from closed confines of the Hotel Room in which the accused-appellant was present as per his own statement recorded under Section 313 CrPC and as per Section 106 of the Indian Evidence Act, the onus lies upon the accused-appellant to explain the recovery from his possession, which has not been discharged by him in the case in hand.

36. It has been further submitted that Physical evidence of recovered contraband (Ex.1) has been proved by the prosecution witnesses PW-1 & PW-2 by exhibiting the same during trial. During cross-examination, neither any question was put nor any suggestion was made by the defence to such prosecution witnesses as regards change of colour of the contraband. At no place in the testimony of the said witnesses, as available in the paper book, any mention has been made in this behalf.

37. The chemical examination report (Ext.Ka.10) is admissible in evidence under Section 293 CrPC, which has been proved by PW-1 (examination-in-chief at page no.22 of the paper book) and PW-2 (examination-in-chief at page no.42 of the paper book) also. As per chemical examination report, the recovered contraband was heroin. During the trial proceedings, the defence did not seek to summon the author of the chemical examination report and question him as regards the change of colour of the contraband.

38. The accused-appellant has also not questioned the chain of safe custody of the contraband in any manner. Complete chain

of safe custody of the contraband right from the stage of seizure till production in the court during trial has been duly established by the prosecution witnesses i.e. PW-1 in his oral testimony (examination-in-chief at page no. 21 of the paper book) and PW-5 (examination-in-chief at page no. 54 of the paper book).

39. It has been further submitted that the provisions of Section 52-A NDPS Act, in the manner as projected by the counsel for the accused-appellant, would not get attracted while drawing samples at the time of seizure of the contraband. The sampling for the purposes of chemical examination of the contraband was done in accordance with the procedure as prescribed in Standing Instructions No.1/88, as prevalent at the time of recovery.

40. The requirement, as prescribed in Section 52-A(2) of NDPS Act, with regard to drawing of samples or making inventory of recovered contraband or taking photographs of the contraband and issuance of certificate to the same effect by the Magistrate concerned will get attracted only for the purposes of disposal of the contraband. After the physical evidence is disposed of and not produced as primary physical evidence, as per Section 52-A(4). The said compliance as provided in Section 52-A (2) may serve as primary evidence.

41. He has relied on the paragraphs 33 and 38 to 43 of judgment of Hon'ble Supreme Court passed in the case of **Bharat Aambale Vs State of Chhattisgarh: 2025 SCC OnLine SC 110 : (2025) 8 SCC 452.**

42. He has further submitted that in the present case, the primary evidence recovered contraband (Heroin) in physical

form was produced before the Court during trial and proved by the prosecution witnesses namely PW-1 (examination-in-chief at page no. 36 of the paper book) and PW-2 (examination-in-chief at page no. 43 of the paper book). Hence, there is no occasion for compliance of Section 52-A of NDPS Act.

43. He has lastly submitted that the judgment and order under appeal requires no interference by this Court and the appeal preferred by the accused-appellant deserves to be dismissed.

44. I have heard learned counsel for the contesting parties and have perused the records.

45. It would be apt to discuss first the judgments relied upon by learned counsel for the parties.

46. In Paragraph 66 of the judgment passed in the case of Ranjan Kumar Chadha (Supra), the Hon'ble Supreme Court has delineated ten requirements envisaged by Section 50 of NDPS Act. Hon'ble Supreme Court has observed that Section 50 is a mandatory provision, which is a right of the person as well as obligation for the prosecution. Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate. While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the Raiding Party.

47. Relevant extract of the report is as under :-

“66. From the aforesaid discussion, the requirements envisaged by Section 50 can be summarised as follows:-

(i) Section 50 provides both a right as well as an obligation. The person about to be searched has the right to have his search conducted in the presence of a Gazetted Officer or Magistrate if he so desires, and it is the obligation of the police officer to inform such person of this right before proceeding to search the person of the suspect.

(ii) Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate, the empowered officer should take it in writing from the suspect that he would not like to exercise his right of being searched before a Gazetted Officer or Magistrate and he may be searched by the empowered officer.

(iii) Before conducting a search, it must be communicated in clear terms though it need not be in writing and is permissible to convey orally, that the suspect has a right of being searched by a Gazetted Officer or Magistrate.

(iv) While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the raiding party.

(v) In case of multiple persons to be searched, each of them has to be individually communicated of their right, and each must exercise or waive the same in their own capacity. Any joint or common communication of this right would be in violation of Section 50.

(vi) Where the right under Section 50 has been exercised, it is the

choice of the police officer to decide whether to take the suspect before a Gazetted Officer or Magistrate but an endeavour should be made to take him before the nearest Magistrate.

(vii) Section 50 is applicable only in case of search of person of the suspect under the provisions of the NDPS Act, and would have no application where a search was conducted under any other statute in respect of any offence.

(viii) Where during a search under any statute other than the NDPS Act, a contraband under the NDPS Act also happens to be recovered, the provisions relating to the NDPS Act shall forthwith start applying, although in such a situation Section 50 may not be required to be complied for the reason that search had already been conducted.

(ix) The burden is on the prosecution to establish that the obligation imposed by Section 50 was duly complied with before the search was conducted.

(x) Any incriminating contraband, possession of which is punishable under the NDPS Act and recovered in violation of Section 50 would be inadmissible and cannot be relied upon in the trial by the prosecution, however, it will not vitiate the trial in respect of the same. Any other article that has been recovered may be relied upon in any other independent proceedings."

48. In **Ranjan Kumar Chadha (Supra)**, it is held that Section 50 would not apply if nothing incriminating is recovered from the person of the accused. In the same judgment, Hon'ble Supreme Court has drawn distinction where it is held that upon conducting the search of the bag, opium was recovered and the Court acknowledged the divergent views and noted that the decision of SK. Raju @

Abdul Haque @ Jagga Vs. State of West Bengal, (2018) 9 SCC 708 was not considered while deciding State of Punjab Vs. Baljinder Singh (2019) 10 SCC 473. In the case of Kallu Khan v. State of Rajasthan, 2021 SCC OnLine SC 1223, wherein the search and seizure was made from the accused's motorcycle. The Court while holding that the search cannot be said to be vitiated on account of non-compliance of Section 50 as the same only applies to a search of a person.

49. Relevant paragraphs relied upon by learned counsel for CBN are quoted herein-under:-

110. However, it is pertinent to note that although Pawan Kumar (supra) has been referred to and considered in SK. Raju (supra) yet, the Court in SK. Raju (supra) overlooked the fact that in Pawan Kumar (supra) also the search was not only of the person of the accused but also of his bag. Even in such circumstances, the larger Bench in Pawan Kumar (supra) took the view that Section 50 would not apply if nothing incriminating is recovered from the person of the accused. Thus, there is an apparent conflict between the two decisions.

Section 50 not applicable when recovery made from bag, conveyance, etc.

111. A three-Judge Bench in the State of Punjab v. Baljinder Singh, (2019) 10 SCC 473 considered the question:-

"8.

If a person found to be in possession of a vehicle containing contraband is subjected to personal search, which may not be in conformity with the requirements under Section 50 of the Act; but the search of the vehicle results in recovery of contraband material, which stands proved independently;

would the accused be entitled to benefit of acquittal on the ground of non-compliance of Section 50 of the Act even in respect of material found in the search of the vehicle? "

112. In the aforesaid case, poppy husk was recovered from the accused's vehicle. This Court, while explaining the object of Section 50 and relying on the Constitution Bench judgment in *Vijaysinh Chandubha Jadeja* (supra), held that:-

"10. Section 50 of the Act affords protection to a person in matters concerning "personal search" and stipulates various safeguards. It is only upon fulfilment of and strict adherence to said requirements that the contraband recovered pursuant to "personal search" of a person can be relied upon as a circumstance against the person.

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12. Subsequently, another Constitution Bench of this Court in *Vijaysinh Chandubha Jadeja v. State of Gujarat*, had an occasion to consider the case from the standpoint whether the person who is about to be searched ought to be informed of his right that he could be searched in the presence of a gazetted officer or a Magistrate. While considering the said question, this Court also dealt with the judgment rendered in *Baldev Singh's* case and the discussion in paragraphs 24 and 29 was as under:

"24. Although the Constitution Bench in *Baldev Singh* case [(1999) 6 SCC 172] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to "inform" the person

concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of his said right would cause prejudice to him, and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act. The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazetted officer or a Magistrate, if so required by him. We respectfully concur with these conclusions. Any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

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29. In view of the foregoing discussion, we are of the firm opinion that the object with which the right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimise the allegations of planting or foisting of false cases by the law enforcement agencies, it would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before

a gazetted officer or a Magistrate. We have no hesitation in holding that insofar as the obligation of the authorised officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. Thereafter, the suspect may or may not choose to exercise the right provided to him under the said provision."

(Emphasis supplied)

113. The Court went on to hold that Section 50 would be applicable only to the personal searches and not to the searches of vehicles or bags. This was in line with the ratio laid down in Pawan Kumar (supra) and Baldev Singh (supra). This Court held that:-

"15. As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

16. The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in Baldev Singh clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even

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

(Emphasis supplied)

114. It is pertinent to note here that in Baljinder Singh (supra) the decision of SK. Raju (supra) was not looked into, however, the decision in the case of Dilip (supra) was considered and held to be not laying down the correct law on the ground that it did not consider the decision of Baldev Singh (supra). This Court held that:-

"18. The decision of this Court in Dilip's case, however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in Dilip's case is not correct and is opposed to the law laid down by this Court in Baldev Singh judgments."

(Emphasis supplied)

Settling the conflict between SK. Raju and Baljinder Singh

115. The High Court of Delhi in Akhilesh Bharti v. State, 2020 SCC OnLine

Del 306 : (2020) 266 DLT 689, had the occasion to look into the cleavage of opinion expressed in Baljinder Singh (supra) and SK. Raju (supra). The High Court therein, noted the thin line of distinction drawn by SK. Raju (supra) where the contraband is recovered from an object which is held by the accused in his hand. In such a situation the High Court held that even if nothing is recovered from the person, Section 50 ought to be complied with. The High Court held as under:

26. It is essential to observe that vide the verdict of the Hon'ble three Judge Bench of the Hon'ble Supreme Court dated 05.09.2018 in "SK. Raju alias Abdul Haque alias Jagga v. State of West Bengal" (2018) 9 SCC 708, it has specifically been observed to the effect that where merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act, 1985 will have no application but if the personal search of the accused is also conducted, the provisions of Section 50 of the NDPS Act, 1985 would wholly apply. The verdict of the Hon'ble Supreme Court dated 15.10.2019 in "State of Punjab v. Baljinder Singh" is also a verdict of the Hon'ble three Judge Bench of the Hon'ble Supreme Court in which the personal search of the accused did not result into recovery of any contraband but there was a recovery of contraband effected from the vehicle in which the accused persons were seated with one of them being the driver. Though, the Hon'ble Supreme Court in "State of Punjab v. Baljinder Singh" (supra) has observed to the effect that the judgment of the Hon'ble Supreme Court in Dilip's case is not correct and is opposed to the decision to the law laid down by the Hon'ble Supreme Court in Baldev Singh's judgments, the observations in the verdict of the Hon'ble Supreme Court in "S.K. Raju

alia Abdul Haque alias Jagga v. State of West Bengal" (supra) dated 05.09.2018 (which are not adverted to in "State of Punjab v. Baljinder Singh" (supra) dated 15.10.2019) lay down a fine distinction and in these circumstances thus, where the contraband is recovered from an object which is held by an accused in his hand and the search of the person of such an accused is also conducted which lead to no recovery of any contraband, though, there are recoveries of other personal assets of a person from his personal search, in view of the judgments of the Hon'ble Supreme Court in "SK. Raju alia Abdul Haque alias Jagga v. State of West Bengal" (supra), the non compliance of Section 50 of the NDPS Act, 1985 would prima facie vitiate the recovery."

(Emphasis supplied)

116. Akhilesh Bharti (supra) referred to above was considered by a co-ordinate Bench of the Delhi High Court in Kamruddin v. State (NCT of Delhi), 2022 SCC OnLine Del 3761, and held as under:-

23. In the decision of S.K. Raju (supra), the Hon'ble Supreme Court has clearly held that since the search of the person of the appellant therein was also involved, therefore, Section 50 of the NDPS Act would be attracted in that case and accordingly the requirement of Section 50(1) of the NDPS Act was insisted.

24. So far as the decision relied upon by learned APP for the state in the case of State of HP v. Pawan Kumar is concerned, it is to be stated that in paragraph No. 17 of the decision in the case of S.K. Raju (supra) the Hon'ble Supreme Court has taken note of the decision in the case of Pawan Kumar (supra). The distinction between the two situations has been considered and if a

bag, article or container etc. being carried by an accused is subjected to search independently without there being any search of the person of the appellant, the decision in the case of Pawan Kumar (supra) would have application. However, in a case where the person of accused is subjected to search along with the search of bag, article or container which he holds in his hand, there is requirement of compliance of Section 50 of the NDPS Act. "

(Emphasis supplied)

117. It appears that the Delhi High Court laboured under an erroneous impression that in Pawan Kumar (supra) the search was only of the bag and not of the accused. However, at the cost of repetition, we state that in Pawan Kumar (supra) the search was of both the accused as well as the bag which he was carrying. This is evident from para 2 of the judgment in Pawan Kumar (supra) wherein it has been observed as under:-

"2. ... A search of the accused and the bag being carried by him was then conducted and 360 gm of opium wrapped in polythene was found inside the bag..."

(Emphasis supplied)

118. In Than Kunwar v. State of Haryana, (2020) 5 SCC 260, this Court took a different view. In the said case, the personal search of the accused did not lead to any recovery. However, upon conducting the search of the bag, opium was recovered. This Court acknowledged the divergent views and noted that the decision of SK. Raju (supra) was not considered while deciding Baljinder Singh (supra). However, the latter was applied and was read to be in line with Baldev Singh (supra). It was held that:-

"22. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in Dilip (supra) reliance placed by the appellant on para 16 may not be available. As already noticed, we are not oblivious of the observation which has been made in the other three-Judge Bench judgment of this Court in SK. Raju (supra), which it appears, was not brought to the notice to the Bench which decided the case later in Baljinder Singh (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in Baldev Singh (supra). We also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag for which it is settled law that compliance with Section 50 of the Act is not required. "

(Emphasis supplied)

119. Baljinder Singh (supra) was followed by this Court in Kallu Khan v. State of Rajasthan, 2021 SCC OnLine SC 1223, wherein the search and seizure was made from the accused's motorcycle. This Court while holding that the search cannot be said to be vitiated on account of non-compliance of Section 50 as the same only applies to a search of a person, held as under:-

"15. Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore,

compliance of Section 50 does not attract in the present case. It is settled in the case of Vijaysinh (supra) that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of Surinder Kumar (supra) and Baljinder Singh (supra). Considering the facts of this case, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled."

(Emphasis supplied)

120. Similarly, in a recent judgment, this Court in *Dayalu Kashyap v. State of Chhattisgarh*, (2022) 12 SCC 398, held that an extended view of Section 50 cannot be given to include a polythene bag containing narcotics being carried by the accused. This Court rejected the argument that as three options were given to the accused to get himself searched from the officer which was in violation of Section 50, the search conducted, even of the polythene bag, ought to be vitiated. It was held as under:-

"4. The learned counsel submits that the option given to the appellant to take a third choice other than what is prescribed as the two choices under sub-section (1) of Section 50 of the Act is something which goes contrary to the mandate of the law and in a way affects the protection provided by the said section to the accused. To support his contention, he has relied upon the judgment of State of Rajasthan v. Parmanand [State of Rajasthan v. Parmanand, (2014) 5 SCC 345], more specifically, SCC para 19. The judgment in turn, relied upon a Constitution Bench judgment of this Court in State of Punjab v. Baldev Singh [State of

Punjab v. Baldev Singh, (1999) 6 SCC 172] to conclude that if a search is made by an empowered officer on prior information without informing the person of his right that he has to be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to take his search accordingly would render the recovery of the illicit article suspicious and vitiate the conviction and sentence of the accused where the conviction has been recorded only on the basis of possession of illicit articles recovered from his person. The third option stated to be given to the accused to get himself searched from the Officer concerned not being part of the statute, the same could not have been offered to the appellant and thus, the recovery from him is vitiated.

5. In the conspectus of the facts of the case, we find that the recovery was in a polythene bag which was being carried on a kanwad. The recovery was not in person. The learned counsel seeks to expand the scope of the observations made by seeking to contend that if the personal search is vitiated by violation of Section 50 of the NDPS Act, the recovery made otherwise also would stand vitiated and thus, cannot be relied upon. We cannot give such an extended view as is sought to be contended by the learned counsel for the appellant."

(Emphasis supplied)

FINAL ANALYSIS

121. The only idea with which we have referred to the various decisions of this Court starting with *Balbir Singh (supra)* till *Dayalu Kashyap (supra)* is to highlight that Section 50 of the NDPS Act has been tried to be interpreted and understood in many ways. As noted earlier, in some of the decisions of this Court, the

concept of "inextricably linked to person" was applied. In other words, if the bag, etc. is in immediate possession of the accused and the search is undertaken of such bag, etc., even then, according to those decisions, Section 50 would be applicable. It could legitimately be argued that the interpretation of Section 50 restricting its scope only to the search of a person of the accused would frustrate the object as the apprehension of the person concerned may continue to subsist that he may still be implicated by the police or any other person for more stringent punishment of carrying commercial quantity by getting rid of the rigor of the mandatory provision of Section 50 by implanting the contraband in a vehicle, bag, etc. accompanying the person. What we are trying to convey has been explained in the case of *State v. Klein* [See : John C. Derrnbachet.al., *A Practical Guide to Legal Writing and Legal Method* (1994)]. In the said case, the issue before the U.S. Court was that whether a person can be held guilty for the offence of burglary more particularly when such person did not enter the house per se but tried to steal the object with the help of tree snips. The statute clearly declared that for burglary to happen, the defendant should be physically present. In this case, although the defendant never entered the house, yet he did extend his tree snips through the window. The Court held that, "there is no meaningful difference between the snips and his arm because the penetration by the snips was merely an extension of Klein's person." Therefore, in the said case, the object which a person was carrying was held to be part of his body. A similar view could also have been adopted while interpreting the term "personal search". However, in view of plain and unambiguous statutory provision, there is no scope of interpreting Section 50 in any

other manner than the interpretation explained in *Baldev Singh (supra)* and *Pawan Kumar (supra)*."

50. Hon'ble Supreme Court in the case of **Yusuf (Supra)** has held that it is manifest from Section 52 of NDPS Act that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.

51. Relevant extract of the report is extracted herein-under :-

"13. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate had certified the inventory of the substance seized or of the list of samples so drawn.

14. In *Mohanlal [Union of India v. Mohanlal]*, (2016) 3 SCC 379 : (2016) 1 SCC (Cri) 864 case, the Supreme Court while dealing with Section 52-A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an

application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.

15. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated."

52. In the case of Arif Khan v. State of Uttarakhand, (2018) 18 SCC 380 : (2019) 3 SCC (Cri) 176, Hon'ble Supreme Court has recorded the finding that a search and recovery made from the appellant of the alleged contraband "charas" does not satisfy the mandatory requirements of Section 50.

"23. It is the case of the prosecution and which found acceptance by the two courts below that since the appellant-accused was apprised of his right to be searched in the presence of either a Magistrate or a gazetted officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the appellant-accused gave his consent in writing to be searched by the police officials (raiding party), the two courts below came to a conclusion that the requirements of Section 50 stood fully complied with and hence the appellant was liable to be convicted for the offence punishable under the NDPS Act.

24. We do not agree to this finding of the two courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband "charas" does not satisfy the mandatory requirements of Section 50 as held by this Court in Vijaysinh Chandubha Jadeja [Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609 : (2011) 1 SCC (Cri) 497] . This we say for the following reasons:

24.1. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or gazetted officer.

24.2. Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband "charas" was not made from the appellant in the presence of any Magistrate or gazetted officer.

24.3. Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband "charas" from him, was the gazetted officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband "charas" as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a gazetted officer.

24.4. Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer."

53. In the case Mangilal (Supra), Hon'ble Supreme Court has held that Sub-

section (2) of Section 52-A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars and this provision has been inserted in NDPS Act just to provide fair play in the process of investigation. It is mandatory rule, as envisaged in Section 52A of NDPS Act which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken, apart from list of samples drawn.

54. Relevant extract of the report is herein-under :-

“5.Sub-section (2) of Section 52-A of the NDPS Act mandates a competent officer to prepare an inventory of such narcotic drugs with adequate particulars. This has to be followed through an appropriate application to the Magistrate concerned for the purpose of certifying the correctness of inventory, taking relevant photographs in his presence and certifying them as true or taking drawal of samples in his presence with due certification. Such an application can be filed for anyone of the aforesaid three purposes. The objective behind this provision is to have an element of supervision by the Magistrate over the disposal of seized contraband. Such inventories, photographs and list of samples drawn with certification by Magistrates would constitute as a primary evidence. Therefore, when there is non-compliance of Section 52-A of the NDPS Act, where a certification of a Magistrate is lacking, any inventory, photograph or list of samples would not constitute primary evidence.

6.The obvious reason behind this provision is to inject fair play in the process of investigation. Section 52-A of

the NDPS Act is a mandatory rule of evidence which requires the physical presence of a Magistrate followed by an order facilitating his approval either for certifying an inventory or for a photograph taken, apart from list of samples drawn.

7.In due compliance of Section 52-A(1) of the NDPS Act the Ministry of Finance (Department of Revenue) issued Notification No. G.S.R. 339(E) dated 10-5-2007 which furnishes an exhaustive manner and mode of disposal of drugs ending with a certificate of destruction:

4.Manner of disposal.-(1) *Where any narcotic drug or psychotropic substances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, of the Act, or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs or psychotropic substances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of Section 52-A as per Annexure 2 to this notification.*

(2) After the Magistrate allows the application under sub-section (3) of Section 52-A, the officer mentioned in clause (1) above shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the drug consignments to the Chairman of the Drug Disposal Committee for a decision by the committee on the disposal. The officer shall send a copy of the details along with the drug consignments to the officer-in-charge of the godown.

4.2.Mode of disposal of drugs.-

(i) Opium, morphine, codeine and thebaine shall be disposed of by transferring to the Government Opium and

Alkaloid Works under the Chief Controller of Factories.

(ii) *In case of drugs other than the drugs mentioned in clause (i), the Chief Controller of Factories shall be intimated by the fastest means of communication available, details of drug consignments that are ready for disposal.*

(iii) *The Chief Controller of Factories shall indicate within 15 days of the date of receipt of the communication, the quantities of drugs, if any, that are required by him to supply as samples under Rule 67-B.*

(iv) *Such quantities of drugs, if any, as required by the Chief Controller of Factories under clause (iii) shall be transferred to him and the remaining quantities of drugs shall be destroyed as per the procedure outlined in Para 4.1.2.*

(v) *Destruction shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards. Such incineration may only be done in places where adequate facilities and security arrangements exist. In order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution Control Board or Pollution Control Committee, as the case may be, should be obtained. Destruction shall be carried out at the presence of the Members of the Drug Disposal Committee.*

4.4. Certificate of destruction.-*A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the drugs seized, etc. shall be prepared and signed by the Chairman and members of the Drug Disposal Committee as per format at Annexure 3. The original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case*

file and the triplicate copy will be kept by the Drug Disposal Committee. Details of disposal of drugs shall be reported to the Narcotics Control Bureau in the Monthly Master Reports. "

55. Calcutta High Court in the case of **Ishdan Seikh v. Union of India, 2022 SCC OnLine Cal 1545** has made observation that a Gazetted Officer who had proceeded to the place of occurrence after entertaining reasonable belief that the accused persons may be carrying narcotic substance cannot be said to be an independent person.

56. Relevant paras are extracted herein-under :-

14. The next question which arises is whether offer made by NCB officers to the appellants that they have a right to be searched before a Magistrate or a Gazetted Officer or a Gazetted Officer, who is a member of the raiding party is in consonance with the statutory requirements of Section 50 or not.

15. In State of Rajasthan v. Parmanand (supra), negating the argument on behalf of the prosecution that an offer to be searched before the nearest Magistrate or Gazetted Officer or a Gazetted Officer of the raiding party is a valid compliance of Section 50 of the NDPS Act, the Court held as follows:-

"19. We also notice that PW10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before the nearest Gazetted Officer or before PW5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW5, J.S. Negi by PW10 SI Qureshi. This,

in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to the Magistrate or the nearest Gazetted Officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW5 J.S. Negi, the Superintendent who was part of the raiding party. PW5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW5 J.S. Negi, the search would have been vitiated or not. But PW10 SI Qureshi could not have given a third opinion to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such opinion would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW10 SI Qureshi is vitiated."

16. In the present case, the appellants were misled by the incorrect offer given to them that they could be searched by a Gazetted Officer who is a member of the raiding party. A Gazetted Officer who had proceeded to the place of occurrence after entertaining reasonable belief that the accused persons may be carrying narcotic substance cannot be said to be an independent person before whom the law contemplates a search. In this backdrop, acceptance of the offer by the appellants to be searched before an officer who is a member of the raiding party cannot be said to be a voluntary expression of their desire to be searched before such officer. There is a clear misdirection in law in the offer given to the appellants and accordingly they were misled to agree to a

search before an officer who was a member of the raiding party. By no stretch of imagination, such acknowledgment on their part can be said to be a voluntary relinquishment of the right enshrined under Section 50 of the NDPS Act.

17. Crux of the safeguard enshrined in Section 50 of the NDPS Act is that an accused should be made aware of his right to be brought before a Magistrate or a Gazetted Officer prior to a personal search. Such offer may be oral or in writing but the terms of the offer must be clear, unequivocal and not create confusion in the mind of an accused with regard to the lawful requirements prior to the search in any manner whatsoever."

57. Calcutta High Court in the case of **Mainul Haque (Supra)** has held that Section 50 of NDPS Act is mandatory provision and a person is to be searched by an officer duly authorized under Section 42 of the Act the search must be carried out in the presence of a Gazetted Officer. The Court deprecated this practice that the appellant had produced the contraband when the Raiding Party intercepted the accused along with contraband then the officers could not have been aware that the accused would voluntarily produce the heroin from his possession.

58. Relevant paras are extracted herein-under :-

"20. It is crystal clear that the offer letter and acceptance letter of the accused persons were written by the raiding officer. Thereafter search took place. Therefore, compliance of Section 50 is very much required. It cannot be accepted that the accused voluntarily handed over the heroin. Therefore as per Section 50 of the NDPS Act it is mandatory

that when a person is to be searched by an officer duly authorised under Section 42 of the Act the search must be carried out in the presence of a gazetted officer of the Central Exise, Narcotics, Customs, Revenue, Intelligence or any other departments of the Central Government including Para Military Forces or Armed Forces as empowered in that behalf or by nearest Magistrate. There are catena of Hon'ble Supreme Court Judgments where it has been held that the provisions of Section 50 of the NDPS Act are mandatory. However, they would be applicable only when the search is carried out of individual.

21. The submission of Mr. Tushar Kanti Mukherjee that a Gazetted Officer or a Magistrate was not required to be present when the appellants were searched because they voluntarily produced the contraband, is untenable. When the raiding party set out to intercept the appellants and to seize the heroin on the receipt of the information, the officers could not have been aware that the appellants would voluntarily produce the heroin from their possession. Obviously therefore, the search was required to be conducted in accordance with Section 50 of the NDPS Act. A Gazetted Officer or a Magistrate should have been present. P.W.3, a Gazetted Officer of the NCB, accompanied the raiding team. But his presence would not be in compliance of Section 50 of the Act. In the case of State of Rajasthan v. Paramanand reported in (2014) 5 SCC 345. The communication of the right of a person who is about to be searched under Section 50 of the NDPS Act is not an empty formality. Moreover, the mere presence of a Gazetted Officer in the raiding party would not be sufficient compliance of Section 50 of the Act. The provision under Section 50 of the Act, mandating the presence of either a

Gazetted Officer or Magistrate when a body search is conducted, has been incorporated in order to ensure that an independent Gazetted Officer or Magistrate is available so that the raid, the search and the seizure are done in a completely transparent manner and to avoid the possibility of false implication. The evidence on record establishes that there is a breach of Section 50 of the Act in this case."

59. The case of **Dharambir (Supra)** is about the non-compliance of Section 50 of NDPS Act.

60. Relevant paras of the report are extracted herein-under:-

43. The law laid down in the above-extracted passages from Arif Khan (supra), needless to say, binds this Court under Article 14 of the Constitution of India, inter alia for the reason that the Supreme Court has chosen to rely on the earlier decision, of its own Constitution Bench, in Vijaysinh Chandubha Jadeja v. State of Gujarat, (2007) 1 SCC 433.

44. It is undisputed, in the present case, that the search of the appellant, and his car, were conducted by the raiding party, and not by the Magistrate or a Gazetted Officer. Neither were the appellant and his car produced before any Magistrate or Gazetted Officer. The plea, of the respondent, that, as the appellant had been apprised of his right to have himself, and his car, searched by the Magistrate or a Gazetted Officer, and he had himself agreed to be searched by the raiding party, the mandate of Section 50 stood fulfilled, though attractive, cannot sustain, as an identical plea, raised in similar facts, stands negated in Arif Khan (supra)."

61. Section 52-A has been extensively considered by Hon'ble Supreme Court in the case of **Bharat Aambale (Supra)**, wherein it is held that if there is procedural non-compliance of Section 52-A, it does not necessarily vitiate the trial and the case should be viewed in the context of overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52-A may not be fatal.

62. Hon'ble Supreme Court has gone further to the extent by clarifying the scope and purport of Section 52-A sub-section (4) by observing that sub-section (4) of Section 52-A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the Magistrate as primary evidence.

63. It is further observed that the primary evidence for proving possession will always be the seized substance itself. In order to mitigate the challenges in preservation of such substance till the duration of trial, due to pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52-A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence.

64. Relevant paragraphs of the report is extracted herein-under:-

33. Thus, from above it is clear that the procedure prescribed by the Standing Order(s)/Rules in terms of Section

52-A of the NDPS Act is only intended to guide the officers and to ensure that a fair procedure is adopted by the officer in charge of the investigation, and as such what is required is substantial compliance of the procedure laid therein.

33.1. We say so because, due to varying circumstances, there may be situations wherein it may not always be possible to forward the seized contraband immediately for the purpose of sampling. This could be due to various factors, such as the sheer volume of the contraband, the peculiar nature of the place of seizure, or owing to the volatility of the substance so seized that may warrant slow and safe handling. There could be situations where such contraband after being sampled cannot be preserved due to its hazardous nature and must be destroyed forthwith or vice-versa where the nature of the case demands that they are preserved and remain untouched. Due to such multitude of possibilities or situations, neither can the police be realistically expected to rigidly adhere to the procedure laid down in Section 52-A or its allied Rules/Orders, nor can a straitjacket formula be applied for insisting compliance of each procedure in a specified timeline to the letter, due to varying situations or requirements of each case.

33.2. Thus, what is actually required is only a substantial compliance of the procedure laid down under Section 52-A of the NDPS Act and the Standing Order(s)/Rules framed thereunder, and any discrepancy or deviation in the same may lead the court to draw an adverse inference against the police as per the facts of each and every case.

XXXXXX

38. Even in cases where there is non-compliance with the procedural requirements of Section 52-A, it does not

necessarily vitiate the trial or warrant an automatic acquittal. The courts have consistently held that procedural lapses must be viewed in the context of the overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52-A may not be fatal. The emphasis must be on substantive justice rather than procedural technicalities, and keeping in mind that the salutary objective of the NDPS Act is to curb the menace of drug trafficking.

39. At this stage we may clarify the scope and purport of Section 52-A sub-section (4) with a view to obviate any confusion. Sub-section (4) of Section 52-A provides that every court trying an offence under the NDPS Act, shall treat the inventory, photographs and samples of the seized substance that have been certified by the Magistrate as primary evidence.

40. What this provision entails is that, where the seized substance after being forwarded to the officer empowered is inventoried, photographed and thereafter samples are drawn therefrom as per the procedure prescribed under the said provision and the Rules/Standing Order(s), and the same is also duly certified by a Magistrate, then such certified inventory, photographs and samples have to mandatorily be treated as primary evidence. The use of the word "shall" indicates that it would be mandatory for the court to treat the same as primary evidence if twin conditions are fulfilled being: (i) that the inventory, photographs and samples drawn are certified by the Magistrate, AND (ii) that the court is satisfied that the entire process was done in consonance and substantial compliance with the procedure prescribed under the provision and its Rules/Standing Order(s).

41. Even where the bulk quantity of the seized material is not produced before the court or happens to be destroyed or disposed of in contravention of Section 52-A of the NDPS Act, the same would be immaterial and have no bearing on the evidentiary value of any inventory, photographs or samples of such substance that is duly certified by a Magistrate and prepared in terms of the said provision. We say so, because sub-section (4) of Section 52-A was inserted to mitigate the issue of degradation, pilferage or theft of seized substances affecting the very trial. It was often seen that, due to prolonged trials, the substance that was seized would deteriorate in quality or completely disappear even before the trial could proceed, by the time the trial would commence, the unavailability of such material would result in a crucial piece of evidence to establish possession becoming missing and the outcome of the trial becoming a foregone conclusion. The legislature being alive to this fact, thought fit to introduce an element of preservation of such evidence of possession of contraband in the form of inventory, photographs and samples and imbued certain procedural safeguards and supervision through the requirement of certification by a Magistrate, which is now contained in sub-section (4) of Section 52-A. In other words, any inventory, photographs or samples of seized substance that was prepared in substantial compliance of the procedure under Section 52-A of the NDPS Act and the Rules/Standing Order(s) thereunder would have to mandatorily be treated as primary evidence, irrespective of the fact that the bulk quantity has not been produced and allegedly destroyed without any lawful order.

42. Section 52-A sub-section (4) should not be conflated as a rule of evidence in the traditional sense i.e. it

should not be construed to have laid down that only the certified inventory, photographs and samples of seized substance will be primary evidence and nothing else. The rule of "Primary Evidence" or "Best Evidence" is now well settled. In order to prove a fact, only the best evidence to establish such fact must be led and adduced which often happens to be the original evidence itself. The primary evidence for proving possession will always be the seized substance itself. However, in order to mitigate the challenges in preservation of such substance till the duration of trial, due to pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52-A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence, provided they have been certified by a Magistrate in substantial compliance of the procedure prescribed. This, however, does not mean that where Section 52-A has not been complied, the prosecution would be helpless, and cannot prove the factum of possession by adducing other primary evidence in this regard such as by either producing the bulk quantity itself, or examining the witnesses to the recovery, etc.

43. What Section 52-A sub-section (4) of the NDPS Act does is it creates a new form of primary evidence by way of a deeming fiction which would be on a par with the original seized substance as long as the same was done in substantial compliance of the procedure prescribed thereunder, however, the said provision by no means renders the other evidence in original to be excluded as primary evidence, it neither confines nor restricts

the manner of proving possession to only one mode i.e. through such certified inventory, photographs or samples such that all other materials are said to be excluded from the ambit of "evidence", rather it can be said that the provision instead provides one additional limb of evidentiary rule in proving such possession. Thus, even in the absence of compliance of Section 52-A of the NDPS Act, the courts cannot simply overlook the other cogent evidence in the form of the seized substance itself or the testimony of the witnesses examined, all that the courts would be required in the absence of any such compliance is to be more careful while appreciating the evidence."

65. Now, this Court has to analyze the submissions of the contesting parties.

ANALYSIS :-

66. Physical evidence of recovered contraband has been proved by the prosecution witnesses i.e. Seizing Officer Rajdhari Singh/PW-1 and Superintendent S.C. Sarkar/PW-2, which was exhibited before the trial Court. The accused-appellant had not put any question during cross-examination nor any suggestion was made by the defence to prosecution witnesses as regards to change of colour of contraband substance. At no place during cross-examination at the time of testimony of the witnesses there is any mention in this behalf regarding anything to change of colour of contraband substance.

67. The chemical examination is admissible in the evidence under Section 293 Cr.P.C. ,which has been physically proved by Rajdhari Singh/PW-1 and S.C. Sarkar/PW-2 and as per report, the recovered contraband was heroin.

68. It has also born out from the record that during the trial the defence did not seek to summon the author of chemical examination report and to question him as regards to change of the colour of the contraband.

69. The accused-appellant has also not questioned the chain of safe custody of the contraband in any manner. Complete chain of safe custody of the contraband right from the stage of seizure till production in the court during trial has been duly established by the prosecution witness Rajdhari Singh/PW-1 in his oral testimony.

70. In view of the aforesaid discussion, the submission made by learned counsel for the accused-appellant that recovered contraband produced in the Court was different from the one which was allegedly recovered from the accused-appellant is not sustainable and is rejected.

71. The argument has been advanced that there is non-compliance of Section 52-A of the NDPS Act. The said argument would not get attracted while drawing samples at the time of seizure of the contraband. The sampling for the purposes of chemical examination of the contraband was done in accordance with the procedure as prescribed in Standing Instructions No.1/88, as prevalent at the time of recovery.

72. Section 52-A has been extensively considered by Hon'ble Supreme Court in the case of **Bharat Aambale (Supra)**, wherein it is held that if there is procedural non-compliance of Section 52-A, it does not necessarily vitiate the trial and the case should be viewed in the context of overall evidence. If the prosecution can otherwise establish the chain of custody, corroborate

the seizure with credible testimony, and prove its case beyond reasonable doubt, the mere non-compliance with Section 52-A may not be fatal.

73. Hon'ble Supreme Court has further observed that the primary evidence for proving possession will always be the seized substance itself. In order to mitigate the challenges in preservation of such substance till the duration of trial, due to pilferage, theft, degradation or any other related circumstances, the legislature consciously incorporated sub-section (4) in Section 52-A to bring even the inventory, photographs or samples of such seized substance on the same pedestal as the original substance, and by a deeming fiction has provided that the same be treated as primary evidence.

74. Thus, the argument of non-compliance of Section 52-A of NDPS Act as advanced by Shri Kunwar Sushant Prakash, learned counsel for the accused-appellant is also not sustainable, in view of the law laid down by Supreme Court in the case of **Bharat Aambale (Supra)**. At the same time, argument of Sri S. M. Singh Royekwar, learned Counsel for the Union of India/Central Bureau of Narcotics is upheld.

75. Now, crucial part of compliance of Section 50 of NDPS Act is to be analyzed by this Court.

76. In the case of **Ranjan Kumar Chadha (Supra)**, it has been observed that Section 50 is a mandatory provision, which is a right of the person as well as obligation for the prosecution. Where, the person to be searched declines to exercise this right, the police officer shall be free to proceed with the search. However, if the

suspect declines to exercise his right of being searched before a Gazetted Officer or Magistrate. While informing the right, only two options of either being searched in presence of a Gazetted Officer or Magistrate must be given, who also must be independent and in no way connected to the Raiding Party.

77. At page 27 of the paper-book, Rajdhari Singh/PW-1 has stated that in the present case he did not obtain warrant from the Magistrate for the reason that a Gazetted Officer was present with him. He further deposed in cross-examination that the Gazetted Officers were always present with him. Therefore, there was no requirement to take any Magistrate. He further deposed before the Court that the accused-appellant was informed that Gazetted Officer was present with Raiding Party. When he was asked for search before Gazetted Officer or Magistrate, then the accused-appellant offered for search before Raiding Party. He further deposed that he did not write the fact that the officer was present with him.

78. In the case of **Ishdan Seikh (Supra)**, Calcutta High Court has observed that a Gazetted Officer who had proceeded to the place of occurrence after entertaining reasonable belief that the accused persons may be carrying narcotic substance cannot be said to be an independent person.

79. In the same vein, in the case of **Mainul Haque (Supra)**, Calcutta High Court has held that Section 50 of NDPS Act is mandatory provision and a person is to be searched by an officer duly authorized under Section 42 of NDPS Act and the search must be carried out in the presence of a Gazetted Officer.

80. The statement of S.C. Sarkar/PW-2 at page-38 of the paper- book is relevant and is to be seen in present case where he stated that he introduced himself as Gazetted Officer and told accused-appellant that he was in possession of the heroin. He asked him whether he wished to be searched either before the Magistrate or before the Gazetted Officer, on which he had said that the Raiding Party could search him.

81. Thus, statement of S.C. Sarkar/PW-2 indicates that he was present as a part of Raiding Team. The accused appellant was not told that it was his right to be searched before a Magistrate or a Gazetted Officer other than the one, who is leading the Raiding Party, as such this violates the mandatory provisions of Section 50 of NDPS Act.

82. The NDPS Act requires that accused should be informed about his right in clear terms that he has right to be searched in presence of a Gazetted Officer other than one who is accompanying the Raiding Party.

83. Shri S.M. Singh Royekwar, learned counsel for Union of India has made argument that contraband was picked out by the accused-appellant from his pant and the same was handed over to the Raiding Party. It is not a case where body search was to be done since he had handed over the contraband substance himself, therefore, there is no need of compliance of Section 50 of NDPS Act.

84. This argument cannot be sustained for various reasons. The cross-examination of Rajdhari Singh/PW-1 at page-15 of the paper book indicates that the accused-appellant was firstly searched by Raiding

Party and thereafter, the room was searched. After search of his body, he had handed over the contraband substance to Rajdhari Singh/PW-1, which is deposed at page-17 of the paper-book. Similarly, S.C. Sarkar/PW-2, the Gazetted Officer who was present has also deposed before the Court during cross-examination that he had given options to the accused-appellant whether he wanted to be searched before a Gazetted Officer, he told that he may be searched by him also because he was a Gazetted Officer. S.C. Sarkar/PW-2 has further deposed that the contraband substance was recovered from the right pocket of the pant of the accused-appellant.

85. Harishankar Agnihotri/PW-3, who was Manager of Hotel at relevant point of time, has also deposed before the Court that Raiding Party entered into the room of the accused-appellant and the Raiding Party asked the name of the accused-appellant and the accused-appellant was searched by the Raiding Party and the contraband substance was recovered from the pant of the accused-appellant.

86. Para 6 of the complaint filed by the Investigating Officer further goes to indicate that there was suspicion of having illegal contraband substance in possession of accused-appellant and Islam alias Farukh that is why they were searched. Further, para 9 of the complaint indicates that the accused-appellant had handed over the contraband substance to the Raiding Party. The complaint also indicates that firstly the search procedure of the accused-appellant was adopted and thereafter, the recovery was made.

87. Once the search is to be made then, certainly Section 50 of NDPS Act has to be complied with, but, after going through the

statements of PW-1, PW-2 and PW-3, the version of complaint, it is apparent that the search of the body of the accused-appellant was made first and thereafter, the recovery of contraband substance was made from his possession. There is non-compliance of Section 50 of NDPS Act, which has been deprecated by Hon'ble Supreme Court in the case of **Ranjan Kumar Chadha (Supra)** and **Arif Khan (Supra)** as well as by Calcutta High Court in the cases of **Mainul Haque (Supra)** and **Ishdan Seikh (Supra)**.

88. This Court finds substance in the argument of Shri Kunwar Sushant Prakash, learned counsel for the accused-appellant regarding non-compliance of Section 50 of NDPS Act.

89. In view of aforesaid reason, the conviction and sentence of the appellant-accused deserves to be set-aside.

90. Accordingly, the appeal is allowed and the impugned judgment dated 28.05.1998 passed by the trial Court in Criminal Case No. 85 of 1995 is hereby set-aside. The appellant is acquitted of charges under Sections 8/21 of NDPS Act.

91. The appellant - Vinai Kumar Sharma is in jail since 08.04.2025 and as per custody certificate sent by Superintendent, District Jail, Lucknow, he was in jail for 06 years, 03 months and 10 days and as on date of judgment, the period in jail comes to 06 years, 11 months and 24 days. A release order will be issued by the trial Court in pursuance of the present judgment immediately, to secure his release from jail custody, if he is not wanted in any other case.

92. Appellant is directed to furnish a personal bond and two sureties in each like amount to the satisfaction of the trial Court

within two weeks of actual release from jail in terms of Section 437-A CrPC with undertaking to appear before appellate court as and when appeal is filed against this judgment and he is required to appear before the court.

93. Office/Registry is directed to send the copy of this judgment for necessary compliance along with trial Court record to the court concerned forthwith.

94. The trial Court to send compliance report within four weeks.

95. A copy of this judgment be also sent to Senior Superintendent, District jail, Lucknow forthwith.

96. The Court keeps record the assistance rendered by Mr. Ankur Garg, Research Associate of this Court.

(2025) 12 ILRA 389
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.12.2025

BEFORE

THE HON'BLE RAJEEV MISRA, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal U/S 413 BNSS No. 560 of 2025

Mewati Devi **...Appellant**
Versus
State of U.P. **...Respondents**

Issue for Consideration

Matter pertains to appeal against acquittal under S. 413 BNSS –

“whether the inference drawn by Court below that registration of FIR on the alleged date and time is suspicious”; “whether P.W.1 Mewati Devi and P.W.2 Jaikesh are chance witnesses”; “whether the presence of P.W.1 Mewati Devi and P.W.-2 Jaikesh on the spot at the time of the incident is doubtful and their testimonies are

not trustworthy”; and “whether reasons recorded by Court below in support of its conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusory and against the weight of evidence on record, therefore, illegal and perverse”. (Paras 21, 26, 33, 48, 49–51)

Headnotes

Criminal Law - Trial - Appeal against Acquittal - Scope of Interference - "if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not in such a situation reverse the order of acquittal" - reiterated; interference permissible only where findings are "illegal, perverse or erroneous". (Paras 16-20, 49-51)

Criminal Jurisprudence - Appeal against acquittal - Double presumption of innocence - Principles of interference.

FIR - Delay and Suspicion - Effect -
Material contradictions regarding "*timing of registration of the FIR*"; FIR allegedly
 scribed and handed over "*on the spot*";
 delay in forwarding to Circle Officer and
 C.J.M. - "*time and date on which the said*
FIR is stated to be registered becomes
highly suspicious". (Paras 22-26)

Evidence - Chance Witnesses - Scrutiny - P.W.1 and P.W.2 held to be "*chance witnesses*"; presence at place of occurrence "*not properly explained*"; evidence requires "*very cautious and close scrutiny*". (Paras 27–33)

Ocular Evidence v. Medical Evidence - *"medical evidence does not corroborate the ocular version of the occurrence"*; absence of *"crush injury"* despite allegation of vehicle running over deceased *"3-4 times"*. (Paras 14(5) - (7), 45 - 48)

Held: No perversity in the judgment so as to interfere with the findings returned by Court below - the conclusion drawn by Court below is the outcome of due appreciation of evidence on record - it thus, cannot be said that only the view consistent with the guilt of accused is possible - Appeal under S. 413 BNSS *"fails and is, accordingly dismissed. (Paras 49-51) (E-7)*

Case Law Cited

Bharwad Jakshibhai Nagjibhai and others vs. State of Gujarat, (1995) 5 SCC 602; *Babu Sahebagouda Rudragoudar vs. State of Karnataka*, 2024 SCC OnLine SC 561; *Gamini Bala Koteswara Rao vs. State of Andhra Pradesh*, (2009) 10 SCC 636; *Balraje @ Trimbak vs. State of Maharashtra*, (2010) 6 SCC 673; *Shakaralal vs. State of Rajasthan*, (2004) 10 SCC 632.

List of Acts

Indian Penal Code, 1860; Arms Act, 1959; Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); Code of Criminal Procedure, 1973.

List of Keywords

appeal against acquittal; chance witnesses; suspicious FIR; medical evidence; ocular version; perverse findings; double presumption of innocence; beyond reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under *Section 413 BNSS* arising out of judgment dated 30.08.2025 passed by the Sessions Judge, Azamgarh, in Sessions Trial Nos. 28 of 2012, 491 of 2014 and 29 of 2012, arising out of *Case Crime Nos. 376 of 2011 and 515 of 2011*, Police Station Raunapar, District Azamgarh.

Appearances for Parties**Advs. for the Appellant:**

Kiran Yadav, Sanjay Kumar Yadav

Advs. for the Respondents:

G.A.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Mr. Sanjay Kumar Yadav, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.

2. Challenge in this Criminal Appeal is to the judgment dated 30.08.2025 passed by Sessions Judge, Azamgarh, in Sessions Trial No. 28 of 2012 (State vs. Ram Karan Yadav and others), Sessions Trial No. 491 of 2014 (State vs. Jai Prakash @ Prakash Yadav and

others) arising out of Case Crime No. 376 of 2011, under Sections 302/149, 147 IPC, Police Station Raunapar, District Azamgarh and Session Trial No. 29 of 2012 (State vs. Vijai Yadav), arising out of Case Crime No. 515 of 2011, under Section 3/25 Arms Act, Police Station- Raunapar, District Azamgarh, whereby the accused opposite parties 2 to 9 have been acquitted by Court below of the charges framed against them.

3. Brief facts of the case are that the first informant-appellant moved a Written Report dated 02.08.2011 by stating that her husband had gone to Chandpatti to sell milk in the morning. On 02.08.2011, at around 12:00 noon, Subhash, Ramkaran, Rambadan and Heera were sitting in ambush 1 km west from Vishen Ka Pura Chowk with a four wheeler and one motor cycle. There was a land dispute with Subhash. They had also threatened her husband. Her husband's vehicle was pushed and he was made to fall. He got up and ran away. By then, aforesaid persons chased and caught her husband and broke his legs and hands by running the car over him, due to which, he died on the spot. She was taken by her son Jaikesh on a bicycle and after getting medicines when they reached the spot, they identified all the aforesaid persons. Meanwhile, one Niranjana Yadav also came on the spot. All the three persons have seen the incident.

4. On the aforementioned Written Report (Tehrir) of appellant, FIR against the named accused persons as Case Crime No. 376 of 2011, under section 302/34 IPC at 4:00 pm on 02.08.2011 at Police Station Raunapar, District Azamgarh was registered.

5. After completion of investigation, charge-sheet was submitted against opposite parties 2 to 9 under Sections 302/34, 147 IPC. Another charge-sheet was

also submitted against opposite party 5 Vijai Yadav, under Section 3/25 Arms Act. Thereafter cognizance was taken upon same and the cases were committed to the Court of Sessions. After hearing both the parties, the charges were framed against opposite parties 2 to 9, under Sections 302/149, 147 IPC and charge under Section 3/25 Arms Act was also separately framed against opposite party 5 Vijai Yadav.

6. In order to prove its case, prosecution adduced eight prosecution witnesses, namely, P.W.-1 Smt. Mewati Yadav (the informant/wife of deceased), P.W.-2 Jaikesh (son of the deceased), P.W.-3 Dr. Santosh Kumar (Autopsy Surgeon), P.W.-4 Parmarath Yadav (witness of panchnama), P.W.-5 Ramkrishna Dwivedi (1st Investigating Officer), P.W.-6 Rampreet Yadav (witness of prosecution sanction), P.W.-7 Harigovind Singh (Scribe of FIR) and P.W.-8 Tejbahadur Singh (the then In-charge Inspector and 2nd Investigating Officer). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 27 prosecution papers, namely, Written Report (Tehrir) as Ex. Ka-1, Post Mortem Report as Ex. Ka-2, Inquest Report (Panchayatnama) as Ex. Ka-3, Police Form-13 as Ex. Ka-4, Letter to C.M.O. as Ex. Ka-5, Photonash as Ex. Ka-6, letter to Inspector as Ex. Ka-7, Site Plan as Ex. Ka-8, Recovery memo of blood stained earth and plain earth as Ex. Ka-9, Recovery memo of blood stained grass as Ex. Ka-10, Recovery memo of spectacles of the deceased as Ex. Ka-11, Recovery memo of one pair slippers of deceased as Ex. Ka-12, Recovery memo of motorcycle as Ex. Ka-13, Copy of Report No.9 regarding arrest of accused Rambadan Yadav as Ex. Ka-14, Copy of Report No.14 regarding arrest of accused Heera Yadav as Ex. Ka-15,

Recovery memo of motorcycle and country made pistol on the spot as Ex. Ka-16, Site Plan of recovery memo of motorcycle on the pointing out of accused Vijai Yadav as Ex. Ka-17, Recovery memo of Bolero Car as Ex. Ka-18, Charge-sheet against accused Ramkaran Yadav, Rambadan Yadav, Vijai Yadav, Lal Bahadur Yadav and Heera Yadav as Ex. Ka-19, Sanction for prosecution as Ex. Ka-20, Check FIR (Case Crime No. 515/2011) as Ex. Ka-21, G.D. as Ex. Ka-22, Charge-sheet against accused Vijai Yadav as Ex. Ka-23, Charge-sheet against accused Jai Prakash @ Prakash Yadav, Hariprakash Yadav, Ramesh Yadav and Subhash Yadav as Ex. Ka-24, Check FIR (Case Crime No. 376/2011) as Ex. Ka-25, G.D. Entry as Ex. Ka-26 and report of FSL (Forensic Science Laboratory) as Ex. Ka-27.

7. In statement recorded under section 313 Cr.P.C., the accused-opposite parties 2 to 9 denied the prosecution version and the commission of alleged incident. They stated that P.W.-1 and P.W.2 have given false evidence against them. It has also been stated that they are innocent and have been falsely implicated due to enmity.

8. The defence got examined Sant Ram Yadav as D.W.-1, Lekhpal Jagarnath Singh as D.W.-2 and Dr. Sanket as D.W.-3 to prove the innocence of the accused. The defence has proved documents, namely, papers regarding Farmer Accidental Insurance Scheme as Ex. Kha-1, Report of Lekhpal regarding benefit of Insurance Scheme as Ex. Kha-2, Information letter regarding The Oriental Insurance Company Limited as Ex. Kha-3, Registration Form of Farmer Accidental Insurance Scheme as Ex. Kha-4, Death Certificate of the Insured person issued by the Lekhpal as Ex. Kha-5, Witness Certificate as Ex. Kha-6, Death

Certificate as Ex. Kha-7, Report of Sub Divisional Magistrate dated 16.08.2011 as Ex. Kha-8, Medical Form of Subhash Yadav as Ex. Kha-9, Paper Nos. 191 Kha/1 and 191 Kha/3 as Ex. Kha-10 and Paper Nos. 192 Kha/2 and 192 Kha/4 as Ex. Kha-11.

9. By the impugned judgment dated 30.08.2025, Court below has acquitted the accused of the charges under Sections 302/149, 147 IPC and opposite party 5 Vijai Yadav, under Section 3/25 Arms Act.

10. Thus, feeling aggrieved by the impugned judgment passed by Court below, the present appeal has been preferred by the informant-appellant.

11. Learned counsel for appellant submits that the accused committed murder of appellant's husband at 12:00 noon on 02.08.2011 in her presence. The incident was seen not only by the appellant but by her son Jaikesh and one Niranjana Yadav also. Informant and her son Jaikesh are the eye witnesses of aforesaid murder, but, Court below has wrongly disbelieved their trustworthy testimonies and has thereby committed gross illegality. The eye-witness account as stated by informant and her son Jaikesh is fully supported by medical evidence and enmity due to land dispute between the parties was the motive behind this murder. Court below has erred law in acquitting the accused persons. The impugned judgment of acquittal is against the weight of the evidence on record and therefore, same is liable to be set-aside by this Court.

12. Learned A.G.A. for State-opposite party-1 has however vehemently opposed the present appeal. According to the learned A.G.A., Court below has correctly

appreciated the testimonies of the eye witnesses and therefore, rightly come to the conclusion that P.W.-1 and P.W.-2 are not the eye witnesses of the alleged incident. Court below has also rightly found that the injuries found on the body of the deceased are not such injuries, which could have been caused on account of a four wheeler running over the body of deceased several times. As both P.W.-1 and P.W.2 have not been found to be eye witnesses of the incident, therefore, Court below has rightly acquitted the accused. Lastly, it has been argued that no ground to interfere in the impugned judgment and order is made out, therefore, learned A.G.A. urged for the dismissal of present appeal.

13. We have heard the learned counsel for appellant as well as the learned A.G.A. for State-opposite party-1 and perused the record.

14. The trial Court while acquitting the accused, has recorded the following findings:

1. Registration of the First Information Report at the concerned regarding Police Station on the alleged date and time, was found to be suspicious raising doubts regarding credibility of the prosecution case.

2. P.W.-1 Mewati Devi and P.W.-2 Jaikesh were found to be chance witnesses.

3. The presence of P.W.-1 and P.W.2 on the spot at the time of incident, was found to be doubtful.

4. P.W.-1 and P.W.-2 have made highly contradictory statements in their evidence regarding several material details of incident.

5. The evidence of P.W.-1 and P.W.-2 does not in any way corroborate

the ante mortem injuries found on the body of the deceased and their evidence in this regard, is completely contradictory to the medical evidence available on record. In short, the medical evidence does not corroborate the ocular version of the occurrence.

6. As per evidence of P.W.-1 and P.W.-2, total nine persons were seated in a four wheeler and the deceased was driven on and off by the offending vehicle 3-4 times with intention to kill but not a single crush injury was found on the body of deceased.

7. After appreciating the evidence of P.W.-1 and P.W.-2, they were found not to be present on the spot at the time of incident and therefore, both of them did not see the incident happening. The evidence of P.W.-1 and P.W.-2 was thus found to be not trustworthy.

15. After recording the above findings, Court below concluded that since prosecution has failed to prove the charges against the accused persons beyond reasonable doubt by means of the impugned judgment, acquitted the accused of the charges framed against them.

16. While considering the scope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by Court below.

17. Reference in this regard be made to the judgment of Supreme Court in **Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat, (1995) 5 SCC 602**, which is most appropriately applicable to the facts of the present case. Paragraph-9

of the report is relevant for the controversy in hand and is accordingly, reproduced herein-below:-

" Law is now well settled that though the Cr.P.C. does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not disturb an order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle is not applicable where the approach of the trial Judge in dealing with evidence is manifestly erroneous and the conclusions drawn are wholly unreasonably and perverse. In the instant case, we find that the High Court was fully conscious and did not transgress the bounds, of its appellate powers while dealing and reversing the order of acquittal."

18. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561**, has observed as under:

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent

with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

19. It has also been observed in above-mentioned judgment that an Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has further been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion, which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

20. The Supreme Court in **Gamini Bala Koteshwara Rao vs. State of Andhra Pradesh, (2009) 10 SCC 636**, has observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusion arrived at by Court below. However, it is limited to those cases where the judgment of Court below was perverse. This Court went to declare that the word "perverse", as understood in law, has been understood to

mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another view is plausible, the Appellate Court will not be justified in interfering with the verdict of acquittal.

21. Having heard the learned counsel for appellant, the learned A.G.A. for State-opposite party-1 upon evaluation of the impugned judgment including the reasons recorded therein, in the light of deposition of the injured witness i.e. appellant and keeping in mind the limitation with a Court of appeal dealing with a judgment of acquittal, this Court finds that following four questions arise for consideration in present appeal:-

i. Whether the inference drawn by Court below that registration of FIR on the alleged date and time is suspicious, which raises doubt on credibility of the prosecution case, is legally sustainable.

ii. Whether P.W.1 Mewati Devi and P.W.2 Jaikesh are chance witnesses.

iii. Whether the presence of P.W.1 Mewati Devi and P.W.-2 Jaikesh on the spot at the time of the incident is doubtful and their testimonies are not trustworthy.

iv. Whether reasons recorded by Court below in support of its conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusory and against the weight of evidence on record, therefore, illegal and perverse.

Question No. i. Whether the inference drawn by Court below that registration of FIR on the alleged date and time is suspicious, which raises doubt on credibility of the prosecution case, is legally sustainable?.

22. As per prosecution version, the alleged incident took place on 02.08.2011 at around 12:00 noon, the FIR of which was registered at 4:00 p.m. on the same day at Police Station Raunapar, District Azamgarh, on a Written Report (Tehrir) moved by Mewati Devi, the widow of deceased. The factum of the registration of the FIR was also mentioned in G.D. No. 29, time 16:00 hours on 02.08.2011. As per prosecution version, the informant-appellant Mewati Devi and Jaikesh are the eye witnesses of the alleged incident. The informant-appellant Mewati Devi in her deposition as P.W.-1 has stated that she got scribed the Written Report (Tehrir) (Ex. Ka-1) out side the concerned police station from some person. In her cross-examination, she stated that said Written Report (Tehrir) was written on the spot where her husband died. She further stated that while writing the Written Report (Tehrir), Police Official from the Police Station Raunapar also came on the spot including S.H.O. (Bade Daroga) and some Constables and her application was taken by S.H.O. concerned on the spot. Aforementioned disclosure in her cross-examination reveals that she had not gone to the police station for registration of the FIR, someone on the spot wrote down the Written Report (Tehrir) upon her dictation and same was delivered to the Police Official present on the spot.

23. As per the testimony of P.W.-5 Investigating Officer, Ramkrishna Dwivedi, the said FIR was registered in his absence and he got the copy of the Check FIR, etc. on the spot. Whereas the informant-appellant herself is stating that she handed over her written application to S.H.O. concerned on the spot. There is, thus material contradiction regarding timing of

registration of the FIR in evidence of P.W.-1 informant-appellant and P.W.-5 Investigating Officer.

24. The factum of registration of the FIR was also mentioned in G.D. No. 29, time 16:00 hours dated 02.08.2011 (Ex. Ka-26) wherein, it has been mentioned that Mewati Devi came with one Niranjana Yadav to the Police Station and gave written application, whereas the informant-appellant in her cross-examination has stated that the said application was handed over to the concerned S.H.O. on the spot.

25. The said Check FIR was received in the Court of concerned Chief Judicial Magistrate on 06.08.2011 and surprisingly, the said Check FIR was also seen by the concerned Circle Officer only on 04.08.2011, which is evident from the cross-examination of the P.W.-5, Investigating Officer as is mentioned at page-36 of the impugned judgment. This also shows that said Check FIR was not only seen/forwarded by the concerned Circle Officer with the delay of two days, but same has been sent to the concerned C.J.M. with delay of four days. Resultantly, the time and date on which the said FIR is stated to be registered, becomes highly suspicious.

26. After carefully considering aforesaid aspects of present case as recorded by Court below in para-32 of impugned judgment, we are of the considered opinion that the finding recorded by Court below with regard to registration of the FIR at the concerned police station at the alleged time and date, being suspicious raises doubt on the credibility of prosecution case, is legally sustainable. Therefore, question no.i is answered in the affirmative.

Question No. ii. Whether P.W.1 Mewati Devi and P.W.2 Jaikesh are the chance witnesses?.

27. As per narration in the FIR, the alleged incident was seen by the wife Mewati Devi and son Jaikesh of the deceased, when they were returning back after getting medicines for Mewati Devi. Therefore, both of them are stated to be eye witnesses of the alleged incident. However, in the Written Report (Tehrir) (Ex. Ka-1) only four persons, namely, Subhash, Ramkaran, Rambadan and Heera were named by P.W.-1 Mewati Devi and names of other accused were disclosed during the course of investigation.

28. P.W.-1 Mewati Devi in her examination-in-chief, has stated that she and her son Jaikesh went to the Doctor for taking medicines. Her son Jaikesh took her on bicycle for getting medicines. When they were returning at around 12:00 noon on 02.08.2011 accused Subhash Yadav, Ramkaran Yadav, Rambadan Yadav, Vijai Yadav, Heera Yadav, Hari Prakash, Jai Prakash, Ramesh Lal Bahadur and three unknown persons who had covered their faces with clothes, were riding on a four wheeler whereas accused Vijai Yadav was driving a motor-cycle. Her husband's vehicle was pushed and thereafter, he got up and ran away. By then, aforesaid accused chased and caught her husband. They thereafter got him back to the spot and thereafter, a four wheeler was run over her husband 3-4 times and murdered her husband on the spot.

29. P.W.-2 Jaikesh (son of the deceased) also deposed on similar lines as his mother Mewati Devi. However, this witness Jaikesh has stated that accused Subhash Yadav, Ramkaran Yadav,

Rambadan Yadav, Heera, Vijai, Jai Prakash, Hari Prakash, Ramesh and Lal Bahadur were on the four wheeler. This witness has also stated that when his father was being mercilessly beaten by the accused persons, he and her mother shouted, whereupon accused Vijai Yadav placed country made pistol on the head of his mother because of which, they stopped shouting. In the meanwhile, Hari Prakash, Jai Prakash, Lal Bahadur, Ramesh, Heera, Ramkaran, Rambadan, who had caught hold of his father asked Subhash to drive the Bolero vehicle over and above his father.

30. The incident took place 1 km west from Vishen Ka Puura Chowk on a road. Smt. Mewati Devi P.W.-1, (wife of the deceased) and Jaikesh P.W.-2 (son of the deceased) are chance witnesses interested in conviction of accused because of their inimical dispositions towards appellant. Let us examine their evidence with caution and close scrutiny in order to ascertain whether their presence on the spot is properly explained and whether they fall under the category of wholly reliable witnesses in order to base conviction of accused on their testimonies. At the same time it will have to be kept in mind that merely because the eye witnesses are the family members of the deceased, their evidence cannot per se be discarded. Relationship is not a factor to affect credibility of a witness. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. At the same time it needs to be kept in mind while appreciating evidence of such witness that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge, along with the guilty. In the case of **Balraje @ Trimbak Vs. State of**

Maharashtra, reported in (2010) 6 SCC 673, the Apex Court has held that when the eye witnesses are stated to be interested and inimically deposed against the accused, it would not be proper to conclude that they would shield the real culprit and rope in an innocent person. If after careful analysis and scrutiny of their evidence, the reason given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.

31. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be at the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. The evidence of a chance witness therefore, requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (**vide Shakarlal vs. State of Rajasthan [(2004) 10 SCC 632: 2005 SCC (Cri) 579]**).

32. The evidence of chance witness can be accepted provided statement of such witness adequately explains the presence of such witness and such evidence stands the test of caution and close scrutiny.

33. Admittedly, the place of alleged incident is neither the residence of the deceased nor his work place, rather it is a public road. Admittedly, in the early

morning, the deceased left alone for selling milk in Chandpatti. It is the case of the prosecution that P.W.-1 Mewati Devi on the fateful day, at about 10:00 a.m. suddenly, fell ill and therefore, went to Chandpatti market on a bicycle with her minor son Jaikesh. As per prosecution story, Mewati Devi P.W.-1 became ill only after her husband had left home for selling milk. In this background, Mewati Devi P.W.-1 first visited the Doctor and after getting medicines in due course, started her return journey and during her return journey, she arrived at the spot, where she alongwith her minor son Jaikesh witnessed the incident. In this prosecution story, Mewati Devi P.W.-1 and Jaikesh P.W.-2 both were aware of the fact that the deceased was also there in Chandpatti market for selling milk. Therefore, it is very surprising that instead of contacting deceased, they had visited Doctor at their own and took medicines. It is also an admitted fact that said Chandpatti market is about 5 kms from their home. In this background, it is abundantly clear that both Mewati Devi P.W.-1 and Jaikesh P.W.-2 are chance witnesses, who are alleged to be present on the alleged spot. Therefore, in our opinion, conclusion of Court below regarding these witnesses to be chances witnesses, is a right conclusion. Therefore, question no.ii is answered in the affirmative.

Question No. iii. Whether the presence of P.W.1 Mewati Devi and P.W.-2 Jaikesh on the spot at the time of the incident is doubtful and their testimonies are not trustworthy?.

34. Law regarding appreciation of evidence of chance witnesses is well settled. In the present case, both Mewati Devi P.W.-1 and Jaikesh P.W.-2 are wife

and son of the deceased respectively. Therefore, these witnesses are family members of the deceased. In this background, their evidence needs to be carefully analyzed specifically with the objective whether these witnesses were actually present on the date, time and place of the incident. If the answer to this question is in the affirmative, only then it can be evaluated that their evidence is trustworthy or not.

35. Mewati Devi P.W.-1 and Jaikesh P.W.-2 both have stated that they were returning on bicycle after getting medical treatment from Chandpatti market and they had witnessed the incident while returning home from said Chandpatti market. Mewati Devi P.W.-1 in her cross-examination has stated that she left home for Chandpatti market at 10:00 a.m. and met the Doctor at about 11:00 a.m., Doctor took approximately two hours to examine her and thereafter she was administered glucose.

36. Similarly, Jaikesh, P.W.-2 in his cross-examination has stated that he took her mother for medical treatment at 10:00 a.m. He further stated that the distance from Chandpatti market to his home is about 5 km. He arrived in the Hospital within 40-45 minutes and Doctor examined his mother for about 20-25 minutes.

37. Mewati Devi P.W.-1 has specifically stated that she was administered glucose whereas her son Jaikesh P.W.-2 has stated that Doctor did not administer glucose to her mother and an injection was administered to her. If their statements are presumed to be true then in that eventuality, not less than 40-45 minutes were taken by these witnesses from start of their journey upto their arrival at hospital. Mewati Devi P.W.-1 has stated that

Doctor took approximately 2 hours to examine her and his son Jaikesh has stated that Doctor took 20-25 minutes. Therefore, as per statement of P.W.-1, it was already 12:00 noon in hospital, whereas P.W.2 Jaikesh, it was already 11:30 a.m. at the hospital, even if it is presumed that these witnesses started their return journey at 11:30 a.m., in that eventuality too, possibility of presence of both P.W.-1 Mewati Devi and Jaikesh P.W.-2 at spot, (which is approximately 4 km from the hospital) at 12:00 noon becomes completely doubtful.

38. We, are therefore, of the opinion that conclusion drawn by Court below regarding the presence of P.W.-1 and P.W.-2 being doubtful at the time of incident, is a right conclusion drawn from due appreciation of evidence of P.W.-1 and P.W.-2 at page 38, 39 and 40 of the impugned judgment.

39. Mewati Devi P.W.-1 in her evidence has stated that at the time of incident, a four wheeler was being driven by accused Lal Bahadur, whereas her son Jaikesh P.W.-2 has stated that it was Subhash Yadav, who was driving the said four wheeler. Therefore, there is material contradiction in the testimony of P.W.-1 and P.W.-2 regarding the person who was actually driving the said vehicle, which is alleged to have caused the alleged incident. The whole prosecution story is that the deceased was run over 3-4 times by the four wheeler. In this background, it was very important for both of these witnesses to clearly specify who was actually driving the vehicle at the time of incident. The said material contradiction cannot be ignored.

40. P.W.-1 in her deposition has also stated that nine accused were sitting in the Bolero vehicle at the time of incident. However, Jaikesh P.W.-2 has stated in his deposition that Hariprakash, Jaiprakash,

Lal Bahadur, Subhash, Ramesh, Hira, Ramkaran and Rambadan laid the deceased on the road and asked Subhash Yadav to run the vehicle over the deceased and Subhash Yadav drove the vehicle over the deceased 3-4 times moving it back and forth. Thus, there is material contradiction in the evidence of P.W.-1 and P.W.-2 regarding manner in which the said incident had occurred. If both the witnesses were actually present at the spot, certainly then there would not have been such material contradictions in their testimonies regarding the manner in which the incident had occurred and name of accused, who was driving the offending vehicle.

41. P.W.-1 Smt. Mewati Devi and P.W.-2 Jaikesh both have stated that road on which the incident is alleged to have occurred is going from North to South whereas the Investigating Officer, P.W.-5 has stated that road of the incident, goes from East to West. Court below has specifically recorded that in site plan (Exhibit A-8), the road of the incident is shown from the East to West. If these prosecution witnesses were actually present at the spot, they would certainly have known in which direction the road is, on which the incident is alleged to have occurred.

42. As per depositions of P.W.1 and P.W.2, the deceased's body was lying in the middle of road. P.W.1 has not stated that the deceased was lifted by anyone. However, as per the inquest report Exhibit A-3, the deceased's body was found at the location "X" located on the southern side of the road and not in the middle of road which again raises doubts on the presence of these witnesses on the spot, at the time of occurrence.

43. P.W.-2 Jaikesh in his examination-in-chief has stated that accused stuffed his father's mouth with mud and grass and in this background when these two witnesses were present at the spot, then mud and grass must have been present in the deceased's mouth even after his death. However, post mortem report does not mention any grass or mud in the deceased's mouth. The Autopsy Surgeon in his cross-examination has stated that during the course of post mortem no pieces of grass were found in the mouth of deceased.

44. Therefore, the statements of Smt. Mewati Devi, P.W.1 and Jaikesh P.W.2 are highly contradictory and the presence of these witnesses at the time of incident, is also highly doubtful.

45. As per prosecution story, the deceased was run over by Bolero Vehicle 3-4 times, although there is material contradiction in the deposition of P.W.1 and P.W.2 regarding the manner of incident. However, both these witnesses have consistently, stated that deceased was run over 3-4 times by Bolero Vehicle. As per prosecution story and depositions of P.W.1 and P.W.2 both hands and legs of the deceased were broken. Therefore, it is very important to find out whether there is any crush injury on the body of the deceased or not and whether hands and legs of accused were also broken or not.

46. During the post-mortem examination, P.W.-3 observed the following ante mortem injuries on the body of the deceased Singhasan Yadav:

1. An abrasion measuring 0.5 cm x 0.4 cm on the left side of the face, below the left eye.

2. An abrasion measuring 12 cm x 0.4 cm on the back of the left forearm.

3. Multiple abraded contusions measuring 65 cm x 20 cm on the back of the arm and forearm.

4. Lacerated wound measuring 3 cm x 1 cm x muscle-deep on the front of the right arm.

5. Multiple abraded contusions measuring 72 cm x 32 cm across the abdomen and down the chest.

6. Multiple abraded contusions measuring 50 cm x 20 cm on the right side of the back, from the shoulder down to the gluteal region.

7. Multiple abraded contusions measuring 60 cm x 15 cm down to the waist and left lower limb.

8. An abrasion 0.2 cm x 2 cm on the right knee.

47. On internal examination of the deceased's body, P.W.-3 stated that all the chest bones (ribs), sternum, and coccyx were broken. The right and left lungs were lacerated. There was approximately one litre of blood in the chest cavity. The membrane covering the heart was torn. The heart was empty and weighed 1.50 grams. The stomach membrane was torn. There was approximately one litre of blood in the stomach. The liver was ruptured. The spleen was ruptured.

48. Thus, it is apparently, clear that none of the hands and legs of the deceased were found broken. Moreover, there is not a single crush injury on the body of the deceased. When a Bolero vehicle is run over 3-4 times over a normal human being that too if 8-9 persons are sitting in such Bolero vehicle, then in that eventuality, there ought to be some crush injury on the body of a normal human being. It is true that all the ribs of the deceased were

broken and although lungs were also lacerated, however, only multiple abraded contusions were found over his chest and his back but no crush injury and/or no broken bone of hands and legs of the body of the deceased was also found. Therefore, version of the prosecution, i.e. the deceased was run over by Bolero vehicle several times over his body and the legs and hands were broken, does not find support from his post mortem report. In short the ocular version of the occurrence is not corroborated by the medical evidence on the record. This also raises doubt on the veracity of the version of incident put forward by P.W.1 and P.W.2 again raising serious doubt regarding their presence on the spot at the time of the incident. As a cumulative result of above findings, Court below has rightly come to the conclusion that P.W.-1 and P.W.-2 were not present at the time of incident and their testimonies are not trustworthy. Therefore, question no.iii is answered in the affirmative.

Question No. iv. Whether reasons recorded by Court below in support of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt, are cogent and valid reasons or illusionary and against the weight of evidence on record, therefore, illegal and perverse.

49. Court below finally came to the conclusion that P.W.1 and P.W.-2 are not eye witnesses of the incident. They were not present at the scene of incident or at the time of incident. They did not see the incident. Thus, the statements made by P.W.1 and P.W.2 in their respective deposition that on the day of incident, P.W.1 and P.W.2 had gone to Chandpatti market for medical treatment and after getting the medical treatment, when they

were returning home, on the way at 12 noon they saw the incident taking place that nine accused persons, sitting in a four wheeler Bolero vehicle, with intention to kill the deceased, laid the deceased on the road and killed him, is not reliable in any way. The evidence of P.W.1 and P.W.2 does not support the prosecution. The prosecution story is not found to be beyond any reasonable doubt by their evidence. Therefore, the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt.

50. So far as the veracity of above reasons recorded by Court below to conclude that the guilt of accused does not stand established beyond reasonable doubt also cannot be said to be illegal or perverse. The findings/reasons returned by Court below are based upon due evaluation of allegations made in the complaint in the light of evidence on record. Court below has assigned specific reasons for coming to the conclusion that no offence under any of charging Section is made out against accused. Upon examination by us of the said findings in the light of depositions of the prosecution witnesses as noted in the impugned judgment, we could not come across any such fact on the basis of which, any of the findings qua the charging sections recorded by Court below can be said to be illegal, perverse or erroneous. As such, the conclusion drawn by Court below that no criminality as alleged to have been committed by the accused-opposite parties 2 to 9 is borne out from the record is neither illegal nor perverse. Therefore, question no.iv is answered in the affirmative.

51. In view of the discussion made above, we do not find any perversity in the judgment so as to interfere with the

findings returned by Court below. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has misconstrued any material evidence. However, we could not gather any such fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed**.

(2025) 12 ILRA 401

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 01.12.2025

BEFORE

**THE HON'BLE RAJEEV MISRA, J.
THE HON'BLE DR. AJAY KUMAR-II, J.**

Criminal Appeal U/S 413 BNSS No. 609 of 2025

Satyapal		...Appellant
	Versus	
State of U.P.		...Respondents

Issue for Consideration

Matter pertains to appeal against acquittal - Whether conclusion drawn by Court below that prosecution has failed to prove that deceased sustained any firearm injury is legally sustainable; and whether reasons recorded by Court below in support of its conclusion that prosecution has failed to establish guilt of accused beyond reasonable doubt are cogent and valid or perverse. (Paras 19, 20-21, 22-23)

Headnotes

Criminal appeal against acquittal-Scope of interference-Two views possible-Presumption of innocence-Medical evidence contradicting ocular testimony-Contradictions and improvements in prosecution case-Recovery found suspicious-No perversity in judgment of acquittal. (Paras 15-18, 21, 22-23, 35-41)

Held: Autopsy Surgeon categorically stated that no firearm injury was found on the body of deceased; no bullet or pellet was recovered; no blackening or tattooing; no entry or exit wound - Injury was not a gunshot injury - Prosecution failed to prove that deceased sustained any firearm injury - prosecution witnesses materially deviated from FIR and statements under S. 161 Cr.P.C.; improvements and contradictions introduced during trial; involvement of accused Chander and Manveer introduced later; testimonies unreliable - recovery of country made pistol and cartridge was suspicious; no independent witness; weapon allegedly used by Kanhaiya recovered at pointing of Chander; iron rod not produced before Court -findings recorded by Court below are based on due appreciation of evidence; no perversity, illegality or misreading of material evidence established; two views possible; appellate interference not warranted - Appeal dismissed. (Paras 15-18, 20-21, 26-31, 35, 36-39, 40, 41-42) (E-7)

Case Law Cited

State of Bihar vs. Bishwanath Rai and others, **AIR 1997 SC 3818**; *Smt. Nagindra Bala Mitra and another vs. Sunil Chandra Ray and another*, **1960 SCR (3) 1**; *Mani Ram and others vs. State of U.P.*, **1994 Supp. (2) SCC 289**; *Pruthviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala*, **2021 SCC OnLine SC 493**; *Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat*, **(1995) 5 SCC 602**; *Babu Sahebagouda Rudragoudar vs. State of Karnataka*, **2024 SCC OnLine SC 561**; *Gamini Bala Koteswara Rao vs. State of Andhra Pradesh*, **(2009) 10 SCC 636**; *Manoj and others vs. State of Maharashtra*, **(1999) 4 SCC 268**; *Subhash Kumar and others vs. State of Uttarakhand*, **(2009) 6 SCC 641**; *Achhar Singh vs. State of H.P.*, **(2021) 5 SCC 543**; *Govind Mandavi vs. State of Chhattisgarh*, **2025 INSC 1399**.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Acquittal; Appeal against acquittal; Firearm injury; Medical evidence; Contradictions; Recovery; Perverse judgment; Presumption of innocence; Common intention; Two views possible.

Case Arising From

APPELLATE JURISDICTION: Judgment dated 24.09.2025 passed by Additional Sessions Judge, Court No. 10, Budaun in Sessions Trial No. 33 of 2016 and Sessions Trial No. 34 of 2016.

Appearances for Parties**Advs. for the Appellant:**

Mr. Ram Babu Sharma,
Mr. Ardhendu Shekhar Sharma

Advs. for the Respondents:

Learned A.G.A.

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. Heard Mr. Ram Babu Sharma alongwith Mr. Ardhendu Shekhar Sharma, the learned counsel for appellant and the learned A.G.A. for State-opposite party-1.

2. Challenge in this Criminal Appeal is to the judgment dated 24.09.2025 passed by the Additional Sessions Judge, Court No. 10, Budaun in Sessions Trial No. 33 of 2016 (State Vs. Chander and others) arising out of Case Crime No. 256 of 2015, under Sections 302/34 I.P.C., Police Station-Gunnaur, District- Sambhal and connected Sessions Trial No. 34 of 2016 (State vs. Chander) relating to Case Crime No. 381 of 2015, under Section 3/25 of Arms Act, whereby the accused-opposite parties 2 to 4 have been acquitted of the charges framed against them.

3. Brief facts of the case are that on 01-08-2015, first informant/ appellant Satyapal son of Chhote Lal, resident of Akbarpur, Police Station Gunnaur, District Badaun, submitted a written report (Tehrir) (Exhibit Ka-1) stating therein that in the morning of 01.08.2015, there was a quarrel between his brother Jabar Singh and the children of Chander son of Lekhraj, of the village. When his brother, Jabar Singh went to complain about this to Chander, Kanhaiya and Manveer both sons of Chander, they started quarreling. Hearing the same, his mother, Mrs Savitri, and he reached the spot and tried to intervene. Kanhaiya shot at his mother on the head with a .315 bore pistol at around 10:00 am. When his brother Jabar Singh and he challenged the accused, they fled into the forest. His mother, Mrs Savitri, was seriously injured. His wife, Sunita, witnessed the incident. The gunfire caused widespread panic. The residents of house went into hiding and those nearby closed their doors.

4. On the aforementioned written report (Ext. Ka-1) of the appellant, an F.I.R. was registered on 01.08.2015 against the accused persons as Case Crime No. 256 of 2015, under Sections 307 I.P.C., Police Station- Gunnaur, District- Sambhal. The injured Smt. Savitri Devi was got medically treated and on 02.08.2015 she died. Thereafter, Section 307 IPC was converted into Section 302 IPC. During investigation, on 06.10.2015, one country made pistol was recovered on the pointing of the accused Chander in Case Crime No. 256 of 2015. As such on 06.10.2015 Case Crime No. 381 of 2015 was registered against accused Chander under Section 3/25 of Arms Act, which was entered in G.D. No. 20 at 09:30 hours.

5. After completion of investigation, charge sheet under Section 302 IPC was submitted against accused-opposite parties 2 to 4 and a separate Charge-sheet under Section 3/25 of Arms Act was submitted against accused Chander. Thereafter, the cases were committed to the Court of Sessions. After hearing both the parties, charges were framed against charge-sheeted accused on 30.06.2016, under Sections 302/34 IPC and separate charge under Section 3/25 of Arms Act was also framed against accused Chander. The accused pleaded not guilty and claimed trial.

6. In order to prove it's case, prosecution adduced PW-1 Satyapal Singh, (informant and eye witness), PW-2 Jabar Singh (eye witness), PW-3 SI Ayyub Khan (police witness of inquest), PW-4 constable Girish Chandra (formal police witness), PW-5 Dr. Ikrar Ahmad (Autopsy Surgeon), PW-6 constable Jauni Kumar (formal police witness), PW-7 Smt. Sunita (eye witness), PW-8 retired DSP Sri RK Chauhan (2nd I.O.), PW-9 retired SI Sri Satyaveer Singh (1st I.O.) and PW-10 HC Vikas Kumar (police witness). The witnesses adduced by the prosecution have given their respective oral evidence and also proved 23 prosecution papers and 04 material objects, which were marked as exhibits. The same are tabulated herein below:-

Sl. No.	Name	Nature of Evidence	Documents Proved
PW-1	Satyapal	First informant, eye witness and son of deceased	Written Report (Tehrir) as Ext. Ka-1
PW-2	Jawar Singh	Eye witness and son of deceased	-

PW-3	Ayyub Khan, SI	Police witness, who has prepared Inquest Report	Inquest (Panchayatnama) as Ext. Ka-2, Photo-nas as Ext. Ka-3, Chalan-Nas as Ext. Ka-4, Letter to RI Aligarh as Ext. Ka-5, Letter to CMO Aligarh as Ext. Ka-6, Letter to SSP Aligarh as Ext. Ka-7
PW-4	Girish Chandra Constable	Formal witness, who prepared Check FIR and made G.D. entry of Case Crime No. 256/2025	Check FIR (Case Crime No. 256/2015) as Ext. Ka-8, G.D. Entry as Ext. Ka-9, G.D. No. 34 as Ext. Ka-10
PW-5	Dr. Ikrar Ahmad	Autopsy Surgeon, who conducted the post mortem	Post mortem report as Ext. Ka-11
PW-6	Jauni Kumar, constable	Formal witness, who prepared Check FIR and made G.D. entry of Case Crime No. 381/2015	Check FIR (Case Crime No. 381/2015) as Ext. Ka-12, copy of G.D. as Ext. Ka-13
PW-7	Smt. Sunita	Eye witness of fact and daughter-in-law of deceased	-
PW-8	Sri R.K. Chauhan, retired DSP	2nd Investigating Officer	-
PW-9	Sri Satyaveer Singh, retired Inspector	Police witness	Site Plan in Case Crime No. 256/2015 as Ext. Ka-14, Recovery memo of blood as Ext. Ka-15, Site Plan in Case Crime No.

			381/2015 as Ext. Ka-16, Sanction letter of DM as Ext. Ka-17, Charge-sheet in Case Crime No. 381/2015 as Ext. ka-18
PW-10	Vikas Kumar, Head Constable	Police witness	Copy of Register No. 4 as Ext. Ka-19. FSL report as Ext. Ka-20, Charge-sheet in Case Crime No. 256/2015 as Ext. Ka-21, Site Plan as Ext. Ka-22, Certified copy of Register as Ext. Ka-23. Country made pistol recovered from accused Chander as material Ext.-1, one empty cartridge as material Ext. -2, two empty cartridge as material Ext. 3 & 4.

7. After the prosecution evidence was over, all the adverse/ incriminating circumstances relied upon by the prosecution were disclosed to the accused - opposite parties 2 to 4, in question answer form for their version of the occurrence as per mandate of Section 313 Cr.P.C. They denied all the suggestions put to them by repeatedly saying that it is false or they have been falsely implicated or the prosecution case is false or the depositions of prosecution witnesses are false. They further stated that they are innocent and have been falsely implicated due to village enmity.

8. By the impugned judgment dated 24.09.2025, Court below has acquitted the accused-opposite parties 2 to 4 of the

charges framed against them under Sections 302/34 IPC and 3/25 of the Arms Act.

9. Thus, feeling aggrieved by the impugned judgment passed by Court below, the present criminal appeal has been preferred by appellant, who is the first informant of case.

10. Learned counsel for appellant submits that the impugned judgment is illegal, erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the evidence adduced by the appellant, has illegally and erroneously, acquitted the accused-opposite parties 2 to 4 of the charges levelled against them. PW-2 and PW-7 are eye witnesses of the incident, who have supported the evidence given by appellant as PW-1. The prosecution version of the occurrence also stands corroborated by the medical evidence, but Court below by ignoring the same, has arrived at the conclusion that no case as alleged by the prosecution, is made out against the accused opposite parties, hence, wrongly acquitted them. As such, the impugned judgment is illegal and perverse and therefore liable to be set-aside by this Court.

11. Learned A.G.A. for State-opposite party-1 on the other hand has vehemently opposed the present appeal. He submits that the impugned judgment passed by Court below does not suffer from any illegality of law or fact much less a legal error so as to warrant interference by this Court. Court below has examined the prosecution case in the light of the evidence on record threadbare without leaving any aspect of the matter untouched. Prosecution has failed to prove that deceased sustained

firearm injuries. Court below has thus, rightly acquitted the accused. Lastly, it has been argued that no ground to interfere in the impugned judgment is made out. Learned A.G.A. thus urged for dismissal of the present appeal.

12. We have heard the learned counsel for appellant as well as the learned A.G.A. for State-opposite party-1 and perused the record.

13. The trial Court while acquitting the accused-opposite parties 2 to 4 by means of the impugned judgment has recorded the following findings:

(i) As per written report Ext. Ka-1, accused Kanhaiya shot at deceased Mrs. Savitri on her head at around 10:00 AM with a .315 Bore country made pistol.

(ii) Satyapal PW-1, during investigation, gave statement under Section 161 Cr.P.C. to the Investigating Officer that accused Kanhaiya shot at his mother on head with a .315 Bore country made pistol at around 10:00 AM.

(iii) Sub Inspector Ayyub Khan PW-3 has proved the inquest report as Ext. Ka-2, wherein, witnesses of inquest (Panchas) concluded that the deceased Smt. Savitri died from gunshot injury and a large bullet whole is visible behind the left ear of deceased near her head and neck. Deceased's sons informant Satyapal and Jabar Singh were included as witnesses of inquest (Panchas).

(iv) Satyapal PW-1, in his examination- in-chief, had deposed that at the time of incident, accused Chander struck his mother on her head with an iron rod and accused Manveer also struck with a stick. On the instigation of Manveer and Chander, accused Kanhaiya with intention to kill her, fired a shot at

her from a distance of 15-20 paces with .315 Bore country made pistol. Bullet struck his mother on her head, on left side and went through. During cross examination, he stated that bullet passed through and through immediately after hitting her. He further stated that at the same time his mother was struck by an iron rod on the place where gunshot injury (bullet wound) was caused.

(v) Jabar Singh PW-2 in his examination-in-chief has stated that accused Kanhaiya fired at his mother Smt. Savitri with an intention to kill her and accused Chander hit her with an iron rod. During cross examination, he stated that only one shot was fired and that shot hit on his mother's head. Bullet entered from one side and came out from the other side.

(vi) Sunita PW-7 (wife of informant Satyapal PW-1) stated in her examination-in-chief that accused Chander hit her mother-in-law with an iron rod with an intention to kill her, accused Kanhaiya fired at her by a country made pistol and accused Manveer struck her with a stick.

(vii) Dr. Ikrar Ahmad PW-5, Autopsy Surgeon, has proved post mortem report of the deceased Savitri as Ext. Ka-11. This witness found two ante mortem injuries on the body of deceased. First injury was lacerated wound measuring 4.5 cm x 2cm deep behind left ear. The margins of wound were irregular. There was no blackening or tattooing. There was an underlying bone fracture inside the wound. Second ante mortem injury was a swelling measuring 6cm x 3cm located on lower jaw and chin on the left side. There was a fracture on the lower jaw. This witness in his cross-examination has stated that he neither found bullet nor pellet in injury no. 1. There was no blackening or tattooing. In his opinion,

this injury was not a gunshot injury and this injury could not have been caused by bullet. If injury no. 1 had been caused before and thereafter a stick is being hit on injury no. 1 even then injury no. 1 could not be caused. Injury no. 1 could have been caused if a person accidentally fell on hard surface or was struck by a hard object. This witness specifically stated that injury no. 1 is unlikely to have been even caused by friction of a bullet. No firearm injury of entry or exit was found by this witness on the body of deceased.

(viii) As per testimonies of PW-1 and PW-2, deceased Savitri was hit by bullet and at the same time, she was also struck by an iron rod and a stick. If that be so, the deceased's body would have sustained 03 ante mortem injuries i.e. one firearm injury and 02 from stick and iron rod respectively. Autopsy Surgeon has clearly stated that deceased's ante mortem injuries were not caused by gunshot as no bullet or pellet was found inside the injuries sustained by the deceased on her head and there was no blackening or tattooing around said injury. There was no injury consistent with entry wound or exit wound of firearm in the deceased's body. If a person is injured by a gunshot and bullet passes through the body, in that eventuality, deceased's body is left with an entry wound and an exit wound. Therefore, the manner and weapon used by the accused as stated by prosecution witnesses regarding injuries inflicted on the deceased Savitri are not consistent with the opinion recorded by Autopsy Surgeon in Ext. Ka-11 i.e. post mortem report of the deceased. While relying upon judgments of Apex Court in State of Bihar vs. Bishwanath Rai and others, AIR 1997 SC 3818, Smt. Nagindra Bala Mitra and another vs. Sunil Chandra Ray and

another, 1960 SCR (3) 1, Mani Ram and others vs. State of U.P., 1994 supp. (2) SCC 289 and Pruthviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala, 2021 SCC OnLine SC 493, Court below found the prosecution story to be doubtful.

(ix) Statements of informant Satyapal was not found to be consistent at different stages of the evidence. Jabar Singh PW-2 in his cross-examination has stated that he too sustained injuries in the incident but he did not undergo medical examination. This witness in his statement has only implicated accused Chander and Kanhaiya and excluded Manveer. However, informant Satyapal PW-1 has stated that no one except her mother sustained injuries.

(x) Savita PW-7 in her cross-examination has stated that she was also injured by stick but did not seek medical treatment for her minor injuries.

(xi) Witnesses of fact presented by prosecution i.e. PW-1, PW-2 and PW-7 have not deposed in accordance with prosecution story. The prosecution story remained constant during investigation, but was changed during trial. Earlier only one accused Kanhaiya was shown to be involved in the incident but later on the involvement of accused Chander and Manveer was also shown in the incident. During trial, Jabar Singh PW-2 and Sunita PW-7 gave statement that they too have sustained injuries during incident. However, informant Satyapal PW-1 has clearly stated that no one except his mother sustained injuries. The prosecution story was found to be continuously improved upon, to make it more serious, by showing involvement of more and more accused. Prosecution also tried to

show that PW-2 and PW-7 also sustained injuries.

(xii) As per prosecution story in addition to informant, 03 other persons were present at the place of incident i.e. 02 women and 01 man. Even if there was a dispute between two parties it is difficult to believe why 03 accused would attack a woman alone while two sons of woman stood there as mute spectators. Normally, if someone attacks an elderly woman, his sons would undoubtedly come forward to save her. This is not the case in hand. The initial story against the accused was to the effect that Kanhaiya shot deceased Savitri. However, post mortem report showed no bullet injury. Later during trial, evidence was presented that in addition to bullet injury, accused Chander inflicted injury with an iron rod and accused Manveer with a stick. Thus prosecution evidence was not found to be credible.

(xiii) Recovery of country made pistol and empty cartridge was alleged to be made on the pointing of accused Chander from staircase inside his house. Despite this, no public witness was called. The prosecution did not even prove the original FIR in court regarding recovery of country made pistol and empty cartridge. Simultaneously, iron rod and .315 Bore country made pistol were also recovered at the pointing out of accused Chander, but the iron rod was not presented before court. As per the prosecution story, it was accused Kanhaiya who fired by a country made pistol on the head of deceased. However, surprisingly, pistol and empty cartridge was recovered on the pointing of accused Chander and not at the pointing of accused Kanhaiya. Recovery of country made pistol and empty cartridge was thus found to be suspicious.

(xiv) Serious contradictions were found by Court below in the testimonies of prosecution witnesses. Prosecution witnesses have given different evidence regarding the incident at every stage. There was no consistency in their testimonies, rendering the prosecution narrative suspicious. Prosecution has failed to prove that accused Chander, Kanhaiya and Manveer murdered deceased Savitri in furtherance of a common intention. Prosecution has also failed to prove the recovery of illegal country made pistol and cartridge.

14. After recording above findings, Court below came to the conclusion that prosecution has failed to prove the charges levelled against the accused beyond all reasonable doubt and thus acquitted them vide judgment dated 24.09.2025.

15. While considering the scope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by Court below. Reference in this regard be made to the judgment of Supreme Court in **Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat, (1995) 5 SCC 602**, which is most appropriately applicable to the facts of the present case. Paragraph-9 of the report is relevant for the controversy in hand and is accordingly, reproduced herein-below:-

" Law is now well settled that though the Cr.P.C. does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not

disturb an order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle of is not applicable where the approach of the trial Judge in dealing with evidence is manifestly erroneous and the conclusions drawn are wholly unreasonably and perverse. In the instant case, we find that the High Court was fully conscious and did not transgress the bounds, of its appellate powers while dealing and reversing the order of acquittal."

16. The Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561**, which clearly reach an appeal against acquittal has observed as under:

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

17. It has also been observed in above-mentioned judgment that an Appellate

Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has further been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion, which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond all reasonable doubts and no other conclusion was possible.

18. In **Gamini Bala Koteswara Rao vs. State of Andra Pradesh, (2009) 10 SCC 636**, it was observed that interference in an appeal against acquittal should be rare and in an exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusion arrived at by Court below. However, it is limited to those cases where the judgment of Court below was perverse. The Court further went to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another view is plausible, the Appellant Court will not be justified in interfering with the verdict of acquittal.

19. Having heard the learned counsel for appellant, the learned A.G.A. for State-opposite party 1 and upon evaluation of the impugned judgment including the reasons recorded therein, in the light of depositions

of 03 prosecution witnesses of fact i.e. PW-1, PW-2 and PW-7 and keeping in mind the limitations with a Court of appeal dealing with a judgment of acquittal, this Court finds that the following questions arise for consideration in present appeal:-

(i). Whether conclusion drawn by Court below that prosecution has failed to prove that deceased sustained any firearm injury, is legally sustainable.

(ii). Whether reasons recorded by Court below in support of its conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt are cogent and valid reasons or illusory being against the weight of evidence on record, therefore, illegal and perverse.

Question No. 1

(i). Whether conclusion drawn by Court below that prosecution has failed to prove that deceased sustained any firearm injury, is legally sustainable.

20. Autopsy Surgeon Dr. Ikrar Ahmad conducted post mortem of the body of deceased Savitri and has testified as PW-5. This witness found following ante mortem injuries on the body of deceased:-

(i) A lacerated wound measuring 4.5 cm x 2cm skull deep behind left ear. The margins of this wound were irregular. There was no abraded colour around this wound. There was no blackening or tattooing. An underlying bone inside this wound was found fractured.

(ii) A swelling measuring 6cm x 3cm on left side of lower jaw and chin. Lower jaw below this injury was found fractured.

21. PW-5 Dr. Ikrar Ahmad in his cross-examination has clearly stated that no

bullet or pellet was found in injury no. 1. There was no blackening or tattooing either. In his opinion, injury no. 1 was neither a bullet injury nor it could have been caused by a pellet. In his opinion, this injury could not have been caused even if injury no. 1 has been caused first by a firearm followed by the blow of stick over it. If some person accidentally falls on hard surface and his head struck with a hard object, in that eventuality, injury no. 1 can be caused. Injury no. 1 cannot even be caused by the friction of bullet. There was no injury of entry or exit wound of firearm on the body of deceased. Testimony of this autopsy surgeon is categorical and clear that no firearm injury was found on the body of deceased. Moreover, injury no. 1 which is a lacerated wound and found on the skull of deceased, was not having any blackening or tattooing as there is no entry wound and corresponding exit wound on the skull of deceased. No bullet or pellet was found inside the skull of deceased. Therefore, in this background, said injury is neither a bullet injury nor a firearm injury. A careful analysis of the evidence of this witness makes it abundantly clear that deceased was not having any ante mortem firearm injury on her body. In our opinion, the prosecution has miserably failed to prove that deceased had sustained any firearm injury. Court below has discussed in detail regarding this aspect of alleged firearm injury in Para-25 of the impugned judgment (pages 13 and 15 of the paper book). It has rightly come to the conclusion that prosecution has failed to prove that deceased Savitri sustained any firearm injury, raising serious question mark on the prosecution story and thus, has rightly found prosecution story to be a suspicious one. **Question No. 1 is accordingly answered in the affirmative.**

Question No. 2

(ii). Whether reasons recorded by Court below in support of its conclusion that prosecution has failed to establish guilt of accused beyond reasonable doubt or cogent and valid reasons or illusionary and against the weight of evidence on record, therefore, illegal and perverse.

22. Court below upon evaluation of prosecution witnesses of fact, finally came to the conclusion that serious contradictions have emerged in the testimonies of prosecution witnesses. The prosecution witnesses have not presented concrete and consistent evidence to support the prosecution narrative beyond reasonable doubt. The witnesses of fact have given different evidence regarding incident at every stage. There is no consistency in their testimonies rendering the prosecution narrative suspicious. The evidence presented by prosecution does not prove that accused Chander, Kanhaiya and Manveer murdered Savitri Devi in furtherance of their common intention. The prosecution has also not been able to prove that illegal country made pistol and cartridge were recovered from accused Chander, as a result, Court below acquitted the accused opposite parties.

23. So far as the veracity of above reasons recorded by Court below to conclude that the guilt of accused does not stand established beyond reasonable doubt also cannot be said to be illegal or perverse. The findings/reasons returned by Court below in support of above conclusion are based upon due evaluation of the allegations made in first information report in the light of evidence on record. Court below has assigned specific reasons for coming to the conclusion that no offence

under any of the charging Section is made out against accused. Upon examination by us of the said findings in the light of depositions of the prosecution witnesses as noted in the impugned judgment, we could not come across any such fact on the basis of which, any of the findings qua the charging sections can be said to be illegal, perverse or erroneous. Infact the prosecution itself could not prove the fact that deceased sustained any firearm injury by it's own evidence. **As such, the conclusion drawn by Court below that no criminality as alleged to have been committed by the accused-opposite parties 2 to 4 is borne out from the record is neither illegal nor perverse.**

24. Out of abundant caution, we are examining the depositions of informant Satyapal PW-1, Jabar Singh PW-2 and Sunita PW-7. The informant Satyapal and Jabar Singh are real brothers and sons of deceased Savitri. Sunita is wife of informant Satyapal and daughter-in-law of deceased Savitri.

25. Informant- appellant Satyapal lodged the FIR by submitting a written report (Ext. Ka-1) at Police Station Gunnaur, District Sambhal. The incident is said to have taken place on 01.08.2015 and the timing of incident as reported in written report is 10:00 am. FIR was lodged within an hour of the incident i.e. by 11:00 am on 01.08.2015.

26. As per FIR, accused Chander, Kanhaiya and Manveer were quarrelling with informant's brother Jabar Singh. Informant, his mother Savitri and his wife Sunita arrived at the spot after hearing the noise and informant's mother Savitri when tried to intervene, at that time, accused Kanhaiya shot at his mother on her head. In

the FIR, no role other than quarrelling has been assigned to accused Channder and Manveer. No weapon whatsoever has been assigned to both of these accused. A clear and categorical case has been put forward in the FIR that accused Kanhaiya shot at Smt. Savitri on her head with a .315 Bore country made pistol.

27. Informant- appellant Satyapal in his statement recorded under Section 161 Cr.P.C. has clearly stated that accused Kanhaiya shot at his mother on her head with .315 Bore country made pistol but he did not state anything regarding accused Chander or Manveer that these two accused had also inflicted any injury on the deceased with the help of an iron rod or stick. Similar were the statements of PW-2 and PW-7 during course of investigation.

28. Therefore, from the very beginning, the prosecution brought out a specific story wherein it has been specifically alleged that accused Kanhaiya shot at Savitri on her head with .315 Bore country made pistol and she died on account of gunshot injury. This story continued even while narrating opinion of inquest witnesses and thereafter in the statement recorded under Section 161 Cr.P.C. of the witnesses of fact during course of investigation by the Investigating Officer.

29. Oral and documentary medical evidence has belied this prosecution version of the incident as narrated in FIR and continued during investigation as no firearm injury was found on the body of deceased Savitri.

30. However, after post mortem report was prepared, it became abundantly clear that no gunshot injury was found on the

body of deceased, therefore, prosecution witnesses who are sons and daughter-in-law of deceased developed a new story wherein it has been alleged that accused Kanhaiya caused through and through gunshot injury by a .315 Bore country made pistol and simultaneously accused Chander stuck deceased with an iron rod and accused Manveer struck her with a stick.

31. During trial, PW-1 Satyapal in his examination-in-chief has stated that accused Chander hit his mother on her head with an iron rod and accused Manveer also hit her with a stick. On the instigation of accused Manveer and Chander, Kanhaiya fired a shot from a .315 Bore country made pistol and the bullet hit his mother on the left side of her head and went out. In his cross-examination he stated that bullet immediately went out after hitting and iron rod was struck on firearm injury.

32. Jabar Singh PW-2 in his examination-in-chief has stated that accused Kanhaiya fired a shot by his country made pistol at his mother Savitri and accused Chander hit her with an iron rod.

33. Sunita PW-7 in her examination-in-chief has stated that accused Chander hit her mother-in-law with an iron rod and accused Kanhaiya fired from a country made pistol. Accused Manveer also attacked with a stick.

34. As per depositions of PW-1, PW-2 and PW-7, the bullet fired from a country made pistol passed through head of deceased Savitri after it struck her. At this juncture, it is very important to observe that informant PW-1 Satyapal was a witness of inquest and in the inquest report (Ext. Ka-

2), all the witnesses of inquest have stated that Savitri Devi died on account of a gunshot injury.

35. The very prosecution story that the deceased sustained gunshot injury even if it is presumed to be a through and through gunshot injury is completely falsified by the medical evidence available on record. The prosecution has miserably failed to prove that deceased suffered any firearm injury.

36. Moreover, the prosecution witnesses of fact PW-1, PW-2 and PW-7 have not only deviated from the basic prosecution story as unfolded in the FIR and have tried to create a different story by alleging specific role of accused Chander and Manveer in the occurrence and tried to explain that the injury of lacerated wound found on skull of deceased by stating that deceased was also struck with an iron rod after being hit by a bullet. This new narrative which has been placed on record only during the course of trial is a clear deviation from the basic prosecution story as unfolded in FIR. We may point out that though the FIR is not an encyclopedia of the prosecution case, but it does disclose the basic prosecution case. (**Vide Manoj and others Vs. State of Maharashtra, (1999) 4, SCC 268, Subhash Kumar and others Vs. State of Uttrakhand, (2009) 6 SCC 641 and Achhar Singh Vs. State of H.P. (2021) 5 SCC 543**). The witnesses have themselves departed from the basic prosecution case as unfolded in the FIR for which no plausible explanation has come forward.

37. PW-2 and PW-7 in their cross examination have stated that they have also sustained injuries during the incident. However, no such narrative was either

made in FIR nor was it mentioned by these witnesses in their statements recorded under Section 161 Cr.P.C. whereas informant- appellant Satyapal PW-1 has clearly stated that no other person other than his mother got injured in the incident. Thus, it is apparently clear that there are serious contradictions in the depositions of PW-1, PW-2 and PW-7 qua the occurrence.

38. PW-2 Jabar Singh has alleged the role of accused Kanhaiya and Chander only and has not alleged any role of accused Manveer. PW-2 has not stated anything whether accused Manveer also attacked or not and what weapon, if any, was used by accused Manveer in the incident.

39. As per prosecution story, PW-1, PW-2 and PW-7 are alleged to be eye witnesses. Mother of PW-1 and PW-2 is alleged to have sustained injuries in their presence. As per prosecution story both these witnesses stood mute spectators while their elderly mother was being attacked by accused. In this background when they have allegedly witnessed the incident as a mute spectators, the version put forth in the written report (Ext. Ka-1) as well as inquest report that only accused Kanhaiya shot at their mother and caused firearm injury on her head, did not find support from the post mortem report then these witnesses developed a new story of assault upon their mother by accused Chander and Manveer with an iron rod and stick, while still maintaining that their mother was also shot and had received through and through gunshot injury. PW-1, PW-2 and PW-7 have tried to modulate and improve their versions while deposing on oath. Their testimonies are full of embellishments and contradictions. Belated introduction of accused Chander and Manveer by alleging their active participation in crime in

question with an iron rod and stick and thereby causing injuries with these new weapons of offence to deceased Savitri, appears to be a clear manipulation, devised to implicate the accused- opposite parties 3 and 4. Apex Court in **Govind Mandavi vs. State of Chhattishgarh, 2025 INSC 1399**, found vital omission in First Information Report (as in present case) and held that such an omission completely impeaches the credibility of the prosecution case. Moreover, the medical evidence belies the basic prosecution story that the deceased sustained gunshot injury. Therefore, prima facie, presence of PW-1, PW-2 and PW-7 on the spot at the time of incident also seems to be doubtful and their depositions lacks consistency credibility and reliability.

40. Moreover, as per prosecution story, it was accused Kanhaiya who had shot at deceased Savitri but surprisingly the alleged illegal country made pistol has been recovered on the pointing of accused Chander. No independent witness of recovery has been produced by the prosecution. Even iron rod allegedly used in the incident and allegedly recovered at the pointing of accused Chander was not produced before Court, therefore, the alleged recovery also seems to be a suspicious one.

41. We are, therefore, of the opinion that reasons recorded by Court below in respect of it's conclusion that prosecution has failed to establish the guilt of accused beyond reasonable doubt are cogent and valid reasons. The same are not illusionary but logically drawn upon the appreciation of the evidence on record. **Question No. 2 is also answered accordingly.**

42. In view of the discussion made above, we do not find any illegality or

perversity in the impugned judgment so as to interfere with the findings returned by Court below. The conclusion drawn by Court below is the outcome of artificial appreciation of the evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment i.e. Court below has either ignored any vital evidence or misconstrued any material evidence. However, we could not gather any new fact from the record nor could we find that Court below has misconstrued any evidence on record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record. We, therefore, do not find any good ground to entertain the present appeal filed under Section 413 BNSS, which consequently fails and is, accordingly **dismissed**.

(2025) 12 ILRA 414

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 18.12.2025

BEFORE

**THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.**

Criminal Appeal No. 1071 of 1987

Lala & Anr.		...Appellant
	Versus	
State of U.P.		...Respondents

Issue for consideration

Validity of judgment of conviction and sentence under Sections 147, 302/149 Indian Penal Code, 1860.

Headnotes

Alleged incident occurred in the dark hours of night-away from abadi of the village and its populated area-no source of light, except for the moonlight-deceased sustained ten ante-mortem injuries -in the opinion of the doctor, the cause of death was coma as a result of head injury.- highly unnatural and improbable that it would take about an hour or so for the eleven assailants to beat the deceased and cause only ten injuries-prosecution has utterly failed to prove its case beyond reasonable doubt-Trial Judge has not appreciated the evidence on record in the right perspective and reached a wrong conclusion.

Appeal allowed. (E-9)

Case Law Cited

1. Podda Narayana v. State of A.P., AIR 1975 SC 1252
2. Hem Raj v. State of Haryana 2005 (10) SCC 614

List of Acts

Indian Penal Code

List of Keywords

Blind murder, prosecution has utterly failed, unexplained omission to examine the independent witness.

Appearances of parties

Counsel for Appellant(s) : G.S. Tiwari Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. Both these criminal appeals have arisen from a common judgment of conviction and sentence passed by the Court of the 5th Additional Sessions Judge, Allahabad in Sessions Trial No. 540 of 1985 (State Vs. Udai Narain and others), under Sections 147, 302/149 Indian Penal Code, 1860 ('IPC', for short), Police Station Soraon, District Allahabad. As both these appeals have been filed against a common judgment and order, the same are being decided by a common judgment.

2. Criminal Appeal No. 1071 of 1987 has been filed by appellants Lala s/o Jhurai and Amrit Lal s/o Shyam Lal, both residents of Village Bhadri, P.S. Soraon, Allahabad, whereas Criminal Appeal No. 1069 of 1987 has been preferred by appellants Uadi Narain s/o Mahadev, Dayaram s/o Jagannath, Jai Ram s/o Mahadev, Ram Awadh s/o Baij Nath, Maharani Deen s/o Lala, Harish Chandra and Kallu both s/o Ram Sewak, Hari s/o Gurai, Ram Sunder @ Bhola Pradhan s/o Punni, all residents of Village Bhadri, P.S. Soraon Allahabad. By the judgment and order impugned passed by the learned Trial Court, all the appellants have been convicted for the offence punishable under Section 147 IPC and sentenced to undergo one year's rigorous imprisonment and imprisonment for life for offence punishable under Section 302 read with 149 IPC. It was further directed by the Trial Court that all the sentences shall run concurrently.

3. During the pendency of both these appeals, appellant no.1 Lala in Criminal Appeal No. 1071 of 1987 has died and the appeal against him, therefore, abated. The abatement was recorded vide order dated 03.11.2025. In Criminal Appeal No. 1069 of 1987, appellant no.1 Udai Narain, appellant no. 2, Dayaram, appellant no.3, Jai Ram, appellant no.4, Ram Awadh, appellant no.5, Maharani Deen, appellant no.8 Hari and appellant no.9, Ram Sunder @ Bhola Pradhan have died and the above appeal against them has been abated vide order dated 03.11.2025.

4. Now Criminal Appeal No. 1071 of 1987 survives to be heard on behalf of appellant no.2 Amrit Lal alone and Criminal Appeal No. 1069 of 1987 on behalf of appellant no. 6 Harish Chandra and appellant no.7 Kallu.

5. Brief facts of the prosecution case are that informant Ram Kishor s/o Bhagirathi, resident of Bhadri, Police Station Soraon, District Allahabad, filed a written information (Tehrir) (Ext. Ka-1) before the In-charge, Police Station Soraon on 08.07.1982, saying that he was a labourer. His brother Ram Dulare used to guard the crop of bhata (brinjal) sown near the south-west bank of the canal located in village Bhadri. Today also, he went there to guard the crop. At about 01:00 a.m. in the wee hours, the informant's uncle Pancham came over to him and told him that near the (railway) station, some people were beating Ram Dulare and threatening him to work for them, instead of working for the assailants' opponents. Thereupon, he along with, his uncle Pancham and Nanku (cousin) reached the vicinity of the railway station and heard some noise that was coming from the west of the railway line. They reached there and saw that Udai Narain s/o Mahadev, Dayaram s/o Jaggu, Jai Ram s/o Mahadev, Ram Awadh s/o Baij Nath, Lala Ram s/o Jhurai, Maharani Deen s/o Lala, Harish Chandra s/o Ram Awadh, Kallu s/o Ram Sewak, Hari s/o Gurai, Amrit Lal s/o Shyam Lal and Ram Sunder Pradhan @ Bhola s/o Punni were battering Ram Dulare, kicking and punching him, besides thrashing him with sticks (danda) in Ram Awadh's agricultural field. The informant and his uncle touched the assailants' feet and imploringly asked them why they were beating the poor man so much. Jairam said that since he works as a labourer for their opponents but not for them, they would insert lathi in his rectum. Then Amrit Lal pulled him down and Udai @ Udai Narain inserted a lathi in his rectum. The informant's brother died in agony at the spot. During the occurrence, a number of persons from the village reached there, who also requested the appellants not

to beat Ram Dulare. The appellants left the scene of crime upon seeing the informant's brother dead and threatening him that if he lodged a first information with the Police, he too would be killed.

6. On the basis of the said written information, an FIR, giving rise to Case Crime No. 109 of 1982, under Section 302 IPC, was registered at Police Station Soraon on 08.07.1982 at 06:05 a.m. against all the eleven accused and investigation commenced. The Investigating Officer reached the place of occurrence and collected blood stained dhoti from the deceased's body and prepared a recovery memo (Ext. Ka-11). The inquest report (Ext. Ka-2) relating to the deceased was prepared along with connected papers. Thereafter, the dead body was sent for autopsy. In the post-mortem report, ten ante-mortem injuries were found over the body of the deceased and in the doctor's opinion, the cause of death was coma, as a result of head injury.

7. The Investigating Officer recorded the statements of the informant and other witnesses, inspected the place of occurrence and prepared its site plan (Ext. Ka-12), and after concluding the investigation, filed charge-sheet (Ext. Ka-13) against all the eleven accused under Sections 147, 148 and 302 IPC before the Magistrate.

8. The learned Magistrate took cognizance of the offence and summoned all the accused. All the accused appeared before the learned Magistrate and were furnished copies of the relevant prosecution papers under Section 207 of the Criminal Procedure Code (for short 'Cr.P.C.') Thereafter, the case was committed for trial to the Court of Sessions by the learned

Magistrate. In the Court of Sessions, all the accused appeared. The court framed charges under Sections 147, 302 read with Section 149 IPC against the accused, who denied the said charge, pleaded not guilty and claimed to be tried.

9. The prosecution has examined four witnesses to prove its case. They are P.W.1, Ram Kishor (the informant and eye-witness), P.W.2 Pancham (eye-witness), P.W.3 Dr. A.K. Nigam (Medical Officer, who conducted the post-mortem examination) and P.W.4 S.I. Arjun Singh (Investigating Officer). Their testimony, in brief, is enumerated hereunder.

10. P.W.1 Ram Kishor is the informant and an eye-witness of the incident. He, in his examination-in-chief, has stated that about four and a half years ago, he was at his home. At about 01:30 in the night, his uncle Pancham came to him and said that some men from the village are beating Ram Dulare on the western side of the station. Ram Dulare was his real brother, so he, along with Pancham and Nanku, went to the station and heard some noise coming from the west. When they reached the spot, they saw that Ram Dulare was being beaten in Ram Awadh's field of bottle gourd by accused Udai Narain, Jai Ram, Daya Ram, Ram Sundar @ Bhola, Harish Chandra, Ram Awadh, Kallu Ram, Lala, Maharani Deen, Hari and Amrit Lal. All the accused were residents of his village. Therefore, he knows them from before. Udai Narain, Jai Ram, Bhola @ Ram Sunder and Daya Ram were beating Ram Dulare with lathi, whereas the rest of the accused were subjecting him to fisticuffs and kicks. It was moonlight. The accused Jai Ram said that Ram Dulare was working for his opponent (Bhayia Lal) and not for him and pushed him, abusing. Ram

Dulare was pushed in a drain situate in the western direction. The informant and others beseeched Jai Ram to spare him, whereupon Jai Ram asked his associates to force a lathi into his anus and kill him. Thereupon, the assailants forced a stick (danda) into his rectum. He died there. Some residents of the village Kripa Shankar, Devki Nandan, Ram Dhan, Ram Sukh and others also arrived and asked the accused to desist, but they did not pay heed. After Ram Dulare died, they fled the spot, leaving the dead body and held out threats that if the informant went to the police station, he too would be killed. Thereafter, the informant carried Ram Dulare to the Police Station on a cot, purchased a piece of paper on the way and wrote out a report. He reached the police station with the dead body and lodged the report. He received a copy of the report and proved the written information (tahrir) as Ext. Ka-1. He has also said that the deceased was farming a crop sharing basis (batai) for Bhaiyalal @ Bhaiya Ram using his field, where brinjal (bhanta) crop was sown.

11. In his cross-examination, P.W.1 has said that about 20-25 persons accompanied him up to the road with the dead body. About 6-7 persons saw the incident. He received the information about the maar-peat at 01:00 a.m and reached the place of occurrence with others at 01:30 a.m. He reached there from the road along with Nanku, Pancham and Chinau. The above route is long and there is another route up to the place of occurrence, which is short in distance and passes through Chamrauti. The other villagers went from the shortest route and reached there before him. P.W.1 reached there empty handed, though he knew that his brother was being beaten. The villagers themselves reached

there and he did not ask them to accompany him. From the railway line, he saw four persons beating Ram Dulare with lathis and rest punching and kicking him. He reached there and requested them not to assault Ram Dulare, but they still continued beating him for about half an hour. Amrit Lal did not put the deceased down. About three inches lathi was thrust in his rectum. As a result, blood oozed out and dropped in the field. Blood was oozing out of Ram Dulare's nose. He put his thumb impression upon Ext. Ka-1 at the police station and at the same time the above application was written. He purchased the paper at the Soraon roundabout. He has also said that the application (tahrir) was written prior to reaching at the Police Station, as he was taking the dead body there. Therefore, he had written in the report that 'he has brought the dead body to the police station'. Chinau son of Ram Nath was not present at the place of occurrence. He did not tell the Investigating Officer that he runs a private canteen in IFFCO.

12. P.W.2 Pancham is said to be an eye-witness, who has stated that he is illiterate and on the date of incident, he was returning home after blocking the flow of water while irrigating his paddy crop. A person met him near the station and told him that Ram Dulare was being beaten by some people. He ran to the informant's home and told him that Ram Dulare was being beaten near the station. Then, Nanku and Chhinu were woken up and all of them reached Ram Awadh's field. They saw that all the eleven accused were beating Ram Dulare. Jai Ram, Udai @ Udai, Daya Ram and Bhola were armed with lathi, which they were employing to batter, Ram Dulare whereas rest of the accused were treating him to fisticuffs and kicks. They beseeched the assailants not to

do so, but Jai Ram said that he (the victim) works for the opponents and exhorted others to beat him and drive a stick (lathi) up his anus. Ram Dulare fainted. Then accused Udai @ Udai drove a lathi up his anus. As a result he died. The above incident occurred at about 01:00 or 01:30 in the night. The appellants fled the spot, threatening the witnesses with dire consequences, if they reported the incident to the police station etc. It was a moonlit night. They identified appellants, who belonged to their own village. Thereafter, they carried the cadaver to the police station on a cot and on way, near the Soraon intersection, purchased a piece of paper and wrote out the first information (tahrir) and gave it to the Police at the station where the FIR was lodged. He has also stated that the inquest report was prepared by the Sub-Inspector, which he has proved as Ext. Ka-2.

13. In his cross-examination, P.W.2 has stated that he does not know the person who gave him information that Ram Dulare was being beaten. The inquest report was read over to him by the Investigating Officer and then, he appended his signature to it. He did not tell the Investigating Officer that the deceased was brought to the station, where the application was written in the light and then came to the police station to lodge the FIR. There were 8 to 10 persons, who gathered at the spot. There were injuries over the entire body caused by the lathi blows and blood was oozing out from the rectum. About 8-10 fingers deep, the lathi was inserted in the deceased's rectum, in consequence whereof fecal matter came out and blood was already oozing out, which fell on the ground.

14. P.W.3, Dr. A.K. Nigam, has conducted autopsy on the deceased Ram Dulare on 09.07.1982. He has stated that on

09.07.1982, while posted as Medical Officer at the Moti Lal Nehru Hospital, Allahabad, the dead body of Ram Dulare was brought to him for post-mortem examination at 03:30 p.m. by Constables Raj Mangal and Buddhan Khan, both posted at Police Station Soraon. He has stated that the deceased had died about one and a half day ago. The deceased was of strongly built. Rigor mortis had passed through the upper limb of the body but present in lower limbs. He found following ante-mortem injuries on the corpse:

(i) *Contusion of the size of 2 cm x 0.5 cm on the forehead at the left side 1 cm x 0.5 cm above the left eyebrow.*

(ii) *Traumatic swelling of the size of 4 cm x 3 cm on the left parieto occipital region, posterior part 3.50 cm from the top of the left ear with contusion 1 cm x 3/4 cm in the central of swelling.*

(iii) *Contusion 5 cm x 2.5 cm on the left side of chest 2 cm lateral to the nipple.*

(iv) *Contusion 10 cm x 3/4 of the abdomen of the left side lower part extending from pubic region 1 cm above the anterior superior iliac spine.*

(v) *Contusion 6 cm x 1.5 cm on the right upper arm middle part back.*

(vi) *Lacerated wound 0.5 cm x 0.5 cm x muscle deep on the left leg middle part inner side.*

(vii) *Multiple contusion on the back in an area of 15 cm x 12 cm.*

(viii) *Contusion on the back of the hip and posterior part of the right thigh.*

(ix) *Contusion on the back of the left thigh and hip.*

(x) *Contusion 1 cm x 0.5 cm on the inner part of the right hip.*

15. It was found that the parietal bone was fractured and there was hematoma

under the occipital bone. The brain was congested. The stomach had partially digested food material and was full. Small intestine was empty and large intestine was half full. The cause of death was coma due to head injury. He has proved the post-mortem report as Ext. Ka-3 and stated that the above injuries could have been caused by lathi and danda. The death could have occurred on 08.07.1982 at 01:00 in the night. Injury nos. 8, 9 and 10 could be or could not be caused due to something being inserted in the rectum. He handed over deceased's dhoti and underwear to the constable after post-mortem, which he proved as Exts. 1 and 2. He has stated that there may be a variation of six hours regarding the time of death on either side. Injury nos. 8, 9 and 10 are not on the rectum. Rectum was normal and there was no internal injury to the stomach. There were no sign of escape of blood from the nose and rectum.

16. P.W.4 S.O. Arjun Singh, is the Investigating Officer of the case, who has stated that the FIR was lodged in his presence. The informant had brought the dead body along with him to the police station. Upon a written application of the informant, the Head Constable Ram Charan Singh scribed the check FIR. He further stated that he is familiar with his handwriting and signature and the witness has proved the check FIR as Ext. Ka-4. He has further stated that his signatures are on Ext. Ka-4. He has also stated that the Head Moharrir Ram Charan Singh entered gist of the FIR in G.D. No. 5 at 06.05 a.m., a copy whereof has been proved as Ext. Ka-5. The Investigating Officer has stated that on the basis of FIR, he commenced the investigation. The inquest report of the deceased was prepared along with connected papers. He has proved the

inquest report as Ext. Ka-2. He has also stated that he collected blood stained dhoti of the deceased and prepared its recovery memo, which is proved as Ext. Ka-11. He has proved the dhoti as material Ext.-1. He inspected the place of occurrence and prepared its site-plan, which he has proved as Ext. Ka-12. Thereafter, he recorded the statements of the informant and other witnesses. After concluding the investigation, he filed a charge-sheet in the competent court, which is proved as Ext. Ka-15. He has also stated that it is written in the inquest report that villagers were committing maar-peeet and shouting chor-chor, whereby the death had occurred.

17. The prosecution have produced the following documentary evidence in support of their case namely, Written application (Ext. Ka-1), Inquest Report (Ext. Ka-2), Post-mortem Report (Ext. Ka-3), First Information Report (Ext. Ka- 4), G.D. (Ext. Ka-5), Photo-nash (Ext. Ka-6), Challan-nash (Ext. Ka-7), Sample Seal (Ext. Ka.-8), Letter to C.M.O. (Ext. Ka-9), Letter to R.I. (Ext. Ka-10), Recovery Memo of blood stained Dhoti (Ext. Ka-11), Site Plan Index (Ext. Ka-12) and Charge-sheet (Ext. Ka-13).

18. After conclusion of the prosecution evidence, the statement of accused 313 Cr.P.C. was recorded, in which they denied the prosecution case and said that the witnesses have deposed against them due to enmity. Accused Amrit Lal, Kallu and Harish Chandra have stated that the deceased was killed by someone else while committing theft somewhere, but under the pressure of Ranjeet and Vijay Bahadur and in connivance with the Police, they have been falsely implicated in this case. The appellants have not produced evidence in their defence.

19. After hearing both the parties and examining the evidence on record, the learned trial court found that the prosecution has been able to prove its case beyond reasonable doubt and the appellants were held guilty, convicted and sentenced. The learned Trial Judge observed that the entries in the inquest report regarding information that the informant's brother Ram Dulare was killed by the villagers upon suspicion of being a thief is hearsay and inadmissible in evidence. The learned Trial Court also observed that the doctor, who carried out the autopsy and wrote the post-mortem examination report, has concealed injuries over the rectum and this negligence of the doctor would not give any benefit to the defence. It was also observed that if direct evidence is cogent and reliable, then hyper-technical medical evidence would have no bearing on the prosecution case. It was also observed that enmity is a double-edged weapon, which could cause an offence to be committed, and on the other hand, a person could be falsely implicated in a case. After so observing, the learned Trial Court convicted and sentenced the appellants.

20. Aggrieved by the judgment of the learned Trial Court, the appellants have preferred this appeal.

21. We have heard Mr. P.K. Singh along with Mr. Manoj Kumar Patel and Mr. Divyanshu Nandan Tripathi, learned Counsel appearing on behalf of appellant no.2 in Criminal Appeal No. 1071 of 1987 and on behalf of appellant nos. 6 and 7 in Criminal Appeal No. 1069 of 1987. Mr. Ghan Shayam Kumar, learned AGA-I has been heard on behalf of the State in both the appeals.

22. It is submitted on behalf of the appellants that the alleged incident

occurred at odd hours. It was a blind murder and nobody had seen the occurrence. It is also submitted that the presence of alleged eye-witnesses on the spot is highly doubtful. The witnesses examined in Court are relatives of the deceased and interested witnesses. Their testimony, therefore, is not trustworthy and reliable.

23. It is next submitted by learned counsel for the appellants that the FIR has been lodged belatedly after about six hours and there is no explanation for all the delay in lodging the FIR. It is further submitted that allegedly, the surviving appellants were present on the spot and there are general allegations against them. According to the prosecution, they were not carrying any weapons and thus, were not part of unlawful assembly. They had no common object to murder the deceased. The incident occurred far away from the outskirts of the village. There was no source of light.

24. It is also submitted that in rural areas, generally, people gather at a place where some dispute occurs, just to watch it, and merely by standing at the place of occurrence, they cannot be considered as member of the unlawful assembly.

25. Learned AGA appearing on behalf of the State has submitted that the appellants are named in the FIR. The FIR was prompt and there was no delay in lodging it. All the appellants formed an unlawful assembly. Some of the appellants were armed with lathi and all of them, in furtherance of their common object, battered the deceased, as a result whereof, he died on the spot.

26. It is also submitted that ocular testimony is supported by the medical

evidence. Merely because witnesses are relatives does not ipso facto become a ground to reject their testimony. There are no major inconsistencies in evidence and other connected circumstances to raise doubt about the worth of their testimony. The prosecution has proved its case beyond reasonable doubt and the Court has rightly convicted the appellants. Therefore, both these appeals have no force and are liable to be dismissed.

27. In a criminal trial, the burden of proof always lies upon the prosecution to prove its case beyond reasonable doubt. As per the prosecution story, the alleged incident occurred in the dark hours of night, away from abadi of the village and its populated area. There was no source of light, except for the moonlight. According to the post-mortem report, the deceased sustained ten ante-mortem injuries of the nature of contusions and lacerated wounds over different parts of the body, and there were fractures over the parietal and occipital bone; hematoma was present under the occipital bone. In the opinion of the doctor, the cause of death was coma as a result of head injury. The autopsy was done on 09.07.1982 at 3:30 p.m. In the opinion of the doctor, death had occurred about one and a half day ago. The above period shows that the death might have occurred some time in the night of 08.07.1982. Looking into the injuries of the deceased, it is clear that this is not a case of natural death, but murder. Now, we have to see whether it was the appellants, who committed the murder of the deceased as alleged by the prosecution.

28. The prosecution has examined two witnesses of fact to prove the incident. They are P.W.1 Ram Kishor and P.W.2 Pancham. P.W.1 Ram Kishor is the real

brother of the deceased and P.W.2 Pancham, his uncle. Therefore, both these witnesses are relatives of the deceased and thus, they are interested witnesses. But, merely being relative witnesses does not render their testimony unreliable and what is required is that evidence of such witnesses be examined very carefully in the light of other evidence on record.

29. Upon a perusal of the testimony of both these witnesses as well as the manner in which they say the incident had happened, their presence at the spot, is highly doubtful. According to the prosecution, P.W.2 Pancham was in his field, irrigating the paddy crop and he was there till after midnight, when a person met him near railway station and told him that the deceased Ram Dulare was being beaten by some men. The prosecution has not disclosed the identity of the person who gave this information to Pancham. P.W. 2 Pancham has also stated that he does not know the person, who gave him the information. It is very unlikely that some unknown person would pass on such information to a stranger like Pancham, expecting that it would reach the relevant person. If that unknown person knew that the informant was the deceased's brother then he would have passed on this information to the informant himself. Thus, the very first source of such information is highly doubtful.

30. Moreover, according to P.W.2 Pancham, after receiving the information, he came running to Kishor's house and passed on to him the information that Ram Dulare was being beaten on the west side of the railway station. Thereafter, Nanku and Chhinu were awakened. All of them reached Ram Awadh's field and saw all the appellants present there. P.W.1 Ram

Kishore has stated that his uncle Pancham told him that Ram Dulare was being beaten by some men from the village towards the western side of the railway station, in the field of Ram Awadh, where a crop of bottlegourd was sown. Therefore, he along with Pancham, Chhinau, and Nanku went there and saw the appellants battering the deceased.

31. It has come in evidence of P.W. 1 that on that particular night at about 01:00, he received information that his brother was being beaten and at about 1:30 a.m., i.e. after half an hour he proceeded to the place of occurrence. He has stated that from railway line, he saw that four persons were beating him with sticks (lathi) and the rest were resorting to fisticuffs and kicks. He then reached the place of occurrence and saw the appellants still beating the deceased. He has also stated that he requested the appellants not to beat the deceased, but they kept on the violence for half an hour. Some villagers too were also present there. They also requested the appellants not to beat Ram Dulare. Therefore, as per P.W.1 Ram Kishor, the above episode of assault by the appellants continued for about an hour. In view of the testimony of P.W.1 and P.W.2, it is made out that the deceased was being battered, which led a stranger to give this information to Pancham, who was returning from his paddy field, and he, in turn, apprised the informant about it. Upon receipt of this information, the informant and Pancham collected some persons from the village and, thereafter, reached the place of occurrence, which was away from the populated area of the village, in a field of Ram Awadh near the railway line. All this must have taken a considerable time.

32. In view of the above evidence, it is highly unnatural and improbable that it would take about an hour or so for the eleven assailants to beat the deceased Ram Dulare and cause only ten injuries. If the accused appellants had a common object to kill the deceased, they would not have taken about an hour to accomplish the evil deed. As per the post-mortem report, the deceased had received ten injuries, and according to prosecution, out of the eleven assailants, three were carrying sticks (lathi). Normally, it would not have taken more than five to ten minutes for the 11 assailants to commit this crime. It is highly unnatural that the appellants would keep on beating the deceased up to a considerable time so that people may reach the spot and identify them. Thus, the manner and duration, up to which the alleged incident is stated to have happened, is highly unlikely.

33. There is one more aspect which raises serious doubt about the presence of informant and Pancham, the two witnesses of fact, examined by the prosecution, at the place of occurrence. It has come in evidence of P.W.1 Ram Kishor and P.W.2 Pancham that after receiving the information, they left home for the place of occurrence empty handed. This conduct of the witnesses is very unnatural. After receipt of information that Ram Dulare was being beaten by a group of men, the normal conduct of the informant and his uncle Pancham would have been to pick up a danda or lathi, or any other kind of weapon in hand before leaving for the scene of crime to save the deceased. This conduct of both these witnesses going empty handed to the place of occurrence raises serious doubt whether they, in fact, reached there, and latter part of the incident happened before their eyes.

34. It is also noteworthy to mention that according to the prosecution, the three appellants were carrying lathi and there was no other weapon with them. In such a situation, the conduct of P.W.1 and P.W.2 in not trying to save the deceased and let him be done to death before their eyes is also not reasonable and natural conduct. If the appellants had any dangerous weapon on them like firearms, it could have been understandable for them not to come forward to save the deceased but, lathi were not such a weapon as to deter a person from saving his close relative, like a real brother or nephew.

35. Further, P.W.1 stated that it was after receiving the news that the informant and his uncle Pancham along with Nanku and Chhinau left their house for the spot taking a longer route by road, whereas the other villagers reached there prior to them via the Chamrauti which is shortest route to the place of occurrence. This conduct of the informant is also unnatural. After receiving such startling news, a man of ordinary prudence (P.W.1) should have proceeded via the shortest route to save his brother, rather than take a longer route, and, also, go there empty handed. Therefore, going empty handed via a longer route, without any reasonable explanation, raises suspicion about the presence of the informant and his uncle Pancham at the spot, at the time of occurrence.

36. Besides this, there are major contradictions in ocular and medical evidence. According to P.W.1 Ram Kishor and P.W.2 Pancham, the deceased was beaten up by all the appellants, who treated him to fisticuss, lathi blows and kicks at the instigation of the appellants Jai Ram. The appellant Amrit Lal pulled the deceased down, whereas Udai @ Udai Narain

thrustured his lathi in the deceased's anus, on account of which, he died on the spot. P.W.1 Ram Kishor has said that the appellant Jai Ram exhorted on to drive a lathi in the deceased's anus, and, thereafter, a lathi was drove into his rectum. P.W.2 Pancham has stated that it was Udai, who drove the lathi into the deceased's rectum. P.W.1 has stated that lathi was drove about three inches into the anus orifice, due to which blood oozed out and dropped onto the ground (the field). P.W.2 Pancham has stated that about 8 to 10 angul lathi was inserted, as a result whereof, fecal matter came out; he started bleeding and the blood dropped on to the ground.

37. Therefore, both the witnesses have stated that serious injuries were caused to the deceased by thrusting a lathi in deceased's anus and due to injuries sustained by the deceased, there was bleeding from his nose and rectum. But, according to P.W.3, Dr. A.K. Nigam, Medical Officer, who conducted the post-mortem examination of the deceased, there were no sign of bleeding from nose or rectum. He has also stated that the rectum was normal and there was no internal injury in the stomach also.

38. The above observation and the injuries found on the body of the deceased are contrary to the verbal account of P.W.1 and P.W.2. In the post-mortem examination, there were injury nos. 8, 9 and 10 of the nature of contusion on the back of hip and posterior part of right thigh, left thigh and hip and inner part of right hip. The doctor has stated that these injuries were not found on the rectum. There is no evidence that the doctor was partisan or negligent in conducting the post-mortem examination. The nature and number of injuries found on the person of

deceased are material. These are not opinions of the doctor, which could be considered in the light of oral evidence, but material part of medical evidence, which show the nature of injuries and the part of body over where the injuries were found. In case of conflict between direct evidence of eye-witnesses and evidence of medical expert, the eye-witness version is to be accepted, unless the medical evidence completely belies the ocular version. In the present case, the medical evidence completely rules out the direct evidence of eye-witnesses. The injuries found on the dead body do not support the dock evidence, and thus, there are material contradictions in the ocular and medical evidence, which raise serious doubts about the prosecution case.

39. The burden was on the prosecution to prove that it were the appellants, who caused injuries and murdered Ram Dulare in the manner, alleged by the prosecution. The prosecution has utterly failed to prove it from the oral and medical evidence, read together.

40. It is argued on behalf of the appellants that it was a blind murder and the deceased was killed by someone else. There was a rumour that the deceased was beaten by the villagers over suspicion that Ram Dulare was a thief, and, in this regard, the appellants have drawn the attention of this Court to an entry in the inquest report where it is mentioned that the deceased was beaten by the villagers, after being suspected as a thief and died as a result thereof. P.W.2 Pancham is one of the pancha of the inquest report and has stated in Court that after reading out of the above inquest report to him, he put his thumb impression upon it. In this regard it may be noted that the purpose

and nature of the inquest report is only to know the apparent cause of the death and other entries in the inquest report are not very material. The defence has not asked any question in this regard from the witness P.W. 4, who prepared the inquest report, to clarify this point, so any argument in this regard can not be accepted.

41. In **Podda Narayana v. State of A.P.**, AIR 1975 SC 1252, it was held by the Supreme Court that the proceedings under Section 174 Cr.P.C. have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death, and if so, what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the Police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report.

42. It is clear from the above discussion that it was a blind murder and the deceased was murdered by someone else, in the dark hours of night, away from the abadi of the village.

43. In view of above discussion, we find that P.W.1 Ram Kishor and P.W.2 Pancham had not seen the incident and their testimony is not reliable and trustworthy. There are major contradictions in ocular and medical evidence. The prosecution has not produced any other

independent witness, who were allegedly present at the place of occurrence.

44. In **Hem Raj v. State of Haryana 2005 (10) SCC 614**, the Supreme Court has held that non-examination of independent witness, by itself, may not give rise to an adverse inference against the prosecution. However, when the evidence of eye-witnesses raises serious doubts about their presence at the time of occurrence, the unexplained omission to examine the independent witness would assume significance. The above authority applies to the present case. According to the prosecution, there were many eye-witnesses and villagers at the spot when the incident occurred. The presence of eye-witnesses, at the place of occurrence, is highly doubtful. The prosecution has not explained why other eye-witnesses were not examined. This aspect of the matter assumes significance and gives rise to an adverse inference against the prosecution.

45. In view of the above discussion, the presence of P.W.1 and P.W.2 at the spot is highly doubtful and it appears that they had not seen the incident. They reached the spot when the deceased had already died and after other villagers had already reached there. It is alleged on behalf of the appellants that there is party politics in the village and they are falsely implicated due to this partybandi. In this regard, P.W.1 Ram Kishor has admitted in his statement that there are two parties in the village, one belonging to Bhayia Lal (whom the informant supports) and the other party is of the appellants. Therefore, the argument of appellants' in this regard has force and a false implication of theirs cannot be ruled out.

46. It is submitted on behalf of appellants that the FIR is ante-timed and

dictated by the Police, after consultation and thus loses its significance. In this regard, it may be noted that it has come in evidence of P.W.1 that he had affixed his thumb impression upon Ext. Ka-1 at the police station. On the one hand, he has stated that it was written on way to the Police Station at Soraon, after purchasing a piece of paper there and P.W.2 has stated that it was scribed at the Soraon roundabout. They then proceeded to the Police Station. On the contrary, it has come in the evidence of P.W.1 that it was written, when he signed it meaning thereby, at the police station. He has also said that the name of witness Chhinai was mentioned in the FIR, though he was not present at the spot. This statement is contrary to his previous statement as well as that of P.W.2, that after waking up Chhinai, they went to the place of occurrence, along with Chhinai. On the other hand, the I.O. has said that P.W.2 had given a statement to the Police, whereafter written information (tehrir) was written at the railway station in the electric light and not at the Soraon roundabout. Besides this, it is mentioned in the FIR that "लाश लेकर थाने आया हूँ" In this regard P.W.1 has stated that as he was taking the dead body to the Police Station, so he had written these words in advance. The above explanation is not satisfactory. These words would normally have been written after reaching the police station. In view of the above discussion, we come to the conclusion that the above contradictions have resulted in the F.I.R. losing its significance.

47. In view of the testimony of P.W.1 and P.W.2 that there was bleeding from the nose and blood oozed out from the deceased's rectum and some blood also dropped at the place of occurrence, the I.O. has said that he searched for the blood

List of Keywords

without sufficient reason, extra-judicial confession, strong suspicion

Appearances of parties

Counsel for Appellant(s) : Ashok Kumar Singh Bais, S.k. Agarwa

Counsel for Respondent(s) : D.G.A.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by the appellants, namely, Smt. Omwati wife of Hukum Singh, Vijay Pal and Om Pal sons of Chhajju Singh, residents of Village, Bhaila, Police Station Deoband, District Saharanpur, against the judgment and order dated 11.06.1991, passed by the Court of the VIth Additional Sessions Judge, Saharanpur, in Session Trial No.103 of 1990, under Sections 304-B/34 and 201 Indian Penal Code (in short 'I.P.C.'), Police Station Deoband, District Saharanpur.

2. By the impugned judgment and order, appellant, Smt. Omwati has been convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 304-B/34 IPC. The appellants, Vijay Pal and Om Pal have been convicted and sentenced to undergo seven years' rigorous imprisonment for the offence punishable under Section 304-B/34 IPC. All the appellants have also been convicted and sentenced to undergo three years' rigorous imprisonment for the offence punishable under Section 201 IPC also. All the sentences have been directed to run concurrently.

3. Feeling aggrieved by the impugned judgment and order, this appeal has been filed by all the three convicts. During the pendency of this criminal appeal, appellant No. 1, Smt. Omwati, has died, and the appeal

against her stands abated vide order dated 02.09.2025. Therefore, the appeal has been heard on behalf of the surviving appellants, Vijay Pal and Om Pal.

4. The brief facts of the prosecution case are that the informant, Satyapal Singh, son of Sube Singh, resident of village, Kapsadh, Police Station Sardhana, District Meerut, filed a written report (Ext. Ka-1) before the In-charge, Police Station, Deoband, District Saharanpur, dated 13.10.1988, wherein it was said that the marriage of his sister, Vimlesh, was solemnized with Jai Bhagwan more than five years ago in village, Bhaila. After the marriage, whenever his sister came over to parents' village Kapsadh, she would say that her in-laws were demanding a television and cash. Whenever the informant went to village Bhaila, the same demand was made to him as well, but due to his poor financial condition, he could not fulfill the demand. The appellant, Omwati (mother-in-law of his sister) would regularly harass the informant's sister in this regard. On the night of 11/12 October 1988, at about 11:00 p.m., his sister was murdered by her mother-in-law, Smt. Omwati, Vijay Pal, and Om Pal by administering poison. Soon thereafter her dead body was cremated. The above incident was witnessed by several residents of the village, including Dharampal son of Fakira and Mahipal son of Shadhu Singh, resident of village, Sabirpur and they went over to informant's village and informed him about it. On the basis of written report (Ext. Ka-1), a chik FIR (Ext. Ka-6) was registered as Case Crime No.416 of 1988, under Sections 302, 201 I.P.C., and 3/4 Dowry Prohibition Act, at Police Station Deoband on 13.10.1988 at 20:30 hours.

5. The investigation was conducted by the Circle Officer, R.D. Singh, who recorded the statements of the informant

and other witnesses and also collected the burnt bones and ashes of the deceased from the place where her dead body was cremated. He prepared the recovery memo (Ext. Ka-4). He also inspected the place of occurrence and prepared its site plan (Ext. Ka-3). After completing investigation, he filed a charge-sheet against the appellants, Smt. Omwati, Vijay Pal and Om Pal, under Sections 304-B, 201 I.P.C. and Section 3/4 Dowry Prohibition Act before the Chief Judicial Magistrate, Saharanpur.

6. The learned Magistrate took cognizance of the offence and summoned the appellants. The relevant prosecution papers were furnished to the appellants under Section 207 Cr.P.C. and the case was committed to the Court of Session on 18.04.1990 for trial.

7. The appellants appeared before the Court of Session and charges under Sections 302/34, 304-B/34 and 201/34 Indian Penal Code were framed against the appellants. They pleaded not guilty and claimed to be tried.

8. The prosecution examined six witnesses in support of the prosecution case; namely, P.W.1, Satyapal Singh, (brother of the deceased), P.W.2, Dharampal, P.W.3, Mahipal, P.W.4, Kishan Singh, P.W.5, Rohitash and P.W.6, R.D. Singh (the Investigating Officer).

9. Out of these six witnesses, P.W.1 Satyapal Singh (brother of the deceased and the informant) has proved the written report, (Ext.Ka-1) and said that his sister, Vimlesh was married to Jai Bhagwan, son of Hukum Singh, about five years ago. Smt. Omwati was her mother-in-law whereas Vijay Pal and Om Pal were brothers of Hukum Singh, Jai Bhagwan's father. Whenever his sister would

visit her parent's home, she complained about the demand of dowry and harassment by her mother-in-law. The same demand was also made to him, which he could not fulfill on account of his poverty. About one year and nine months ago, Dharampal and Mahipal came to his house and informed him that on the night of 11/12.10.1988, at about 11:00 p.m., his sister had been killed by Omwati, Vijay Pal, and Om Pal by administering poison mixed in milk and her body cremated on their plot at about 4:00 a.m. Thereafter, the informant went to village Bhaila, made inquiries from different persons, and lodged the FIR.

10. P.W.2, Dharampal, is stated to be a witness, who was present in village Bhaila on the day of the incident. According to P.W.2, he along with Mahipal had gone to purchase a jhota-buggi. They selected the jhota of Jai Bhagwan. Upon Jai Bhagwan's request they stayed at his gher as it had become dark. At about 10-11 p.m., a woman came to Jai Bhagwan's gher and told him that his wife had been poisoned. Thereupon, he went to Jai Bhagwan's house alongwith Mahipal. Some residents of the village, Bhaila were also present there. Vimlesh was lying on a cot and she was vomiting. Omwati, Vijay Pal, and Om Pal were also present there. Vimlesh said to Jai Bhagwan, "अब तो थारे चैन पड़ जायगी, टेलीविजन, सोफासेट व नकद रुपया मिल जायेगा," and also said, "मुझे ओमवती, विजय पाल व ओमपाल ने गेहूँ में रखने की गोली दूध में खिला दी है।" After saying so, she died. Thereafter, the appellant, Omwati said, "मेरी बुद्धि खराब हो गयी थी। मैंने अनाज में रखने की गोली इसे दूध के साथ दे दी।" Thereafter, at about 4:30 a.m., they took Vimlesh's dead body to their plot and burnt it. He has also

said that he objected asking the appellants not to burn the body, but they did not agree.

11. P.W.3 Mahipal is also a man, who was present in village Bhaila along with P.W.2 at the time of occurrence. He said that after receiving information that poison had been administered to Vimlesh, he, along with Jai Bhagwan and Dharampal, went Vimlesh's house, where she was suffering in agony and asking Omwati whether her desire for a sofa set, TV, and cash had been fulfilled. Thereafter, she died. The appellants were present there and Vimlesh did not say anything else. We asked Omwati, what she had done, she said that she had committed a mistake and had administered a wheat pill tablet mixed in milk. Thereafter, the appellants, Vijay Pal and Om Pal insisted on performing her last rites. He told the appellants to inform the Police about the incident, but they refused. Thereafter they picked up the dead body and carried it to their plot.

12. P.W.4, Kishan Singh, a resident of the same village where the incident occurred, has not supported the prosecution case and turned hostile. He said that he does not know the circumstances under which Vimlesh died.

13. P.W.5, Rohitash, also a resident of the village, has also turned hostile and said that he was not present at the time when Vimlesh died.

14. P.W.6, R.D. Singh, Circle Officer, was the Investigating Officer of the case. He said that he conducted the investigation, inspected the place of occurrence, and prepared its site plan (Ext. Ka-2). Thereafter, he went to the place where the deceased was burnt and prepared its site plan (Ext. Ka-3). He also said that he

collected the cremated bones and ashes of the deceased from the place where the body was cremated and prepared the recovery memo (Ext. Ka-4). After collecting evidence, he filed a charge-sheet against the appellants, Omwati, Vijay Pal, and Om Pal.

15. After closure of the prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. In their statements, they have admitted that Vimlesh was married to Jai Bhagwan, but they said that the marriage was solemnized about 8-9 years ago. It was also said that Vijay Pal and Om Pal are not the brothers of Hukum Singh. They have denied the prosecution case and said that during the days when this incident occurred, Vimlesh was pregnant. On the night of the incident, Vimlesh suffered a miscarriage, due to which she died. This information was conveyed to her parental home (a reference to her relation thus). The informant, Satyapal, came over before whom Vimlesh's last rites were performed.

16. The accused have produced D.W.1, Pratap Singh, in their defence. D.W.1 has stated, on oath, that he knows the informant and the accused. The marriage of Jai Bhagwan (husband of the deceased) was solemnized about 11 years ago. He participated in the marriage. He has heard that Jai Bhagwan's wife died due to miscarriage. He participated in her last rites. The informant, Satyapal Singh, and others from the deceased's parents side were also present there. She died at about 4:00 a.m., and her last rites were performed at about 10:00 a.m.

17. The learned Trial judge, after considering the evidence, adduced by both parties, passed the impugned judgment and

order dated 11.06.1991, whereby the appellants, Smt. Omwati, Vijay Pal, and Om Pal, were convicted and sentenced under Sections 304B/34 and 201 I.P.C. as indicated above.

18. Heard Mr. Ashok Kumar Singh Bais, learned Counsel for the appellants and Ms. Divya Ojha, learned Additional Government Advocate-I for the State.

19. It is submitted on behalf of the appellants that the learned Trial Court has not properly considered the evidence of both parties. The marriage of the deceased, Vimlesh, was solemnized with Jai Bhagwan about 8-9 years ago. The appellants, Vijay Pal and Om Pal, are not the relatives of Jai Bhagwan (husband of the deceased) and do not reside with Smt. Omwati (mother-in-law of the deceased). They would not have gained directly or indirectly from any demand for dowry. There is no evidence that they demanded dowry or subjected the deceased to torture or harassment for want of dowry. There is also no evidence that they administered poison to the deceased or assisted Smt. Omwati in administering it. There is no evidence to show that they cremated the dead body of the deceased and thereby caused the disappearance of evidence of the crime. It is also said that P.W.2 Dharampal and P.W.3, Mahipal are chance witnesses as well as interested witnesses, being relatives of P.W.1 Satyapal Singh (informant). Therefore, their evidence is not reliable.

20. On the other hand, the learned A.G.A. has submitted that the prosecution has proved its case against the appellants. P.W.1, Satyapal Singh is the deceased's brother and has supported the prosecution case regarding the demand of dowry and

the torture of the deceased. P.W.2, Dharampal and P.W.3, Mahipal were present in the village when the deceased died. They have supported the prosecution case. There is no ambiguity in the prosecution evidence. The deceased gave her dying declaration before Dharampal and Mahipal, and there was an extra-judicial confession by her mother-in-law, Omwati as well. It is also submitted that appellants administered poison to deceased, Vimlesh, and after her death, secretly burnt her dead body on their plot at about 4:00 a.m. Thus, the prosecution case is proved beyond reasonable doubt.

21. In the present case, the appellants have been convicted for offence punishable under Section 304-B and 201 I.P.C. Section 304-B IPC reads as follows:-

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

22. In **Harjit Singh v. State of Punjab; (2006) 1 SCC 463**, the Supreme

Court held that, in cases falling under Section 304-B IPC, the prosecution must prove the following essential ingredients for the offence of 'dowry death'.

(a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;

(b) The death must have been caused within seven years of her marriage;

(c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

(d) Cruelty or harassment must be for, or in connection with, any demand for dowry. "

23. The Supreme Court has further held that if the aforesaid four ingredients are established by the prosecution, then the death can be called a 'dowry death', and the husband and/or relatives of the husband, as the case may be, shall be deemed to have caused the dowry death. The word 'dowry' has been defined under Section 2 of the Dowry Prohibition Act, 1961 which provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties.

24. Section 113-B Indian Evidence Act raises a presumption as to the 'dowry death', which reads as follows:-

"When the question is whether a person has committed the dowry death of a

woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation. For the purposes of this section, dowry death shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860). "

25. In the light of above legal position, it has to be seen whether the prosecution has proved its case. According to the prosecution, the deceased, Vimlesh, was married to Jai Bhagwan since about five years before her death. P.W.1, Satyapal Singh, brother of the deceased, has said that the marriage of his sister, Vimlesh, was solemnized with Jai Bhagwan about five years ago. The defence has not put any question to this witness to rebut or contradict the said fact. The effect of failure to cross-examine a witness fell for consideration of the Supreme Court in **State of U.P. Vs Nahar Singh (Dead) and Others (1998) 3 SCC 56**, in which, the informant (P.W.1) was not cross-examined by the appellant on the point of explanation of delay in lodging the complaint. It was held that since the evidence of P.W.1 had remained unchallenged on the explanation of delay, the same ought to have been believed by the High Court.

26. Further, in **Muddasani Venkata Narsaiah (Dead) through Lrs Vs Muddasani Sarojana, (2016) 12 SCC 288**, the Supreme Court has observed that a party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in the cross-examination is not merely a technical one but is one of essential justice. In case of non-cross examination of the

witness on a particular fact, the Court would presume that the witness account has been accepted.

27. Again, in **Arvind Singh V State of Maharashtra, (2020) 8 SCC 302**, it was held that the prosecution is required to bring home the guilt beyond reasonable doubt. It would be open to the accused to raise such reasonable doubt by cross-examination of the prosecution witnesses to discredit them in respect of their truthfulness and veracity. A party intending to bring evidence to impeach or contradict the testimony of a witness must give an opportunity to the witness to explain or answer when the witness is in the witness box.

28. The principle then is clear that unless the witness is cross-examined on a particular point while in the witness-box and afforded an opportunity to explain, his evidence on that point would be treated to have been accepted by the opposite side. Thus, the testimony of P.W.1 on the point of marriage of the deceased would be treated to be accepted by defence.

29. On the other hand, the appellants, in their statements, recorded under Section 313 Cr.P.C., have said that the marriage of Vimlesh was solemnized 8-9 years ago. The defence has produced D.W.1, Pratap Singh, who has said that the marriage of Vimlesh was solemnized about eleven years ago. The period of marriage, he has said is not as per defence case. D.W.1, in his deposition, has given the date of marriage also, but no documentary proof in this regard has been produced by the defence. The Investigating Officer has also not collected any documentary proof with regard to the date or time period of the deceased's marriage. The prosecution has

contradicted this witness by giving a suggestion otherwise. D.W.1 has not explained the reason why he would still remember the deceased's date of marriage after such a long lapse of time. Even the appellants have not given the date of marriage of the deceased. Thus, the testimony of D.W.1, on this point, is not reliable.

30. In view of the above, it is held that the deceased, Vimlesh, was married to Jai Bhagwan about five years ago since before her death.

31. According to the prosecution, the deceased was administered poison by mixing it in milk, as a result of which, she died. On the other hand, it is the case of the defence that the deceased was pregnant and on the fateful night, there was a miscarriage, due to which, she died. In the present case there is no inquest report and post-mortem report for the deceased. In either of the two eventualities, the death of the deceased cannot be held normal. Therefore, the death of the deceased occurred otherwise than under normal circumstances.

32. The FIR was lodged by P.W.1, Satyapal Singh, the deceased's brother. It has nowhere been said in the FIR that the appellants, Vijay Pal and Om Pal ever demanded dowry from the deceased or the informant and harassed the deceased due to the above demand. The allegation of demand of dowry is against the appellant Omwati (the mother-in-law of the deceased) alone. P.W.1, Satyapal Singh has said that it was Omwati, the mother-in-law of the deceased, who was demanding a television and cash in dowry. Due to the said demand, she harassed the deceased. P.W.1, Satyapal Singh, has not deposed of

any particular act of cruelty or harassment by Omwati. He has not spoken of any instance when the alleged demand of dowry or harassment of the deceased took place.

33. Learned counsel for the appellants drew the attention of the Court to **Criminal Appeal No.1076 of 2014 (Karan Singh vs. State of Haryana)**, decided on 31.01.2025 by the Supreme Court. The said case also related to a dowry death, where there were allegations regarding demand of dowry and cruelty or harassment meted out to the victim. In that context, the Supreme Court held that while deposing about the demand of dowry, the witnesses had not stated any particular act of cruelty or harassment by the appellant, which is an essential ingredient of Section 304-B IPC. The aforesaid judgment is fully applicable to the present case, as the informant in the present matter too has not deposed to any specific act of cruelty or harassment of the victim.

34. The appellants, Vijay Pal and Om Pal are residents of the same village, Bhaila. There is no evidence to show that they live together with co-appellant, Omwati. According to the prosecution, the appellants, Vijay Pal and Om Pal are the maternal uncles-in-law of the deceased, and P.W.1 Satyapal Singh, has said that they are brothers of Hukum Singh (father of Jai Bhagwan). Both appellants have denied that they are brothers of Hukum Singh and said that Hukum Singh's father was Kashi Ram, whereas their father's name is Chhajju Singh. They live separately from Omwati.

35. To attract the offence under Section 304-B IPC, the prosecution has to prove that the cruelty was committed by the

husband or the relatives of the deceased's husband. In the present case, the prosecution has failed to prove that the appellants, Vijay Pal and Om Pal, are relatives of Jai Bhagwan, the husband of the deceased. According to P.W.1, he received information about the death of his sister the next day. Therefore, P.W.1 is not an eye-witness to the incident and his statement is only with regard to the demand of dowry and harassment of his sister, a fact which, the prosecution have failed to prove.

36. The prosecution has examined P.W.2, Dharampal and P.W.3, Mahipal to prove that the appellants committed murder of the deceased and the deceased made a dying declaration before them in this regard. Thereafter, in order to cause destruction of evidence of the crime, her dead body was cremated in the early hours of the next day. Upon a perusal of the testimony of both these witnesses, their evidence does not inspire confidence, and it is very hard to believe their version of the story. Admittedly, both these witnesses are residents of another village. Therefore, their presence at the place of occurrence is not normal and both of them are chance witnesses. Being chance witness their testimony is to be closely scrutinized.

37. It has come out in P.W.1, Satyapal Singh's evidence that P.W.2, Dharampal, is the elder brother of Sompal, to whom his other sister is married. Thus, P.W.2, Dharampal, is a relative of the informant. P.W.3, Mahipal, is also a distant relative of the informant. The prosecution's case is that both these witnesses went together to the village of Bhaila to purchase a jhota-buggi. According to the statement of P.W.2, Dharampal, they liked and selected Jai Bhagwan's jhota-buggi. According to

P.W.3, Mahipal, they also settled the price to purchase this jhota-buggi. However, since it was late for them to return to their respective villages, they stayed overnight at the house of Jai Bhagwan. It has come out in the testimony of P.W.2, Dharampal that he did not purchase the jhota-buggi from Jai Bhagwan, but instead purchased it from Jalalabad about 20-25 days later. P.W.3, Mahipal, has also stated that Dharampal purchased a jhota-buggi after 5-7 days of the incident from someone else. The prosecution has not clarified why Dharampal refused to purchase the jhota-buggi from Jai Bhagwan later, despite initially liking it and agreeing to purchase it. This lends weight to the appellants' argument that the purpose of their visit to Bhaila was concocted. Both P.W.2 and P.W.3 are resident of Shabbirpur, and, according to P.W.2, Dharampal their village is 4 miles away from Bhaila. It has come in evidence of P.W.2 and P.W.3 that the price to purchase the jhota buggi was settled by 6:00 p.m. It was not too late for them to return home to their village. Therefore, their stay in village, Bhaila is not a normal event or happening.

38. Besides this, P.W.2 Dharam Pal said that he did not go to the Police Station to lodge the report, as he did not deem it necessary. On the other hand, P.W.3 Mahipal said that they would have lodged the FIR at the Police Station if someone had allowed them to do so. P.W.3 had said that the appellants would not let them go. Therefore, the two witnesses could not go to the Police Station to lodge a report. Both the above stands are contradictory to each other and the reason shown by both of them in not going to the Police Station to lodge an FIR is not very convincing and dependable.

39. According to P.W.1 Satyapal Singh, on the next day of the incident, he went to village, Bhaila and inquired of the villagers regarding the cause of his sister's death. Thereafter, he lodged the FIR on the following day. P.W.1 has not disclosed the name of any person from whom he gathered information about the cause of her death. The prosecution has not produced any such person in support of the prosecution case. The prosecution has produced P.W.4, Kishan Singh and P.W.5, Rohitash, both residents of the same village, where the incident occurred. Both of them have not supported the prosecution case and turned hostile.

40. It has come in the testimony of P.W.1, Satyapal Singh that Jai Bhagwan, (the husband of the deceased), was the love son of his parents. His father had died, and he was living with his mother. He had his own house and agricultural land in the village. The appellants, Vijay Pal and Om Pal lived separately and had no close relations with Jai Bhagwan. They would not have benefited by the demand of any such dowry. There is also no evidence that they raised a demand for dowry and harassed the deceased. The facts necessary to reverse the burden and attract the presumption under Section 113-B of the Evidence Act have not been proved by the prosecution vis a vis the appellants, Vijay Pal and Om Pal. In view of the above, the burden was on the prosecution to prove the reason, which led the appellants to commit the dowry death of the deceased with the help of co-appellant, Omwati. The prosecution has failed to establish such motive for them to commit this crime.

41. According to the prosecution, the deceased had made a dying declaration before Dharampal and Mahipal. Section 32

(1) Indian Evidence Act, dealing with the admissibility of dying declaration by a person relating to cause of his own death, is as follows:

“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :

(1)When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2).....”

42. It is settled law that a dying declaration is an important piece of evidence under Section 32(1), Evidence Act and if a dying declaration is found to be reliable, true and voluntary, then there is no need for corroboration by witnesses and conviction can be recorded on its basis alone. But, at the same time, a dying declaration like any other evidence has to be tested on the touchstone of credibility to be acceptable. This is more so, as the appellants do not get an opportunity to

question the veracity of the statement by cross-examination.

43. In the light of above legal position, the version given by P.W.2, Dharampal and P.W.3, Mahipal with regard to the dying declaration by the deceased is not reliable. P.W.2, Dharampal and P.W.3 Mahipal have said that while they were staying at the Gher with Jai Bhagwan on the fateful night at about 10-11 p.m., a woman came to the gher and informed Jai Bhagwan that his wife had been administered poison. Thereafter, they along with Jai Bhagwan, went to his house where few men and women of the village were already present. The appellants, Omwati, Vijay Pal and Om Pal were also present there. P.W. 2, Dharmpal has said that Vimlesh was lying on a cot and was vomiting. Then Vimlesh said to Jai Bhagwan, “अब तो थारे चैन पड़ जायगी, टेलीविजन, सोफासेट व नकद रूपया मिल जायेगा।” and also said, “मुझे ओमवती, विजय पाल व ओमपाल ने गेहूँ में रखने की गोली दूध में खिला दी है।” After saying so, she died.

44. In his cross-examination, P.W.2, Dharampal has deposed differently by saying that Vimlesh was slightly unconscious and was murmuring that her mother-in-law had administered a tablet used for preserving wheat and Vimlesh died while murmuring these words. In his cross-examination, he did not say that Vimlesh said anything against the surviving appellants, Vijay Pal and Om Pal of their involvement in the crime.

45. P.W.3, Mahipal has deposed that Vimlesh was in severe agony and said to Omwati that the latter's desire for a television, sofa set and cash was fulfilled or

not ? Thereafter, she died and did not utter any other word. In this statement too, there is nothing said against the surviving appellants, Vijay Pal and Om Pal that they administered poison to the deceased or assisted Omwati in administering it. There is no case that Jai Bhagwan, the husband of the deceased, demanded dowry or was involved in his wife's death. So why the deceased, Vimlesh would utter words to Jai Bhagwan about fulfillment of his demand for dowry. The Investigating Officer has not taken down the statement of Jai Bhagwan though he is said to have been present on the spot. In view of these contradictions with regard to the dying declaration of the deceased, the dying declaration of the deceased is not believable or reliable. Importantly, there is nothing in the dying declaration against appellants, Vijay Pal and Om Pal that they played a role in the death of the deceased.

46. It is also relevant to mention that the Investigating Officer recorded the statements of P.W.2 and P.W.3 after more than three months of the date when the FIR was lodged. The prosecution has not given any explanation for this delay. Though the names of these witnesses were mentioned in the FIR, being material witnesses, their statements should have been recorded promptly. The belated recording of their statements without sufficient reason, also raises suspicion about the prosecution case.

47. The appellant, Omwati, who died during the pendency of this appeal, had made on extra-judicial confession before Dharampal and Mahipal. It is a settled principle of the law that an extra-judicial confession made by an accused, under Section 24 Evidence Act, is a weak piece of evidence.

48. In the present case, the extra-judicial confession was made by the co-appellant, Omwati, against whom the appeal has abated. According to P.W.2 Dharampal and P.W.3 Mahipal, she did not say anything in her extra-judicial confession against the surviving appellants, Vijay Pal and Om Pal, regarding their participation in the offence. Therefore, this point does not require any further consideration by this Court.

49. It is the prosecution case that after the death of the deceased, her dead body was cremated by the appellants at about 4:00 a.m. in a plot of land belonging to the appellants. The Investigating Officer has collected the burnt bones and ashes from the place where the dead body was cremated, and, according to the site-plan, it was a plot and not a cremation ground. There is no evidence that the plot belonged to the appellants. P.W.2 Dharampal has said that he did not go with the dead body for cremation, along with others, and had returned to his house. P.W.3 Mahipal has said that the appellants took the dead body to their plot and he returned to his house. None of the above two witnesses said that the dead body of the deceased was cremated in their presence.

50. It has come in the statements of P.W.2 and P.W.3 that many villagers were present at the house, including Omwati (mother-in-law) and Jai Bhagwan (husband of the deceased). The prosecution has not proved who lit the pyre. It has also not been proved in clear terms that the appellants, Vijay Pal and Om Pal, cremated the dead body along with co-appellant Omwati in order to cause the disappearance of evidence of the crime. In absence of such evidence, it can not be said that the

appellants cremated the dead body and caused disappearance of evidence.

51. In view of the above discussion, we come to the conclusion that the Trial Court failed to appreciate evidence in the proper prospective and without applying the settled principles of law, assumed that not informing the informant about the death of the deceased and cremation of the dead body by night raised suspicion that the appellants were involved in the crime. The learned Trial Court also wrongly assumed that the appellants committed the offence and believed the prosecution case on the ground that Jai Bhagwan, the husband of the deceased, was not roped in this case, which rules out the possibility of a false implication of the appellants. It is a settled principle of the law that strong suspicion alone is not sufficient to convict an accused, and suspicion, no matter how strong, cannot replace legal proof in a criminal trial. Proof is established through evidence presented by the prosecution. Suspicion is the distance between "may be true" and "must be true." The prosecution evidence must cover this distance with 'clear, cogent and unimpeachable' evidence to bridge the gap. A Court cannot base a conviction on mere conjectures or to accept suspicion as proof, even if the accused fails to explain certain things. Therefore, there is no concrete evidence against the surviving appellants, Vijay Pal and Om Pal regarding their involvement in the offence.

52. The prosecution has failed to prove the essential ingredients of dowry death against the appellants, Vijay Pal and Om Pal. It is not proved that they are relatives of the deceased's husband. There is no evidence that they demanded dowry. It is also not proved that they committed cruelty vis-a-vis the deceased soon before her

death. In view of the absence of essential ingredients, the presumption of dowry death against the appellants, under Section 113-B of the Indian Evidence Act, is not attracted, as already remarked. It is also material to note that the appellants, Vijay Pal and Om Pal did not live in the same house with the deceased and would not benefit by the demand of dowry. There is also no evidence that they cremated the dead body of the deceased to destroy the evidence of the crime. Thus, the prosecution has failed to prove its case beyond reasonable doubt and the Trial Court has not appreciated the evidence in correct prospective. The learned Trial Judge has illegally convicted the appellants. Thus, the impugned judgment and order passed by the Trial Court is liable to be set aside and the appellants, Vijay Pal and Om Pal deserve to be acquitted.

53 . In view of the above, the criminal appeal is **allowed**. The impugned judgment and order dated 11.06.1991 passed by the Trial Court is set aside and the appellants, Vijay Pal and Om Pal are acquitted of offence punishable under Section 304-B and 201 IPC.

54. The appellant, Vijay Pal is in custody. He is ordered to be released forthwith, if not wanted in any other case. The appellant, Om Pal is already on bail. He need not surrender. His bail bond is cancelled and the sureties are discharged.

55. The appellants shall execute personal bonds in the sum of Rs.25,000/- each under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against them acquittal.

56. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2025) 12 ILRA 438

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 19.12.2025

BEFORE

**THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.**

Criminal Appeal No. 1992 of 1984

Arbind Singh & Anr. ...Appellant
Versus
State of U.P. ...Respondents

Issue for consideration

Testimony of relative witness

Headnotes

Relative witness- merely on account of being related to the deceased-evidence of the witness cannot not be discarded- testimony of such witnesses should be examined carefully-material contradictions in ocular and medical evidence- prosecution has failed to prove its case beyond reasonable doubt- conviction and sentence set aside.

Appeal allowed. (E-9)

Case Law Cited

1. Thulia Kali Vs. State of Tamil Nadu 1972 (3) SCC 393
2. Mohd. Muslim Vs. State of Uttar Pradesh (now Uttrakhand) 2023 (7) SCC 350
3. Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188
4. Seeman @ Veeranam Vs. State, Inspector of Police, 2005 SCC (Cri) 1893
5. Baliraj Singh Vs. State of Madhya Pradesh, 2017 AIR (SCW) 2114

List of Acts

Indian Penal Code, 1860

List of Keywords

material contradictions, relative witness

Appearances of parties

Counsel for Appellant(s) : Sri Desh Ratan Chaudhary, Sri Shobh Nath Pandey, Sri Vijaya Nand Singh
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. The instant Criminal Appeal has been preferred by the appellants/ convicts Arbind Singh son of Bishwanath Singh and Bhola Nath Dubey son of Deo Narain Dubey, both residents of Village- Bhaishwar, Police Station- Ghorawal, District- Mirzapur, against the judgment and order dated 20.07.1984 passed by the Additional Sessions, Judge, Mirzapur in Session Trial No. 101 of 1983, State Vs. Arbind Singh and Another.

2. By the impugned judgment and order, the learned Trial Judge has convicted and sentenced the appellant Bhola Nath Dubey to undergo imprisonment for life, finding him guilty of the offence punishable under Section 302 read with 34 IPC and the appellant Arbind Singh to imprisonment for life for offence punishable under Section 302 IPC.

3. The present Criminal Appeal in regard to accused appellant no. 2 Bhola Nath Dubey son of Deo Narain has abated, by an order of the Court dated 22nd August, 2025. Therefore, the present Criminal Appeal now proceeds on behalf of appellant No. 1/convict, Arbind Singh, only.

4. The brief facts of the prosecution case are that the informant Ram Murat son of Bihari Singh, resident of Village- Bhaishwar, Police Station- Ghorawal, District- Mirzapur submitted a written information (tehrir) dated 15.09.1982 (Ext. Ka-2) before Incharge, Police Station- Ghorawal, District- Mirzapur, stating

therein that on 14/15.09.1982 at about 12 midnight the informant's father Bihari Singh son of Jhuri Singh, aged about 60 years, was sleeping on a cot in the living room (Baithka) situate towards northern side of his house. On the other cots, two in number, the informant, his cousin Shiv Murat (fufera bhai), and Gauri Shankar, were sleeping. Upon hearing (aahat) some one's footsteps the informant got up. He woke up Shiv Murat and Gauri Shankar. Four miscreants came near the door of the Baithka. The informant flashed his torch to spot them. One of the miscreants shot at his father, leading the informant to raise alarm. The miscreants made good then escape as were chased. Meanwhile, Ram Surat son of Lalji a resident of the adjacent house, came out of (his house) with his torch. The miscreants were chased across some distance but they fled away towards the south. One of the miscreants was identified as Arbind Singh son of Biswanath Singh and other was Bhola Pandit both residents of Village- Bhaiswar, Police Station- Ghorawal. He had identified the rest of the two miscreants, by face. When they returned to the living room (Baithka), the informant found his father lying dead on the cot.

5. Upon this information a chik FIR (Ext. Ka-16) under Section 302 IPC, bearing Case Crime No. 51 of 1982, was lodged at police station Ghorawal, District Mirzapur, against accused Arbind Singh, Bhola Pandit and two unknown men. The investigation of the case was entrusted to Station Officer of the Police Station, Diwakar Mishra. The inquest report was prepared alongwith connected papers. The post-mortem examination of the deceased was done, whereupon it was found that the deceased had sustained firearm injuries and the cause of death was opined as shock and

hemorrhage as a result of the ante-mortem injuries. The investigating officer inspected the torch and prepared its supurdaginama marked (Ext. Ka-4). He prepared a fard baramadgi of one lungi, found after a few days towards southern side of the house, which he proved as (Ext. Ka-5). The Investigating Officer prepared site-plan of the place of recovery, marked Ex. Ka-22. The I.O. also collected a sample each of plain earth and blood stained earth, a bullet, bloodstained clothes and blood stained strap (baandh) from the place of occurrence and prepared its fard baramadgi (Ext. Ka-19). He recorded the statements of the informant and other witnesses. The sample of blood stained earth, one bullet, bedsheet, strap (baandh), and dhoti were sent for chemical examination. According to the chemical examination report (Ext. Ka-25) human blood was found on all the items and the blood group was also ascertained. The I.O. inspected the place of occurrence and prepared its site-plan which he proved as Ext. Ka-18. After completion of investigation, the Investigating Officer filed a charge-sheet (Ext. Ka 23) against appellants/ convicts Arbind Singh and Bhola Nath Dubey under Section 302 IPC, before Chief Judicial Magistrate, Mirzapur.

6. The learned Magistrate took cognizance of the offence and summoned the accused. The accused appeared before the Court. The Magistrate furnished copies of the relevant prosecution papers under Section 207 Cr.P.C., and thereafter, committed the case for trial to the Court of Sessions on 25.10.1983.

7. The Court of Sessions summoned the accused. A charge under Section 302 IPC was framed against the appellant Arbind Singh whereas a charge under Section 302 read with 34 IPC was framed

against the appellant Bhola Pandit. Both the appellant pleaded not guilty and claimed to be tried.

8. The prosecution examined five witnesses before the Court in support of their case, to wit, P.W.1- Ram Murat (informant and eye-witness), P.W. 2- Gauri Shankar (eye-witness), P.W. 3- Dr. S.K. Gupta (conducted post-mortem of the deceased), P.W. 4- Constable Fateh Bahadur Singh (carried dead body for post-mortem to Mirzapur) and lastly P.W. 5- Diwakar Mishra, the investigating officer of the case.

9. P.W. 1- Ram Murat, is the son of deceased Bihari. He is the informant and an eye-witness of the case. He has said on oath that he knows appellants Arbind Singh and Bhola Pandit. There was enmity between him and the appellants ante-dating the incident. He originally hailed from belonged to District Varanasi. In the year 1971, his father had purchased 11 Bigha of land in Village- Bhaiswar and after migrating from Varanasi started living here. In 1969, while his father was irrigating his agricultural land by Chakra Nala of river Nakhar, Arbind Singh blocked the flow of water and upon objection Arbind Singh had battered his father employing sticks. Thereupon, the informant had lodged a complaint before the Collector and the Superintendent of Police, a carbon copy whereof he has proved as (Ext. Ka-1). He has further testified that since a year before the incident, on account of the village Pradhan election both parties were not on good terms. In Village Bhaiswar his house is located towards northern side with a courtyard (sehan) adjacent to it and to the north of courtyard there is a living room (Baithka), with a door towards the east. On the fateful

day at about 12 midnight, his father was sleeping on a cot inside this living room (Baithka), where the informant was also sleeping on a separate cot. He had a with him. On the third cot Gauri Shankar and Shiv Murat were sleeping. Upon hearing some aahat (sound of footsteps), the informant woke up and saw four persons at the door. He then woke up Shiv Murat and Gauri Shankar. The informant flashed his torch and identified Arbind Singh and Bhola Pandit. Arbind was holding a revolver in hand whereas Bhola Pandit was carrying a ballam. The rest of the two miscreants were wielding lathis, whom he could not identify. The appellant Arbind Singh shot his father causing injuries to his head and the right eye. He raised alarm, whereupon, Ram Surat and others reached there, carrying a torch. The appellants fled towards south. They who were chased through some distance, but they fled away. Thereafter, the informant returned to the living room (Baithka) where he found his father Bihari lying dead with blood on his cot and some blood had also spilt on to the earth. Due to fear he did not go anywhere and stayed in the house. The next morning he wrote down an application in his own hand and took it to Police Station Ghorawal, at about 08.30 a.m., which he gave to the constable. The witness has proved his tehrir as (Ext.-Ka-16). He has further stated that the I.O., after recording his statement at the Police Station, came over to the deceased's village for investigation. During investigation the informant and Ram Surat had shown him their respective torches of which he prepared a supurdagi nama (Ext. Ka-3). There was a torch lying on his father's cot, which was inspected by the I.O. and he wrote down its supurdagi nama as (Ext. Ka-4).

10. In his cross-examination P.W. 1, Ram Murat has said that he had sent the application to the Superintendent of Police

and the Collector by registered post, one or two months prior to the festival of Nag Panchami in 1979. Witness Gauri Shankar's house is adjacent to his house and Gauri Shankar would sleep at Ram Murat's house occasionally. The lantern was lit in the Baithka and it was a dark night. Upon hearing the noise of footsteps, he woke up but did not raise alarm and went over quietly to Shiv Murat's and Gauri Shankar's cots woken them up, otherwise the intruders would have fled. The miscreants opened fire after the informant had flashed his torch. He forgot to write in his first information that appellant Arvind Singh was carrying a revolver and Bhola Pandit a ballam. His father was shot from a distance of one foot and the bullet hit his head and passed through his right eye. The assailant had shot him in a bending position. None of the accused had covered their faces. He went to the Police Station on a bicycle. He had asked Ram Surat and Gauri Shankar, whether they would depose before mentioning their names in the FIR. On 15.09.1982, there was a case pending in the Mirzapur Court where he was an accused. About two to three years prior to this incident a case was lodged against him, Ram Surat, Gauri Shankar and others in which both the accused (of this case) had deposed against them. There was a case regarding one Prabhawati's murder lodged against him at the behest of Arvind Singh. There was another case of maarpeet lodged against him and his father. Teju Kaal has also lodged a case against him, Ram Surat, Shiv Murat and Gauri. Prior to this incident Premanand had lodged a case regarding the theft against this witness which was compromised. In that case, Inspector Pachmi Ram had come along with Arvind Singh and Baba to arrest them. In that case there were other accused, to wit, Vullu, Sharda and Ram Surat, alongside him. While being arrested by

the Inspector, they obstructed. He has admitted that there are many cases pending against them.

11. P.W. 2- Gauri Shankar is another eye-witness of the incident. He has said that he knows the appellant Arbind Singh and Bhola Pandit. The deceased Bihari was his Mama (maternal uncle). About one and a half years ago at about 12 midnight, Bihari was asleep on a cot in front of the door to his baithaka whereas the witness himself, Shiv Murat and Ram Murat were sleeping on two other cots. Ram Murat and Shiv Murat woke him up, and when Ram Murat flashed his torch, they saw the appellants Arbind Singh, Bhola Pandit besides two other persons standing at the Baithaka of door. Arbind Singh was wielding a revolver and Bhola, a ballam and the two others had danda on them. As soon as, Ram Murat flashed his torch, Arbind Singh shot Bihari with his revolver which hit Bihari on the back side of head, behind the ear passing through the right eye of the deceased; and, after hitting the earthen (मिटटी का) pillar the bullet dropped onto the deceased's cot. Upon their alarm Ram Surat came over with a torch. The appellants fled towards southwards. They were chased through some distance but they fled away. Thereafter, P.W. 2 returned to the Baithaka and saw Bihari lying dead. There was blood over his bed, cot and also splattered on the earth. At the time of this incident, the appellant Arbind Singh was wearing a kurta and lungi and the lungi present before the Court is the same, which Arbind Singh was wearing at the time of incident. The aforesaid lungi was found on 16.09.1982 at about 04.00 p.m. towards the southern side of the informant's house in a drain. The I.O. had collected this lungi and prepared a fard baramadgi, which he proved as (Ext. Ka-5).

12. In his cross-examination, the P.W. 2 has said that the Lungi was found in a drain and it was not taken to the police station the same day. Except for the rainy seasons, he sleeps in his own house, but in the rainy season he would sleep in Bihari's Baithka, because it has many windows. To the north of his own house, there is Oshara having windows. When they returned after chasing the appellants the bullet was found lying on the deceased's cot. Ram Murat was not attacked when he flashed the torch. Ram Murat had awakened them saying that get up, let us see who are these persons. After the appellants had fled away 25-50 persons of the village visited at the place of occurrence. He has admitted that there is a dispute regarding the irrigation of land between him and the appellant Arvind Singh. He lodged a complaint regarding maarpeet against Arvind Singh and others, which was dismissed. In a case under Section 304 I.P.C. he was accused along with Uma, Ram Murat and others. The appellant Bhola did not reside in village Bhaiswar, but would frequent it.

13. P.W. 3 Doctor S.K. Gupta, is an expert witness who has conducted the post-mortem examination of the deceased cadaver on 16.09.1982 at 03.00 p.m. in District Hospital, Mirzapur. He has said that the deceased was aged about 60 years. Rigor mortis had passed away from the upper part of the body and was passing through the lower parts. Blood was oozing from the nose and right ear. There were blisters over the nose. Mouth was open and the entire body was swollen. He found following ante-mortem injuries over the body:-

(i) Fire-arm wound of entry 1cm x 1cm x cranial cavity at right back side of the head. The margins of wound were inverted and lacerated.

(ii) The right eye ball was torn and bulging out and bleeding.

(iii) Right occipital bone was fractured, corresponding with injury no. 1, caused by fire-arm.

Brain towards right side of injury no. 1 was lacerated and it was corresponding to injury no. 1. About one ounce of blood and clotted blood was present. Superior plate of the orbit of right eye was fractured. There was semi-digested food in the stomach. The small intestine was filled with gases and there was fecal matter in the large intestine. The gall bladder was empty. In the opinion of the doctor the cause of death was shock and hemorrhage as a result of injury no. 1. In his opinion injury no. 1 was caused by a shot from a revolver. The exit of injury no. 1 was corresponding to the eye ball of the right eye. The assault could have occurred from a distance of 3 to 4 feet or more than that distance. The death of the deceased would have occurred at about 12 midnight on 14/15.09.1982. He has proved the post-mortem report as Ext. Ka-6.

14. In his cross-examination, P.W. 3 Dr. S.K. Gupta, has said that the above injury could be caused by gun shot from a distance of more than 4 feet because there was no blackening and scorching around the margins of the injury. The direction of the above injury was parallel to the body of deceased, while in the lying position.

15. P.W. 4- Constable, Fateh Bahadur Singh, is a formal witness who took the dead body of the deceased for post-mortem to Mirzapur, after the inquest report was prepared.

16. P.W. 5- S.O., Diwakar Mishra, is the Investigating Officer of this case. He has proved the chik FIR, Ext. Ka-16 as

secondary witness of Head Constable, Shiv Shankar Singh, the scribe of the FIR. He has also proved G.D. No. 6 as Ext. Ka-17. He has said that he recorded the statements of witnesses. The inquest report of the deceased was prepared along with relevant connected papers. He has proved inquest report as Ext. Ka-10, related papers photo nash, challan laash, letter to the CMO and the letter to the R.I. sample seals etc. as Ext. Ka-7 to 13. He has also stated that he inspected the place of occurrence and prepared a site-plan which he proved as Ext. Ka-18. He collected samples of plain earth and blood stained earth from the place of occurrence and kept it in sealed boxes which he proved as Ext. 2 and 3. He recovered a bullet lying under the deceased's cot which he proved as Ext. 4. He has also taken sample of blood stained bedsheet (Kathari), Ext. 5, blood stained pillow, Ext. 6, plastic box, Ext. 7, the strap (baandh) of the cot, Ext. 8, blood stained baniyan, Ext. 9 and prepared a fard baramadgi, marked as Ext. Ka-19. He has also prepared a recovery memo (supurdagi nama) for the torch kept on the deceased's cot marked as Ext. Ka-4. He also inspected torches of witness, Vikram and Bullu which were in running condition and he proved it as Ext. 3. He raided houses in search of the appellants but they were not found. On 17.09.1982, Shiv Murat handed him over the lungi, Ext. 1, which was left by accused at the place of occurrence and prepared its fard baramadgi which he proved as Ext. 5. After completion of investigation he submitted a charge-sheet, Ext. Ka-23, before learned Magistrate.

17. In his cross-examination he has said that the office of the Circle officer, Churk, was about 40 km away from the police station and there is vehicular connectivity between the two. The chik

report is sent the same day to the Circle Officer, if it is lodged before 12 noon, and in other cases, the next day. The date is 17.09.1982 endorsed on the chik under C.O.s signature. The date of receipt at the office of Circle Officer is not mentioned in the G.D. of 15.09.1982. There was (मिट्टी का) pillar in the middle of the Baithka, 6-7 steps away from eastern wall. The deceased's cot was two and half balisht (a measure of man's palm and fingers from thumb to the little finger, outstretched) way from the pillar. There was a bullet mark at the height of about 5 balisht on the earthen pillar, which was about two and half balisht higher than the placing of the deceased's cot. The informant had not told him that due to fear he did not go to the police station the same night. Gauri Shankar had not told him that appellant Shiv Murat's lungi was recovered in his presence.

18. The following documentary evidence has been produced by the prosecution to prove its case; Exhibit Ka-1, Tehrir dated 29.08.1982, Exhibit Ka-2, Tehrir dated 15.09.1982, Exhibit Ka-3 and Exhibit Ka-4, Recovery memo and supurdginama of torch, Exhibit Ka-5, Recovery memo of Lungi, Exhibit Ka-6 post-mortem report, Exhibit Ka-7 Letter to R.I., Exhibit Ka-8 Letter to the C.M.O., Exhibit Ka-9 Report regarding post-mortem, Exhibit Ka-10 Inquest report, Exhibit Ka-11 Copy of Chik FIR, Exhibit Ka-12 naksha laash, Exhibit Ka-13 Challan laash, Exhibit Ka-14 Sample of Seal, Exhibit Ka-15 G.D. No.22, Exhibit Ka-16 Chik FIR, Exhibit Ka-17 G.D., Exhibit Ka-18 site-plan, Exhibit Ka-19 Recovery memo of blood stained and plain earth and bullet blood stained, Exhibit Ka-20 Search memo of Arbind Singh, Exhibit Ka-21 Search memo of Bhola Nath Dubey,

Exhibit Ka-22 site-plan of the place where the Lungi was recovered, Exhibit Ka-23 the charge-sheet, Exhibit Ka-24 Chemical Examination Report, Exhibit Ka-25 report of the chemical examiner, Material Exhibit-1 Lungi, Material Exhibit 2 and 3 sample of blood stained and plain earth, Exhibit 4 Bullet, Exhibit 5 blood stained Kathri, Exhibit 6 pillow, Exhibit 7 tobacco dibia, Exhibit 8 blood stained baandh, and Exhibit 9 blood stained baniyan.

19. After the closure of prosecution evidence, statements of the appellants were recorded under Section 313 Cr.P.C. wherein they denied the prosecution case and stated that false evidence has been adduced against them and that due to enmity they have been falsely implicated in the present case.

20. The accused did not produce any evidence in their defence.

21. After hearing both the parties and perusal of record, the learned Trial Judge convicted the appellant- Arbind Singh under Section 302 and appellant Bhola Nath Dubey under Section 302 IPC read with 34 IPC. The Trial Court observed that there was motive for the appellants to commit Bihari's murder, because Bihari had purchased a land in the village and there was dispute with regard to its irrigation with Arbind Singh. There was a factional dispute relating to election of the Gram Pradhan which served as a motive as well. Though, the incident had occurred in the dark of night but a torch was flashed across the faces of the appellants, leading the assailants to be recognized by the witnesses. The presence of Gauri Shankar in the deceased Bihari's Baithka is well explained and the FIR was lodged promptly. There is no inordinate delay in

lodging the FIR. The learned Trial Judge also observed that the FIR was not ante-timed. P.W. 1, Ram Murat and P.W. 2, Gauri Shankar had proved the occurrence. There are no material contradictions in ocular and medial evidence. In view of the above, the Trial Court convicted the appellants and sentenced them as indicated above.

22. We have heard rival submissions of learned counsel for the parties and perused the record.

23. It is submitted on behalf of the surviving appellant that the FIR was lodged belatedly and there is no plausible explanation regarding the delay. It is also submitted that the FIR is ante-timed and the date and time of lodging the FIR were endorsed later showing an earlier time. It is also submitted that the eye-witnesses are close relatives of the deceased and they are highly interested witnesses. Therefore, their testimony is not reliable. It is further submitted that the presence of the eye witnesses at the place of occurrence is also highly doubtful. It is next submitted that there are material contradictions in the testimony of PW-1- Ram Murat and PW-2, Gauri Shankar, which makes their presence at the place of occurrence very doubtful. The prosecution have not produced any other independent witness which renders the prosecution case unreliable. It is further submitted that there are major contradictions in the ocular evidence and medical evidence which does not support the prosecution case.

24. It is also submitted that the deceased and the eye witnesses P.W.1 and P.W.2 had criminal history and the deceased might have been killed by someone else in the dark hours of the night,

and the appellants have been falsely implicated in this case due to enmity (party bandi). It is also submitted that the appellants had no motive to kill the deceased, particularly an immediate motive. Therefore, the prosecution was unable to prove its case beyond reasonable doubt and the Trial Court has not appreciated the evidence on record correctly. Thus the impugned judgment is illegal and the conviction and sentence awarded to the appellant is not sustainable.

25. On the other hand, it is submitted on behalf of the State that there is no delay in lodging the FIR. It was promptly lodged. PW-1 and PW-2 are natural witnesses who were present at the time of the incident and they have supported the prosecution case. There are no major contradictions in their testimony. Thus, their testimony was reliable and trustworthy. It is also submitted that there are no major contradictions in ocular evidence and medical evidence. There was motive for the appellants to commit the murder of the deceased, as earlier there arose a dispute between the parties and due to the Gram Pradhan election, there was party rivalry in the village which led the appellants to harbor animosity against the deceased. Therefore, there was motive for the appellants to commit this murder.

26. It is further submitted that though it was dark in the night, but the witnesses had torches in their hands and they had identified the appellants when the torch light was flashed across their faces. The appellants are residents of the same village. Therefore, they were known to the witnesses, who flawlessly identified them. Thus, the prosecution case was proved beyond reasonable doubt and the Trial Court has rightly convicted and sentenced

the appellants. Therefore, this appeal is liable to be dismissed.

27. In the light of submissions of both parties and evidence on record we have to see that whether the prosecution has been able to prove its case beyond reasonable doubt. It is settled law that in a criminal case the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, according to the prosecution, on 14/15.09.1982 at about 12 midnight, the appellants came to the place of occurrence, which was the Baithka of the informant, with an intention to commit the murder of Bihari, the informant's father, and in furtherance of their common intention, the appellant/ convict Arvind Singh shot Bihari with a revolver, as a result of which Bihari died on the spot.

28. In the present case, the date and time of Bihari's death is not disputed. Doctor S.K. Gupta, PW-3, has conducted the post-mortem examination of the deceased and found that the deceased sustained two fire arm ante-mortem injuries. The one was a firearm entry wound on the right side of the back of skull, margins inverted and lacerated. The other injury was that the right eyeball was lacerated and bulging out. In his opinion injury no. 1 was caused by fire from a revolver. The exit of injury no. 1 was corresponding to the eye ball of the right eye and there was a fracture of the occipital bone. The deceased's brain towards right side of injury no. 1 was lacerated and it was corresponding to injury no. 1. In view of the medical examination report, it is clear that the deceased had died due to a head injury caused by firearm.

29. Further, PW-1, Ram Murat and PW-2 Gauri Shankar, have said in their dock evidence that the alleged incident

took place at 12 midnight of 14/15.09.1982. In this regard, Doctor S.K. Gupta, who has conducted the post-mortem examination on 16.9.1982 at 3 p.m., has opined that death could have taken place about one and a half day prior to the post-mortem examination. Thus, the above time tallies, with the time and date stated by the eye witnesses which supports the prosecution case. Therefore, the date and time as well as the death of deceased Bihari are not disputed and they are established by the prosecution.

30. So far as the place of occurrence is concerned, it is also not disputed by the defence. In this regard, PW-1 Ram Murat and PW-2 Gauri Shankar, have categorically stated that the deceased was murdered while he was sleeping on his cot in the Baithka. It has also come in evidence that there were gunshot injuries to the deceased and he was bleeding. Blood had also dropped down on deceased's cot as well as on the floor under the cot.

31. The Investigating Officer, PW-5 Diwakar Mishra, has inspected the place of occurrence on the morning following the incident and found that the dead body of the deceased was lying on the cot in the Baithka. He also found a bed-sheet, pillow, and kathri soaked in blood and blood-stained earth under the cot. He also found that the straps (baandh) of the cot were also soaked in blood. The Investigating Officer collected the above articles as well as samples of plain earth and blood-stained earth and sent them for chemical examination. In view of the chemical examination report (Exhibit Ka-24) these articles carries human blood. Thus, the ocular evidence as well as the evidence collected by the I.O. at the place of occurrence and also the fact that the body of the deceased was found lying at the cot

of the Baithka, proves that the deceased was killed at the place of occurrence as alleged by the prosecution. The defence has also not suggested any alternative place of occurrence where the murder of the deceased could have taken place. Therefore, the place of occurrence is established by the prosecution.

32. It is submitted on behalf of the appellants that the FIR was lodged belatedly and it was ante-timed, and thus, the prosecution case is not believable. In this regard, the prosecution case is that the incident occurred on 14/15.09.1982 at 12 midnight, and the FIR was lodged by the informant Ram Murat, son of Bihari, on 15.09.1982 at 8:30 a.m. at Police Station-Ghorawal, District Mirzapur.

33. Upon a perusal of the chick FIR, it is clear that the distance of the police station from the place of occurrence is eight miles. The FIR was lodged about 8^{1/2} hours after the time of incident. In this regard, PW-1, Ram Murat has said that due to fear, he did not go to the police station the same night, and in the morning, he himself wrote down the application (tehrir) and went to the police station on a bicycle and lodged the FIR. The reason shown by the informant for lodging the FIR, belatedly, does not appeal to us. Here, it is pertinent to note that it has come in evidence that after the incident, many residents of the village reached the spot, and right through the night they were visiting the place of occurrence but, the informant did not ask any villager to accompany him to go the police station to lodge an FIR. Here, it is also noteworthy that according to PW-1 and PW-2, they chased the assailants across a certain distance and after the assailants fled away, they returned to the place of occurrence. It has also come in evidence

that there were some criminal cases lodged against the informant and the deceased. In one such case, both the appellants of this case had deposed against the informant and PW-2 Gauri Shankar, the other witness of this case. There was one case regarding theft lodged against the informant, and in that case, the police inspector came to arrest the informant, and at that particular time, the appellant Arbind Singh and Babu, had accompanied the police personnel. It has also come in evidence of PW-1 that when the inspector tried to arrest the informant Ram Murat in that case, he obstructed the arrest, and in this regard, another case was lodged against him.

34. Further, according to PW-2 Gauri Shankar, in the case under Section 304 IPC regarding culpable homicide not amounting to murder, the informant, himself, and others were accused, and in another case with regard to attempt to commit culpable homicide not amounting to murder both of them along with others were accused. Therefore, upon looking at the above evidence, it is clear that both the informant and PW-2 Gauri Shankar had criminal antecedents, and the deceased too have criminal history. It is also clear that in some such criminal cases the appellants of this case stood with the other side.

35. In view of the above background, it is not natural on the informant's part not to proceed to the police station the same night to lodge an FIR, though he chased the assailants with the other villagers, knew them well and almost all the persons of the village had reached the place of occurrence, which they kept visiting the entire night some coming in and others leaving. In view of the above, it cannot be said that the informant would have had any fear in proceeding to the police station to lodge an

FIR. The informant has not disclosed any reason for the delay in lodging the FIR in the written report. In view of the evidence of the I.O. that the informant did not tell him, that due to fear he did not go to the Police Station during the night to lodge the FIR, this reason put forward to explain the delay cannot be accepted. Therefore, there is inordinate delay in lodging the FIR, and the delay has not been satisfactorily explained by the prosecution. In *Thulia Kali Vs. State of Tamil Nadu 1972 (3) SCC 393*, the Supreme Court has held that on account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of colored version, exaggerated account or concocted story as a result of deliberation and consultation. Thus, the delay in lodging the FIR should be satisfactorily explained. It was also held that if the witnesses examined have given contradictory evidence and there is discrepancy on the point and the prosecution fail to examine other independent material witnesses then it would make the Court draw an adverse inference against the prosecution. In **Mohd. Muslim Vs. State of Uttar Pradesh (now Uttarakhand) 2023 (7) SCC 350**, it has been held by the Supreme Court that the FIR in a murder case is vital and valuable piece of evidence. Infirmities in the FIR casts doubt on its authenticity, depletes its evidentiary value and entitles the accused to the benefit of doubt.

36. It is submitted on behalf of the appellant that the FIR was ante-timed and lodged later on with an earlier time mentioned in it. In this regard, upon a perusal of evidence, it appears that the office of the Circle Officer, Robertsganj, is about 40 kilometers away from the police station and it has come in evidence that generally, those chik FIR which are lodged

before 12 noon are sent to the Circle Officer the same day, and in case FIRs lodged after 12 noon, they are sent to the Office of Circle Officer the next day. In the present case, the FIR was lodged at 8:30 a.m., which means it was lodged before 12 noon. The record shows that the FIR reached the Office of the Circle Officer the next day.

37. The prosecution has not clarified why the FIR was not sent to the Office of the Circle Officer the same day, which was against the general practice, raising suspicion that it was anti-timed.

38. The Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188**, has observed in para 12 of the report:

“FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the

local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offered a satisfactory explanation for the delay in dispatch or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR.”

39. In view of the above, there was inordinate delay in lodging the FIR without reasonable explanation which raises doubt over the prosecution case.

40. It is next submitted on behalf of the appellant that there was no motive for the appellants to commit the offence. On the other hand, it is argued on behalf of prosecution that the appellant had motive enough to commit the offence because Bihari had purchased land in the appellant's village in the year 1971, and thereafter, set up residence there. In the year 1979 when he was irrigating his agricultural land the appellant Arbind Singh had caused obstruction and raised some dispute in this

regard. Thereupon P.W. 1 Ram Murat had sent a report to the Office of the Superintendent of Police and the Collector. P.W. 1 Ram Murat, has proved this application as (Ext. Ka-1). There is a postal receipt alone in this regard and no other evidence to prove that this application ever reached the Office of the Superintendent of Police or the Collector and if so what action was taken on this application by these officers, has been produced. Even if it is assumed, that the above complaint had reached to the Superintendent of Police, then all that it shows is that there was a dispute regarding the irrigation of land and that too in the year 1979, whereas the incident in the present case occurred on 15.09.1982 i.e., after about 3 years from the alleged dispute. There is no evidence to show that between these three years, the appellants and the deceased ever reached grudges against each other or then. The above dispute is also not of such a serious nature that it would prompt the appellants to commit murder of the deceased, after 3 years of the event, in such a manner.

41. Further, it has been argued on behalf of the prosecution that there was an election of the village Gram Pradhan where the informant and appellants were supporters of rival parties and this rivalry had prompted the appellants to commit murder of the deceased. It is also argued that the election of the Gram Pradhan was held about a year prior to the occurrence and Gopal Singh, brother of the appellant Arbind Singh was seeking election to the post of the Gram Pradhan. His opponent was Vikram Singh. The deceased and P.W. 1 Ram Murat were supporting Vikram Singh and it is on account of this rivalry that the appellants had developed grudge against the deceased and his family, which prompted them to commit murder. This

argument, even if it is believed to be true, has no force. Even if it is assumed to be true, it does not give any immediate cause for the appellants to murder the deceased, because the above election was held about a year ago and there is no evidence that in the intervening period both the parties had any other dispute or quarrel of a serious nature. It is very unlikely that suddenly after about one year of the elections for post of Gram Pradhan, the alleged grudge emanating from the Gram Pradhan election would prompt the appellants to commit the murder of the deceased. Additionally, it may be noted that according to prosecution the enmity was between the informant and his father on one side and appellants on the other. It is highly unlikely that under these circumstances the appellants would target the deceased Bihari alone and leave the informant unhurt and not even threaten him, if he was present at the spot. Therefore, from the above discussion, we come to the conclusion that the motive for the appellants to commit the murder is very weak and not reliable. Though, this case is based on direct evidence, and, in a case of direct evidence, it is settled law that the motive loses its significance, but, it is also relevant to mention that if a party alleges motive to commit a crime then failure to prove such motive would certainly have some effect on its case.

42. Now let us see whether the direct evidence, in the form of eye witness account, adduced by the prosecution establishes that the appellants have committed the offence. In this regard, the prosecution has examined P.W. 1 Ram Murat and P.W. 2 Gauri Shankar to support its case. P.W. 1 Ram Murat is the son of the deceased and P.W. 2 Gauri Shankar is a nephew (bhanja) of the deceased. Therefore, both these witnesses are the

relative- witness of the deceased, and thus, interested witnesses also. In **Seeman @ Veeranam Vs. State, Inspector of Police, 2005 SCC (Cri) 1893**, and in **Baliraj Singh Vs. State of Madhya Pradesh, 2017 AIR (SCW) 2114**, the Supreme Court has held that the witness could be a relative but, that does not mean, that his testimony is to be totally rejected. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of an interested witness, and if, on such scrutiny it is found that the evidence of the interested witness is worth credence, the same would not be discarded merely on the sole ground that the witness is an interested witness. It is also held that, it is well settled that it is the quality of evidence and not the quantity which is required to be judged by the Court to place reliance on the testimony.

43. Therefore, with regard to a relative- witness, it is settled law that merely on account of being related to the deceased, the evidence of the witness cannot not be discarded and the only precaution the Court would have to bear in mind is that the testimony of such witnesses should be examined carefully by looking at other attending circumstances of the case. Here, in this case as discussed above, the deceased as well as the informant and the eye witness Gauri Shankar, were involved in many criminal cases together and had criminal antecedents as well. The appellants had deposed against them in one such case and accompanied the inspector in another, to cause the informant's arrest. The argument on behalf of the appellants is that deceased who had criminal antecedent would have many enemies, and it may be that he was eliminated by some other person; and a blind murder as it was, led the informant to

take benefit of the dispute due to partybandi, in order to falsely implicate them in this case.

44. After a careful examination of the testimony of P.W. 1 and P.W. 2, it comes out that the presence of both these witnesses is highly doubtful at the place of occurrence, at the time of incident. There are not only major contradictions in their testimony but also the manner in which they have described the incident to have taken place. The account is highly improbable and no reliance can be placed on their testimony. According to prosecution at the time of incident, P.W. 1 and P.W. 2, both were sleeping in the Baithka, alongwith the deceased. In this regard so far as the presence of P.W. 2 Gauri Shankar is concerned, he has said that his house is near that of the deceased. The reason given by Gauri Shankar to sleep in the deceased's Baithka is that except in rainy season, he sleeps in his own house and in the rainy season, he sleeps in the deceased's Baithka because it has many windows and his Oshara has only one window. The above reason given by P.W. 2 to be sleeping in the deceased's Baithka on the fateful day, is very weak. He has a separate house nearby, with an Oshara that has windows. There was no reason for him to sleep in the Baithka of the deceased. He has stated that he was awakened by P.W. 1, Ram Murat and when he got up he saw four men at the door. The informant flashed a torch across their faces, whereupon one of them shot the deceased from his country-made pistol.

45. According, to P.W. 2, the fire was shot from a distance of 5-6 feet and he has stated that after the shooting the appellants fled the spot. On the other hand, it is stated by P.W. 1 Ram Murat, that accused Arbind

Singh shot the deceased, after bending over him, from a distance of one foot. Therefore, the distance from which, and the manner in which the deceased was shot is given a different account of by P.W. 1 and P.W. 2. Here, it is also relevant to mention that according to PW-1, when he heard the noise of footsteps while sleeping, he did not raise alarm but quietly went to Gauri Shankar's cot and awakened him. Though, it is not clear, but from the evidence adduced by the prosecution, it can be gathered that the doors of Baithka were open, which is why the appellants were seen at the door. When the torch was flashed across their faces, they shot the deceased. In such a situation, when doors were open, and the informant had heard footsteps of someone at odd hours of the night, the normal reaction for him would have been to raise alarm so that the intruders who come from outside would flee, knowing that people inside were alert and not sleeping. The reason given by the informant for not raising an alarm is that he thought that the persons would run away, if he indeed raised it. The above reason is also very weak and unnatural because, at odd hours of the night, if one hears foot steps of strangers approaching his house with doors open, then his first reaction would be to suspect that they had come with bad intentions. In such a situation, the informant should have suspected that the persons who are approaching the Baithka may be miscreants or were there with an ulterior motive. The normal conduct for him would have been to raise alarm rather than keep silence and wake up his roommates. The above conduct also raises suspicion regarding the presence of the informant and Gauri Shankar at the place of occurrence.

46. Additionally, it is stated that the torch was flashed by the informant across

the miscreant's faces and one of them fired only one shot leaving the informant and other men in the Baithka unhurt. It has also come in evidence that the other men in the Baithka were neither threatened nor any attempt made to assault them. It has also come in evidence that, it was dark in the night and appellants were not covering their faces, though they live in the same village. Normally, the assailants would have concealed their identity by covering their faces before committing such a crime. If they chose a dark night to commit this offence then there was a possibility for them to cover their faces, but when the torch was flashed at them, they would have apprehended that their identity was disclosed and would have attempted an assault on other inmates or at least threatened them. Further, the sole source of light, the torch, has not been produced by prosecution in Court and no reason for this lapse is given. Therefore, the witnesses testimony about the manner in which the appellants committed the offence is not reliable. The prosecution has not examined the other man, who was also sleeping in the Baithka and no reason has been assigned for his non-examination in Court. In **Hem Raj v State of Haryana 2005 (10) SCC 614**, the Supreme Court has held that non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of the eye-witnesses raise serious doubts on the point of their presence at the time of occurrence, the unexplained omission to examine the independent witnesses would assume significance. The above guidance squarely applies in the present case. In view of the above authority, as the presence of P.W. 1 and P.W. 2 is found doubtful at the place of occurrence and their testimony not reliable and trustworthy, non-production of other

witness of fact by the prosecution would lead to an adverse inference about the prosecution case.

47. It has been submitted on behalf of the appellants that there are material contradictions in ocular and medical evidence also which totally rules out the possibility of the appellants committing the murder in the manner alleged by the prosecution. In this regard, the examination of evidence, both ocular and medical, shows they contain material contradictions which raises doubt about the manner in which the incident took place.

48. As per the post-mortem report of the deceased, there were two ante-mortem injuries, one was a firearm wound of entry over right side of scalp on the back side. The margins were inverted and lacerated which means that the deceased was shot at this point and the second injury was that the right eyeball was lacerated and bulging out with bleeding present, when the bullet passed through the right eye. In the internal examination, it was found that the firearm wound on the right eye corresponds to injury no. 1, and there was fracture of the occipital bone on the right side. In view of the above medical condition, it is clear that the deceased had died due to a head injury caused by a firearm. It has come in evidence that at the time of the incident, the deceased was sleeping on a cot of with a height of 2.5 balisht (handspan) (which is the measure of the distance between the tip of the thumb and the tip of the little finger when the hand is spread out). According to P.W. 1, the deceased was shot from a distance of 01 foot, but the autopsy report says there was no blackening, tattooing or scorching around the wound of entry.

49. In **Modi's book on Medical Jurisprudence and Toxicology, twenty-**

third edition (Reprint 2011), at page 721, it is mentioned that, 'Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. In the absence of powder residue, no distinction can be made between one distant shot or another., as far as distance is concerned. Scorching in the case of latter firearms is observed within a few inches, while some evidence of scorching in the case of shotguns may be found even at one to three feet. Moreover these signs may be absent when the weapon is pressed tightly against the skin of the body, as the gases of the explosion and the flame smoke and particles of gunpowder will all follow the track of the bullet in the body.'

50. Therefore, in case of firearm injury from a firearm having a short barrel (like a revolver in this case) there would be blackening and scorching, if the weapon was discharged from a distance of less than 3 feet. P.W.1 has not said that the deceased was shot pressing the barrel of the revolver to the skin of the head. In view of the above, the testimony of P.W. 1 becomes doubtful and it is not believable that the shooting was from a distance of one foot. It has come in the testimony of P.W.1 and P.W. 2 that the deceased was lying on the cot when he was shot over the back of his head. In view of the testimony of P.W.3 Dr., S.K. Gupta, the direction of the injuries of the deceased was parallel, if he was lying on the cot.

51. Here, in this case PW-2 Gauri Shankar has said that the bullet passed through the right eye, struck an earthen pillar, and landed on the cot of the deceased. The I.O. has also said that he found a bullet mark on the earthen pillar at a height of five balisht from the ground.

The above manner of assault on the victim is highly improbable and it is not possible that the deceased was shot in such a manner, while in a lying down position on the cot with a height of two and half balisht from the ground. If the deceased was shot while in the lying position on the cot, then it was not possible that the bullet would exit from the right eye and hit the earthen pillar at the height of 5 balisht, situated at about two and half balisht from the cot of the deceased. In such a situation the bullet would not take the upward direction, through the right eye and hit the earthen (मिट्टी का) pillar at double the height of the point of entry. Further, if P.W.1 is believed that the deceased was shot in a lying down position and the assailant shot him from a distance of one foot after bending over him, then the direction of bullet, after exit from the right eye, would not have been upward; rather it would be downwards. Therefore, the manner in which P.W.1 has testified, that the deceased was shot, is not believable.

52. According to the testimony of P.W. 2 the appellant had shot the deceased from the door in a standing position and in that case also, it was not possible for the bullet to take the direction upward after hitting the deceased over back of head, while lying on the cot. In either of the situation, it is highly improbable that the injuries were caused by the appellants to the deceased in the manner, as claimed by the prosecution. Thus, there are material contradictions in ocular and medical evidence and the medical evidence totally rules out the presence of P.W. 1 and P.W. 2 at the place of occurrence.

53. In view of the above findings, we come to the conclusion that the presence of P.W. 1 Ram Murat and P.W. 2 Gauri

Shankar, at the place of occurrence is highly doubtful and there are material contradictions in their testimony, regarding the manner in which the incident is said to have occurred. There are also material contradictions in ocular and medical evidence. Therefore, looking into the facts of the case, it cannot be ruled out that the deceased was murdered by someone else and the appellants have been falsely implicated in this case.

54. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. In this regard, the conviction recorded by the Trial Court is based on incorrect appreciation of facts and evidence, and the conclusion of guilt of the appellants is based on conjectures. Thus, the impugned judgment and order is liable to be set aside, and the appellants deserve to be acquitted of the charges framed against them.

55. Thus, the impugned judgment and order of conviction and sentence passed by the Trial Court is liable to be set aside.

56. In view of the above, the instant criminal appeal is, accordingly, **allowed**. We set aside the judgment and order dated 20.07.1984 passed by the Trial Court i.e., the Additional Sessions Judge, Mirzapur in Sessions Trial No. 101 of 1983 and acquit the surviving appellant, Arbind Singh, of the charge under Section 302 read with 34 IPC.

57. Appellant No.1, **Arbind Singh** is on bail. His bail bonds and personal bond are cancelled and the sureties discharged. Appellant No. 1 Arbind Singh, need not surrender.

58. Appellant No. 1, **Arbind Singh** shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023

(corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

59. Let a copy of this order be sent to the learned Trial Court concerned alongwith the Trial Court record for information and necessary compliance.

(2025) 12 ILRA 454

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2634 of 1987

Narendra & Anr. ...Appellant
Versus
State of U.P. ...Respondents

Issue for consideration

Proof of motive in cases based on direct evidence.

Headnotes

Indian Penal Code-Sec 302- based on direct evidence -proof of motive is not very material in this case- litigation regarding an agriculture land was pending- names of appellants were recorded in the revenue records- possession of disputed land remained with the deceased- witnesses of fact have proved the case that the appellants did caused death of Hotilal by battering him with Mungari- seven ante-mortem injuries found over the dead body- prosecution has been able to prove its case beyond reasonable doubt.

Appeal dismissed. (E-9)

Case Law Cited

1. Rizan v. State of Chhattisgarh, A.I.R. 2003 S.C.976
2. Dalip Singh and others vs. State of Punjab (AIR 1953 SC 364)
3. Israr vs. State of U.P. (2005 (51) ACC 113)

4. Seeman @ Veeranam Vs. State, Inspector of Police, 2005 SCC (Cri) 1893
5. Baliraj Singh Vs. State of Madhya Pradesh, 2017 AIR (SCW) 2114
6. State of Punjab vs. Hakam Singh, (2005) 7 SCC 408
7. Ambika Prasad & Another v/s State (Delhi Administration) with others, (2000) 2 SCC 646
8. Dhanaj Singh @ Shera and Others v/s State of Punjab 2004 All JIC 399 SC
9. State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370 : (AIR 1999 SC 1293)
10. Thaman Kumar vs. State of Union Territory of Chandigarh, reported in (2003) 6 SCC 380: (AIR 2003 SC 3975)
11. Sunil Kumar v. State of Rajasthan reported in 2005 SCC (Cr.) 654
12. Masalti and others V. State of U.P., AIR 1965 SC 202
13. Nathuni Yadav and others v. State of Bihar and another, 1997 (34) ACC 576
14. Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420
15. Molu and others v. State of Haryana, AIR 1976 SC 2499
16. Gopal v/s State of U.P. ACC 1999(39) page 98

List of Acts

Indian Penal Code, 1860

List of Keywords

Direct evidence, eye-witness account-sec 302 IPC

Appearances of parties

Counsel for Appellant(s) : Dharmendra Singhal (Senior Advocate), Shivendra Raj Singhal
Counsel for Respondent : A.G.A.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. The instant Criminal Appeal, under Section 374 (2) Cr.P.C., has been preferred by appellants/convicts Narendra and Surendra, both sons of Jagram Singh, residents of Village- Hazipur, Police Station- Siana, District- Bulandshahr, against the judgment and order dated 03.11.1987 passed by Additional Sessions Judge, Bulandshahr in Session Trial No. 87

of 1987, State Vs. Narendra and another, under Section 302/34 IPC, Police Station-Siana, District- Bulandshahr.

2. By the impugned judgment and order, the Trial Court has convicted and sentenced the appellants to undergo imprisonment for life for the offence punishable under Section 302 read with 34 Indian Penal Code (in short 'IPC').

3. The present Criminal Appeal in regard to appellant no. 2/convict Surendra has **abated**, by order dated 12th September, 2025. Therefore, the present Criminal Appeal now proceeds vis-a-vis appellant No. 1/convict, Narendra only.

4. Brief facts of the prosecution case are that the informant Atar Singh son of Girwar Singh, a resident of Village-Buklana, Police Out-Post Bugrasi under Police Station- Narsaina, District-Bulandshahr, submitted a written information (tehrir) (Ext. Ka-1) before the officer- in-charge of Police Out Post-Bugrasi, Police Station- Narsaina, District-Bulandshahr, alleging that today, i.e., on 18.7.1985, at about 2:30 p.m., the informant was moving from his tubewell towards his fields, when he heard someone shrieking. Thereupon, he ran towards that direction and saw Kamlesh wife of Hotilal, also moving fast from her grove. Both of them saw Narendra and Surendra, both sons of Jagram Singh, residents of Village-Hazipur, Police Station- Siana, alongwith two other companions, catching hold of Hotilal and beating him. They raised alarm, as a result, whereof the accused ran away through their arhar field. When they reached Hotilal, they found him dead.

5. It has also been alleged that the informant had identified the other two

persons also, and it is further said that there was litigation pending regarding land between Hotilal, Surendra and Narendra. Condition of Kamlesh was not good in health on account whereof he had come to lodge the report. The dead body was lying on the spot. Upon this information, a chik FIR giving rise to Case Crime No. 39 of 1985, under Section 302 IPC (Ext. Ka-2), was registered at Police Outpost- Bugrasi, Police Station- Narsaina, District Bulandshahr, on 18.7.1985 at 16:30 hours under Section 302 IPC. Thereafter, investigation commenced. The investigating officer collected samples of plain earth and blood-stained earth and a blood-stained dhoti from the place of occurrence and prepared its fard baramadgi (Ext. Ka-14).

6. The inquest was done and a report prepared alongwith other related papers on 18.7.1985. Thereafter, the dead body was sent for autopsy. In the post-mortem examination seven ante-mortem injuries were found on various parts of the dead body. There was abraded contusions, lacerated wounds, abrasions, and contusions on the left side of the forehead with bleeding from the nose present. In the opinion of the doctor, the cause of death was coma as a result of ante-mortem head injuries. The Investigating Officer recorded the statements of informant and other witnesses and inspected the place of occurrence. He prepared a site-plan of the place of occurrence, which he proved as (Ext. Ka-13). The blood-stained earth, plain earth, blood-stained dhoti, bushshirt, and underwear were sent for chemical examination. According to the chemical examination report, human blood was found, with blood group A. On the blood-stained earth, the result could not be ascertained as the blood was disintegrated.

After collecting evidence, the Investigating Officer filed a charge sheet against the appellants Narendra and Surendra under Section 302 IPC before the competent court.

7. The Magistrate's Court took cognizance of the offence and summoned the accused. The appellants appeared before the Court, and the learned Magistrate furnished them relevant prosecution papers under Section 207 CrPC. Thereafter, the case was committed to the Court of Sessions for trial. The appellants appeared before the Court of Sessions, where a charge under Section 302 read with 34 IPC was framed against both of them, to which they pleaded not guilty and claimed trial.

8. The prosecution examined seven witnesses, to wit, PW-1 Atar Singh, PW-2 Smt. Kamlesh, PW-3 Constable Narottam Singh, PW-4 SI Satya Prakash Sharma, PW-5 Dr. A.K. Bansal, PW-6 SI K.V. Singh, and PW-7 Constable Ram Saran Singh.

9. PW-1, Atar Singh, the informant of the case, has said on oath that the appellants Narendra and Surendra were real brothers and nephews (bhanja) of the deceased Hotilal. At about 2:30 p.m., Hotilal was murdered about two years ago. The witness was returning from his tubewell when he heard shrieks from Hotilal who was in his grove. He ran in that direction, and Kamlesh wife of the deceased, also ran in the same direction. Both of them saw that two men had caught hold of Hotilal in his field near his grove, and the appellants Narendra and Surendra were beating him with mallets (mungris). Upon seeing this, they raised alarm, whereupon all the four men ran away.

Hotilal had died, with blood oozing out of his mouth. He has also said that there was a case pending between Hotilal on one hand and Narendra and Surendra on the other regarding 56 bighas of the deceased's land, and that the possession of this land was with Hotilal. It was on this that the appellants Narendra and Surendra had murdered him. The witness has proved the written report (tehrir) as (Ext. Ka-1) and said that Smt. Kamlesh had covered Hotilal's dead body by her dhoti.

10. In his cross-examination, P.W. 1 Atar Singh said that his tubewell is about 10-15 meters away from the field when the deceased was murdered. The deceased was the appellants' maternal uncle (mama) and the disputed land was recorded in the name of Hotilal's father. Later on the appellants' name were entered in the records. There was litigation pending with regard to possession of the said land between the appellants and the deceased Hotilal and his brother Ram Chandra since 1957. The deceased was aged about 50 years at the time of the incident. He was an ex-army man and had retired about 7-8 years ago. Hotilal's first wife was Pushpa of who had borne him three children. She had left him. Kamlesh is aged about 30-35 years. Hotilal looked after his crops and at the time of the incident, a crop of maize and urd was sown over this land. The witness heard screams when proceeding to his field from the tubewell, and after hearing the screams Kamlesh was seen proceeding from the west. The appellants were beating Hotilal under a tree. About 3-5 yards away from the place of occurrence there was a crop of maize. One miscreant was holding the deceased's hands and the other his lower hands. The appellants Surendra and Narendra were battering Hotilal. The witness himself was about 20-25 yards

away from the place of occurrence. When he reached there he saw blood spilt over there. The appellants ran away making there way through the Arhar crop and he did not see whether the crop was damaged or not. He left Kamlesh near the dead body and proceeded to the village within 10-15 minutes. He proceeded to the police station at about 03:00 - 03:30 p.m. on foot. He reached Police Outpost Bukrasi and lodged the report there. The I.O. met him at the Police Outpost and recorded his statement at 04:00- 04:30 p.m. He told the I.O. that the appellants had assaulted employing mungris.

11. PW-2 Smt. Kamlesh is the wife of the deceased. According to her, on the fateful day, at about 2:30 pm., she was in her grove and her husband was in the field near the grove. She saw two men catch hold of Hotilal, and appellants Narendra and Surendra beating him with mallets (mungris). Atar Singh also witnessed the incident. When they raised alarm, the appellants and their two companions fled away. As a result of injuries, Hotilal died. She has also said that there is about 55-56 bighas of land belonging to her, and a case is pending against appellants Narendra and Surendra regarding this land. Due to the above reason, Hotilal was murdered. The names of the appellants are entered in the record, but the physical possession is with hers.

12. In her cross-examination P.W. 2, Smt. Kamlesh has said that she belongs to Culcutta. Hotilal had married her and brought her here from Culcutta, about 10 years ago. Her husband had a first wife Pushpa of whom he had two sons and a daughter. At the time of marriage she was 30 years old whereas Hotilal was about 50 years old. The appellants' names were

entered over the land but she is in possession. The field where the deceased was murdered was given on Batai to Atar Singh. Since Hotilal was ill he had given the field on Batai to Atar Singh a year ago. She and Hotilal had taken lunch after weeding the crop. There was no one around at that time. Thereafter, both of them took rest and after a while she left towards, the south of the field for harvesting Jowar crop. Thereafter, she heard screams. Her husband was taking rest under a tree about 2-3 feet away from maize crop. She heard her husband's scream from a distance of about 20-25 yards and ran towards the place of occurrence. She saw that Narendra and Surendra were assaulting her husband whereas the two other miscreants were catching hold of Hotilal. Both the appellants had assaulted her husband alongwith miscreants and about 3-4 blows were deliver in her presence. She had denied the suggestion that she and Atar Singh had illicit relationship and it was they who had killed the deceased and falsely implicated the appellants in this case.

13. PW-3, Head Constable Narottam Singh is a formal witness who has scribed the chick FIR (Ext. Ka-2) on the basis of the written information (tehrir) by the informant. He has also stated that he entered the gist of the FIR in GD No. 18, the copy whereof he has proved as (Ext. Ka-3). He has also said that on 19.7.1985, Constable Vishwanath Singh, deposited two sealed boxes at the Police Out-Post, which he kept in the Malkhana, and entered its gist in G.D. No. 11, which he proved as (Ext. Ka-4). He has also said that Constable Rameshwar Dayal and Ram Saran had brought receipts of clothes in a sealed packet to the Police Out-Post, which he deposited in Malkhana vide G.D. No. 19,

which he has proved as (Ext. Ka-5). He has also proved G.D. No. 12 as (Ext. Ka-6).

14. In cross-examination P.W. 3, Head Constable Narottam Singh has said that the special report of this crime was sent to Sadar Hospital by Constable Rakesh Kumar, the same day at about 05:00 p.m. and there are Rakesh Kumar's signature on the margin of G.D. No. 21. Constable Rakesh Kumar returned to the Police Outpost at 10:00 a.m. on 19.07.1985. It is true that date 24.07 is endorsed under Chief Judicial Magistrate's signature.

15. PW-4, SI Satya Prakash Sharma, is the investigating officer of the case, and he has spoken about the investigation he conducted. He has said that he reached at the place of occurrence where the dead body was lying. Thereafter, he appointed panchas and then the panchayatnama (inquest) was prepared which he has proved as (Ext. Ka-7). He has also proved the related papers, such as the challan nash, letter to CMO, letter to R.I., photo nash, and photo lash, as (Exts. Ka-8 to Ka-12). He has also said that he inspected the place of occurrence at the pointing out of the informant and prepared its site-plan, which he has proved as (Ext. Ka-13). He collected plain earth and blood-stained earth from the place of occurrence, as well as the ladies dhoti spread over the dead body, and sealed them in separate boxes. Thereafter, he prepared its fardbaramadgi, which he has proved as (Ext. Ka-14). He recorded the statements of informant and other witnesses and searched for the accused. Further investigation was done by K.P. Verma. He has also proved the proceedings regarding attachment of the appellants' property under Sections 82/83 CrPC, which he proved as (Ext. Ka-15). He has also said that the samples of blood-stained dhoti, bushshirt, and

underwear were sent for chemical examination.

16. In his cross-examination P.W. 4, SI Satya Prakash Sharma has said that the starting time of preparation of inquest, in column no. 1, is missing in the inquest report, Exhibit Ka-7. In column no. 2, the cause of death and the nature of FIR is not written. In column no. 3, the distance from the place of occurrence to the Police Station is not written. He has not mentioned in the inquest the nature of weapon by which the injuries were caused. During investigation the appellants did not move any application. He has denied the suggestion that he had taken down the statement of Atar Singh after perusing the post-mortem report. The tubewell of Atar Singh was about 50 steps away to the West-South of the grove. Many fields of Wheat, Maize and Urd crops were sown on both sides of chak road. In his opinion the weapon of assault was not clear, and, therefore, he had not mentioned it in the inquest report. He has recorded the statement of Atar Singh before the inquest report was prepared.

17. PW-5, Dr. A.K. Bansal is a formal witness, who conducted the post-mortem examination of the deceased Hotilal on 19.7.1985 at 4 p.m., while posted as a Medical Officer at the District Hospital, Bulandshahr. He has said that the deceased was about 52 years old and had died one day ago. The rigor mortis had started passing through the hands and was present in his legs. He found the following ante-mortem injuries on the body:

(1) Abraded contusion 10 cm x 6 cm on left side forehead with left black eye and haemorrhage in the left eye. Blood on the nose was present. Skull shape was deformed.

(ii) *Lacerated wound 3 cm x 1 cm x bone deep on left side of head.*

(iii) *Abraded contusion 5 cm x 8 cm on left side lower jaw.*

(iv) *Abraded contusion 8 cm x 4 cm right side neck. Blood from right ear present.*

(v) *Contusion 10 cm x 3 cm right side chest.*

(vi) *Contusion 8 cm x 2.5 cm on right side chest below injury No. 5.*

(vii) *Contusion 6 cm x 2 cm right buttock.*

On internal examination the doctor found that there was blood under the skin below injury no. 1 and 2. There were multiple fractures on the head; the frontal bone, parietal temporal bone and occipital bone were fractured. Brain tissues were lacerated with blood; the left part of the brain was lacerated. Below injury no. 3, there was fracture in the jaw bone. Below injury nos. 5 and 6, ribs no. 4 and 5 were fractured and underneath the lungs were also lacerated.

18. In the opinion of the doctor, the cause of death was coma as a result of ante-mortem injuries. The doctor has proved the post-mortem report as (Ext. Ka-16) and said that the injuries could have been caused on 18.07.1985 at about 2:30 pm. He has also said that injuries no. 5 and 6 could have been caused by mungris and by dandas.

19. In his cross-examination P.W.5, Dr. A.K. Bansal has said that the time of death could not be the intervening night of 18/19.07.1987. All the injuries could have been caused by Mungri meaning a flat small cane with a thin handle which is generally used in the washing of clothes.

20. PW-6, SI K.V. Singh is the second I.O. of the case and he has said that during investigation, he proceeded to initiate proceedings under Sections 82/83 Cr.P.C. against the accused and, after completion of investigation, filed a charge sheet before the competent court, which he proved as (Ext. Ka-17). The defence had not cross-examine him.

21. PW-7, Constable Ram Saran Singh, is also a formal witness, who carried the dead body of the deceased for post-mortem to the Post-mortem House, Bulandshahr. He too has not been cross-examined by the defence.

22. The prosecution has produced the following documentary evidence in support of their case: Exhibit Ka-1 written report (tehrir); Exhibit Ka-2 chik FIR; Exhibit Ka-3 G.D. No. 18; Exhibit Ka-4 G.D. No. 11; Exhibit Ka-5 G.D. No. 19; Exhibit Ka-6 G.D. No. 12; Exhibit Ka-7 panchayatnama (inquest report); Exhibit Ka-8 Challan nash; Exhibit Ka-9 Letter to C.M.O.; Exhibit Ka-10 Letter to R.I.; Exhibit Ka-11 Photo nash; Exhibit Ka-12 Photo of the dead body; Exhibit Ka-13 site plan; Exhibit Ka-14 Recovery memo of blood stained and plain soil; Exhibit Ka-15 Proceedings regarding attachment of the accused's property under Sections 82/83 CrPC; Exhibit Ka-16, the Post-mortem report; Exhibit Ka-17 Charge-sheet; and Exhibit Ka-18 the report of the chemical examiner.

23. Statements of the appellants were recorded under Section 313 Cr.P.C., wherein both of them admitted that they are real brothers. Smt. Kamlesh is the widow of the deceased, and both of them are nephews (bhanja) of the deceased Hoti Lal. They also admitted that there was litigation pending regarding 55-56 bighas of land

between them and deceased Hotilal and said that they are in actual possession of the said land. They have also said that Atar Singh wanted to grab the land in connivance with Kamlesh and thus has falsely implicated them in this case.

24. The appellants have filed certified copy of the Atar Singh's testimony dated 08.05.1985 in Case No. 50 of 1984, a copy of Khasra for Fasli Year 1381-1392, a copy of the S.D.M's order dated 02.08.1982 in Case No. 133 of 1980, a copy of the Khatauni for the Fasli year 1391 and a copy of the Khasra for the Fasli Year 1393. The defence did not adduce any oral evidence.

25. After hearing both parties and perusing the evidence on record, the Trial Court came to the conclusion that the prosecution had proved their case beyond reasonable doubt and thus convicted appellants Narendra and Surendra for the offence punishable under Section 302 read with Section 34 IPC, sentencing them to undergo imprisonment for life. The Trial Court observed that appellants had motive to commit the murder of Hotilal and there was no evidence that the informant Atar Singh and Kamlesh had any illicit relationship or any motive to commit his murder. The FIR was lodged promptly and it was not ante-timed. The place of occurrence is well established. The presence of P.W. 1, Atar Singh and P.W. 2 Smt. Kamlesh at the spot cannot be disputed and their presence at the place of occurrence is quite natural. There is no material contradiction between the ocular and medical evidence. Accordingly, the Trial Court convicted appellants and sentenced them as indicated above.

26. Feeling aggrieved by the impugned judgment and order dated

03.11.1987, this criminal appeal has been filed on behalf of both the convicts, but, as already said, abated on behalf of Surendra.

27. We have heard the rival submissions of learned Counsel for the parties and perused the record.

28. It is submitted on behalf of the learned counsel for the appellant that the FIR has been lodged belatedly and there is no plausible explanation of delay, raising suspicion about the prosecution case. It is also submitted that the FIR is ante-timed and in the inquest report there is no time mentioned with regard to the commencement of inquest. The special report of the crime sent to the Chief Judicial Magistrate was also received late in the Chief Judicial Magistrate's Office which raises suspicion that the FIR was lodged late with an earlier date and time mentioned in it. It is further submitted that there was no motive for the appellants to commit the murder of the deceased. With regard to the land dispute litigation was pending in Court and admittedly the appellant's name including that of the deceased were entered in the revenue record. Therefore, there was no reason for the appellants to commit this crime.

29. It is further submitted that there was illicit relationship between the informant Atar Singh and Kamlesh, wife of the deceased. The deceased after knowing about it objected to it which led both of them to kill the deceased and get rid of him.

30. Per contra, it is submitted on behalf of the State that this is a case of direct evidence and P.W. 1, Atar Singh and P.W. 2, Kamlesh have witnessed the incident. There was no illicit relationship

between Atar Singh and Kamlesh and the defence had not produced any evidence in this regard. There was motive for the appellants to commit murder of the deceased as there was a land dispute between both of them and possession was with the deceased. Therefore, in order to grab the land, the appellants have committed murder of the deceased. It is further submitted that the FIR was lodged promptly and there was no delay in lodging the FIR. Even if it is assumed that there was delay in sending the special Report of crime to the Chief Judicial Magistrate and the I.O. failed to mention the time of commencement of investigation in the inquest report it is no more than a mere lapse on the part of the I.O. which will have no bearing on the prosecution case, proved as it is by direct evidence. In view of the above, the prosecution has proved its case beyond reasonable doubt and thus, this appeal has no force and is liable to be dismissed.

31. The first submission of the appellant is that the FIR was lodged belatedly and the prosecution has failed to give sufficient reason for the delay, rendering the prosecution case not reliable. In this regard, a perusal of record shows that the incident occurred on 18.07.1985 at 02.30 p.m. The place of occurrence is Village- Buklana falling under the reporting Police Out-Post Bugrasi, Police Station- Narsaina, District- Bulandshahar. In the chik FIR (Ext. Ka-2), the distance from the place of occurrence to the Police Out-Post is 4 km. The FIR was lodged on 18.07.1985 at 04.30 p.m.. Therefore, within 2 hours of the incident the FIR was lodged by informant Atar Singh. In this regard, P.W. 1, Atar Singh has said that he himself wrote down the application at his house, and, thereafter, he proceeded to the police

station on foot at about 03-3.30 p.m. alongwith Sukhvir and Trilok Chand. He has also said that he reached the Police Out-Post Bukrashi and lodged the FIR.

32. In this regard, P.W. 3 Constable, 599, Narottam Singh, has said that he was posted as a Constable Clerk at the Police Out-Post- Bugrasi and on 18.07.1985 at 04.30 p.m. the informant Atar Singh brought a written information (tehrir) (Ext. Ka-1) with him and on the basis thereof, he scribed the chik FIR in his own hand writing, which he proved as (Ext. Ka-2). He has also said that he entered the gist of the case in G.D. No. 18, the same day which he proved as (Ext. Ka-3). The above witness has not been cross-examined on the aspect of delay in lodging the FIR. In view of the statement of Atar Singh and P.W. 3 Constable Narottam Singh, it is established that the FIR was lodged promptly and there is no delay in lodging the FIR.

33. It is further submitted on behalf of the appellants that the FIR was lodged ante-timed and in this regard they have submitted that in the inquest report, the time of commencement of investigation has not been mentioned. Besides this the special report of the crime was also sent late to the Chief Judicial Magistrate's Office. It shows that the FIR was lodged ante-timed. We do not agree with this submission of the appellants. P.W. 3 Constable Narottam Singh, the scribe of the chik FIR, has said that the Special Report of the case was sent the same day at 05.00 p.m., through Constable Rakesh Kumar and a reference to that effect was made in the General Diary of the day bearing No. 21. He has further said that Constable Rakesh Kumar returned at 10.00 a.m. on 19.07.1985 and a reference in this regard was also made in the General Diary. He has

also said that the signature of the Chief Judicial Magistrate on the chik FIR bears the date 24.07, below his signature. So, according to the date under signatures of the CJM it was put up before him late. But, it does not mean that the FIR was also sent late from the Police Out-Post. No question regarding delay in sending the FIR was asked of the IO so that he could get an opportunity to explain it.

34. The Supreme Court in **Sunil Kumar v. State of Rajasthan** reported in **2005 SCC (Cri.) 654** has observed:

"Additionally, no question was asked of the Investigating officer as to the reason for the alleged delayed dispatch of the F.I.R. Had this been done, the investigating officer could have explained the circumstances. That having not been done, no adverse inference can be drawn."

35. In view of the above, the submission of the appellants in this regard has no force. Beside this, the entries in general diary of a police station are made in chronological order and there is presumption that the official work is performed as per practice and rules. There is no evidence to the contrary adduced by the defence to rebut the presumption. It is proved that the special report of the said crime was sent the same day at 5 p.m.. Therefore, it rules out any possibility of lodging the FIR on an ante-timed basis.

36. It is true that the inquest report does not carry the time of its commencement of its but at the bottom on the first page of the inquest report, time '19.05' hours is mentioned regarding the conclusion of inquest proceedings. It means that the inquest proceedings were completed at 19.05 hours, and these must

have commenced prior to that time. This means that the time of commencement of the inquest was omitted a mention of in the inquest report, inadvertently, by the officer conducting it. The above inquest report mentions the FIR, case crime number and other details of the case which shows that non-mentioning of the commencement of investigation is just an inadvertent lapse and would in no way adversely affect the prosecution case.

37. Beside this, the post-mortem report of the deceased was conducted on 19.07.1985 at 04.00 p.m. where, in the report the doctor has mentioned the papers sent alongwith the dead body for autopsy. It shows that the inquest and related papers were already prepared before the body was sent for autopsy. There is no such evidence which would show that the FIR was lodged ante-timed. Therefore, the submission of the appellants in this regard has no force.

38. So far as death of the deceased Hotilal at the place of occurrence is concerned that, for a fact is not disputed. According to the prosecution, the deceased Hotilal was murdered on 18.07.1985 at 02.30 p.m. in his agricultural field situate in Village- Buklana, Police Station- Narsaina, District- Bulandshahr. P.W. 1, Atar Singh and P.W. 2, Smt. Kamlesh have said that the deceased was murdered at the above date, time and place. P.W. 5, Doctor A.K. Bansal who has conducted the autopsy on the deceased is cadaver has also opined that death could have occurred at 02.30 p.m. on 18.07.1985. He has denied the suggestion of the defence that death could have occurred in the midnight of 18/19.07.1985. The Investigating Officer has prepared a site-plan of the place of occurrence. In the above site-plan the place of occurrence is near a mango tree in the agricultural field

of the deceased, Hotilal. The Investigation Officer had also collected plain earth and blood-stained earth and a dhoti from the place of occurrence which were sent for chemical examination. In chemical examination report (Ext. Ka-18) human blood was found in the blood-stained earth and on the dhoti. The inquest was also done at the place of occurrence. In view of the above, time of death of the deceased and the place of occurrence are fully established.

39. The prosecution has produced two witnesses of fact to prove its case. Of them P.W. 1 Atar Singh, is the informant of this case and P.W. 2 Smt. Kamlesh, is the wife of the deceased. Both of them have categorically testified that it was the appellants alongwith two unknown men, who murdered the deceased. Their testimony with regard to the incident is consistent and there are no major contradictions there to raise doubts about its veracity. According to P.W. 1, Atar Singh, at the time of incident, he was moving from his tubewell to the field, which he had taken on Batai from Hotilal, when he saw the murder take place. He has said that he heard the deceased scream and ran towards that side. He also saw Smt. Kamlesh running in the same direction as she too heard the scream. It has come in his cross-examination that at about 11.00 a.m., on the said date he had gone to his tubewell to take some rest after doing work in his own field. It has also come in evidence that his own field is near the tubewell. The location of the tubewell and the field of this witness near the place of occurrence has not been challenged by the defence in the cross-examination of P.W. 1 Atar Singh. Therefore, P.W. 1 Atar Singh is a natural witness and his presence at that the time, near the place of occurrence cannot be

doubted. He has said that deceased Hotilal was in his field of maize and urd was resting under the mango tree, when the murder took place. He has also said that Smt. Kamlesh was working in the grove from where she rushed to the place of occurrence. It has come in evidence that beside these two persons, there was nobody near the vicinity. He has said that he left Smt. Kamlesh near the dead body and went to the village where he wrote down the report. He has clearly said that two persons had caught hold of Hotilal while both the appellants battered him with Mungri. He has admitted that he did not mention the weapon (Mungri) in his report and has attributed the omission to the fact that he was perplexed while scribing the first information. But, in his statement to the Investigating Officer, under Section 161 Cr.P.C., he has disclosed the weapon (mungari) which was used in the commission of the offence. He has said that his statement was recorded at the Police Out-Post the same day at about 4.00-4.30 p.m. So the informant has promptly disclosed the weapon of assault to the I.O., ruling out any improvement.

40. In view of the above, if the weapon of assault is not mentioned in the FIR it would have no adverse effect on the prosecution case, as it is well settled law that the FIR is not an encyclopedia wherein every minute detail of the incident must be scripted. Therefore, P.W. 1 Atar Singh has fully supported the prosecution case, that it was the appellants who committed the murder of Hotilal.

41. P.W. 2, Smt. Kamlesh is the deceased is wife, and, therefore, a relative-witness; and, also interested one. Relationship is not a factor in itself to affect the credibility of a witness as held by

Supreme Court in **Rizan v. State of Chhattisgarh**, A.I.R. 2003 S.C.976.

42. Further, in the case of **Dalip Singh and others vs. State of Punjab** (AIR 1953 SC 364), it has been laid down by the Supreme Court:-

"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 relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts."

43. In **Masalti and others V. State of U.P.**, AIR 1965 SC 202, the Supreme Court observed:-

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses..... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea

that such evidence should be rejected because it is partisan cannot be accepted as correct."

44. The observations of Supreme Court in **Israr vs. State of U.P. (2005 (51) ACC 113)** in para 12 of the judgment are also worth mentioning:-

".....Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

45. Lastly, in **Seeman @ Veeranam Vs. State, Inspector of Police, 2005 SCC (Cri) 1893**, and in **Baliraj Singh Vs. State of Madhya Pradesh, 2017 AIR (SCW) 2114**, the Supreme Court has held that the witness could be a relative but that does not mean that his testimony is to be totally rejected. In such a case, it is the paramount duty of the Court to be more careful in the matter of scrutiny of evidence of an interested witness, and if, on such scrutiny it is found that the evidence the interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested one. It is also held that, it is well settled that it is the quality of the evidence and not the quantity which is required to be judged by the Court to place reliance on it.

46. In view of the above, the testimony of P.W.2 Kamlesh cannot be rejected solely on the ground that she is related to the deceased. What is required is that her testimony be examined carefully in the

foreshadow of other evidence on record. It has come in evidence that Smt. Kamlesh, P.W. 2, is the second wife of the deceased. It has also come in evidence that Pushpa, the first wife of the deceased had left the deceased. Thereafter, he married P.W. 2, Smt. Kamlesh. It has also come in evidence that the deceased was an ex-armyman. P.W.2 has supported the prosecution case and has said that she had gone over to the field in the morning, carrying a meal for her husband. She has given full details of the occurrence and has corroborated the prosecution case. She has said that the appellants Narendra and Surendra were beating her husband with Mungri whereas the other two assailants had caught hold of him from both sides. She has also said that the tiffin-carrier was left under the mango tree. She did not know if the I.O. had taken it in his possession or not. She has also said that a bangle of her's was broken and its lay at the place of occurrence. In this regard, it is submitted on behalf of the appellants that the I.O. has not collected or shown the broken bangles at the place of occurrence which raises doubt about Smt. Kamlesh's presence there. It is also submitted that according to the prosecution the appellants fled the spot through a field with an Arhar crop of the height of about 5 feet. It would have been damaged but the I.O. has not collected any evidence in this regard raising suspicion about the prosecution case. We do not agree with these submissions on behalf of the appellants. If the I.O. committed a lapse by not collecting the broken bangles from the place of occurrence or taken note of any damage to the Arhar crop, this mistake/lapse on the I.O's part would not in itself raise any suspicion about the prosecution case. It is settled law that if the prosecution case is otherwise proved by oral and medical evidence, then a

defective investigation would not be a ground to disbelieve it.

47. In regard to a defective investigation the Supreme Court in **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408** and **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654** has observed that any irregularity or deficiency in investigation by the I.O. need not necessarily lead to rejection of the prosecution case when it is otherwise proved. The only requirement is use of extra caution in evaluation of evidence. A defective investigation cannot be fatal to the prosecution where ocular testimony is found credible and cogent.

48. It is, further, held by Supreme Court in **Ambika Prasad & Another v/s State (Delhi Administration) with others, (2000) 2 SCC 646** that in a case of defective investigation it would not be proper to acquit the accused if the case is otherwise established conclusively. A criminal trial is meant for doing justice to the accused, the victim and the society so that law and order is maintained. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which a judge has to perform. (Para 8 and 10 of the judgment in Criminal Appeal No. 1152 of 1997 decided on 21-1-2000 per G.B. Patnaik and M.B. Shah JJ.)

49. In **Gopal v/s State of U.P. ACC 1999(39) page 98** a Full Bench of the Allahabad High Court it was held that "Investigation of the case, if faulty, even mischievous or collusive should not be a ground to reject the ocular testimony of the

informant who lodged the F.I.R. promptly. Each and every case has to be decided on the intrinsic evidence. If the eyewitnesses are believable the mere weakness of the investigation should not be a ground to reject their testimony." see of the report.

50. The Supreme Court considered the issue in **Dhanaj Singh @ Shera and Others v/s State of Punjab 2004 All JIC 399 SC**, it was held:

In the case of defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective."Para 5.

51. It has been observed by Supreme Court in **State of Punjab vs. Hakam Singh, (2005) 7 SCC 408** and **Dhanaj Singh vs. State of Punjab, (2004) 3 SCC 654** that any irregularity or deficiency in investigation by the I.O. need not necessarily lead to rejection of the case of prosecution case when it is otherwise proved. The only requirement is use of extra caution in the evaluation of evidence. A defective investigation cannot be fatal to the prosecution where ocular testimony is found credible and cogent.

52. It is next submitted on behalf of the appellants that Atar Singh and Smt. Kamlesh had an illicit relationship and when it came to the deceased Hotilal's notice, he objected to it. In order to carry on with their relationship, both of them planned to eliminate Hotilal. Thus it was Atar Singh and Smt. Kamlesh who had committed the murder and the appellants

were falsely implicated in this case. We do not agree with this submission also. For one there is no hint of evidence which may suggest that Atar Singh and Smt. Kamlesh had any illicit relationship. Both of them have denied any such relationship. Though Smt. Kamlesh was the deceased's second wife and there was a age difference about 15-20 years between them, but on this ground alone it cannot be assumed that there was an illicit relationship between Kamlesh and Atar Singh. Secondly, if the above murder was committed by the informant and Smt. Kamlesh, the accused could have raised this issue or made an application to the concerned police officer/competent authority to investigate this crime from this angle too. There is no evidence on record to show that the appellants ever said anything in this regard to the I.O. or moved an application to the concerned officer regarding the involvement of the informant and Smt. Kamlesh in the commission of this offence. Merely by suggesting such a thing without producing evidence or raising this issue earlier, would not in itself give rise to any suspicion regarding the involvement of informant and Smt. Kamlesh in the said crime. The incident occurred in broad daylight so there was source of light for witnesses to see the occurrence.

53. In view of the above discussion, P.W. 1 Atar Singh and P.W. 2 Smt. Kamlesh, have fully supported the prosecution case and there are no inconsistencies or major contradictions in their statements, which may raise doubt about their evidence.

54. It is submitted on behalf of the appellants that there was no motive for the appellants to commit the murder and they have been falsely implicated in this case.

On the other hand, it is submitted on behalf of the State that there was a land dispute between the deceased and the appellants and litigation in this regard was also pending before the competent Court. The appellants are the deceased's sister's son (bhanja). There was reason thus for them to commit the murder in order to grab the deceased's land.

55. Before discussing the above point, it is to be noted that this case is based on direct evidence and there is an eye-witness account of the said crime. It is settled law that in a case based on direct evidence, motive loses its significance.

56. The observations of Supreme Court in the case of **Nathuni Yadav and others v. State of Bihar and another, 1997 (34) ACC 576** are worth mentioning:

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Chambell struck a note of caution in 'Reg v. Palmer' thus: 'but if there be any motive which can be assigned I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of Criminal Courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties."

In the case of **State of H.P. Vs. Jeet Singh, (1999) 4 SCC 370 : (AIR 1999 SC 1293)**, the Supreme Court has made the following observations:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offendoffender towards the person whom he offended."

57. Regarding the motive for commission of a crime, the Supreme Court has observed thus in **Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420** (para 21 of the report at page 2429):

"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it

has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

58. In **Molu and others v. State of Haryana**, AIR 1976 SC 2499, the Supreme Court has held as under in para 11 of the report at page 2505:

"It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant."

59. In **Suresh Chandra Bahri v. State of Bihar** AIR 1994 SC 2420 in para 21 of the report at page 2429 it was observed by Supreme Court:

"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of

the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

60. In **Thaman Kumar vs. State of Union Territory of Chandigarh**, reported in (2003) 6 SCC 380: (AIR 2003 SC 3975), the Supreme Court remarked:

"There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved."

61. In view of above legal position, proof of motive is not very material in this case, which is based on direct evidence. Even then, if we look into the present case it is not in dispute that a litigation regarding an agriculture land was pending between the deceased Hotilal and the appellants/convicts Surendra and Narendra. It has also come in evidence that the names of appellants were recorded in the revenue records. It has come in the prosecution evidence that the possession of disputed land remained with the deceased. It has also come in evidence that the appellants had won the case in the Court of the

S.D.M., but on appeal preferred by Hotilal, the judgment of the S.D.M. was set aside by the Appellate Court and the case remanded for hearing afresh to the court of first instance. On account of this litigation the appellants could have been prompted to kill Hotilal in order to grab the said land. Nonetheless, as discussed above the witnesses of fact namely Atar Singh and Kamlesh have proved the case that the appellants did caused death of Hotilal by battering him with Mungari. So, even if it is assumed that the prosecution has failed to prove motive for the appellants to commit this offence, it has no significance after all.

62. It is submitted on behalf of the appellant that there are major contradictions in ocular and medical evidence which totally falsifies the prosecution case. We do not agree with this submission also because it has come in the testimony of P.W. 1 Atar Singh and P.W. 2 Smt. Kamlesh that the appellants committed Hotilal's murder by hitting him with Mungri, and when they reached near the place of occurrence they saw the appellants hit the deceased Hotilal with Mungris two to three times. P.W.1 has said that appellants were hitting Hotilal with Mungri and the other two were catching hold. One held by his lower limbs and the other his hands. Both of them saw the incident from about 25 paces. P.W.2 has said that the appellants had assaulted the deceased with small Mungri. The mungri were 1-1/12 feet long and round in shape. The appellants hit him 3-4 times over and she could not say the number of blows, delivered to the chest and head.

63. P.W. 3, Doctor A.K. Bansal, who conducted the autopsy of the deceased, has opined that injury nos. 5 and 6 could have been caused by Mungri and all the injuries sustained by the deceased could have been

caused by a Mungri, a flat small cane with a thin handle generally used in the washing of clothes. There were seven ante-mortem injuries found over the dead body of the deceased of the nature of abraded contusion, lacerated wound and contusion. The frontal bone, parietal temporal bone and occipital bone of the skull were fractured. The bone of lower jaw under injury no. 3 was also fractured. 4th and 5th rib under injury nos. 5 and 6 were also fractured and underneath the ribs the lung was also lacerated. Thus the nature of injuries and the opinion of the doctor fully corroborate the ocular testimony of P.W. 1 and P.W. 2 that the deceased was assaulted with Mungri whereby he sustained these injuries resulting in his death.

64. In view of the above discussion, we come to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and the Trial Court has appreciated the evidence on record correctly arriving at the right conclusion, holding the appellants guilty, and, accordingly, convicting and sentencing them.

65. Therefore, the present appeal lacks merit and is, accordingly, **dismissed**. We affirm the impugned judgment and order dated 03.11.1987 passed by Additional Sessions Judge, Bulandshahr.

66. Appellant no.1/convict **Narendra** is on bail. His personal bond is cancelled and the sureties discharged. He is directed to surrender before the Trial Court within two weeks from today to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

67. Let a copy of this order be forwarded to the learned Trial Court

had suppressed material facts regarding her employment and income in her application and affidavit before the trial court, while the husband bore the responsibility of maintaining his aged parents and other familial obligations - Despite these assertions, the Family Court awarded maintenance, which led to the filing of the present revision challenging the legality and propriety of impugned order.

Held: As per the provision of s. 125(1) (a), the opposite party no. 2 is not entitled to get any maintenance from her husband/revisionist as she is an earning lady and able to maintain herself - Learned counsel for the revisionist has alleged that she did not come before the trial court with clean hands - A perusal of the affidavit filed by the opposite party no.2 clearly reflects that she has not mentioned that she is an earning lady as well as a perusal of application u/s 125 Cr. P.C. reflects that she has claimed herself as an illiterate and unemployed woman but when the document filed by the revisionist was shown to her before the trial court, she has admitted about her income during her cross-examination - Thus, it is clear that she did not come before the trial court with clean hands - The opposite party no. 2 does not deserve any sympathy and is not entitled to receive maintenance from the revisionist, criminal revision allowed. [Paras 11, 12, 15] (E-13)

Case Law Cited

**Rekha Sharad Ushir v. Saptashrungi Mahila
Nagari Sahkari Patsansta Ltd. reported in
2025 SCC OnLine SC 641 - relied on**

List of Acts

Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; s. 125 Cr.P.C.; Maintenance Allowance; Unable to Maintain Herself; Sufficient Means; Neglect or Refusal to Maintain; Affidavit filed before the Trial Court; Cross-examination; Clean Hands; Suppression of Material Facts; Full and True Disclosure of Facts; Liability of the Revisionist; Aged Parents; Award of ₹5,000/- per month; From the Date of Filing of the

Code of Criminal Procedure, 1973 - s.125 - The instant criminal revision arose from an order dated 17.02.2024 passed by Principal Judge, Family Court, Gautam Budh Nagar, whereby the revisionist - husband was directed to pay maintenance of ₹5,000/- per month to the opposite party no. 2 - wife from the date of filing of the application - The wife had approached the Family Court asserting that she was unemployed and had no independent source of income to maintain herself - The husband, however, contested the claim on the ground that the wife is a Post-Graduate, professionally qualified as a Web Designer, and employed as a Senior Sales Coordinator in a private company, drawing a monthly salary of approximately ₹36,000/-, and therefore not entitled to maintenance u/s 125 Cr.P.C - It was further contended that she

Application; Set Aside; Allowed; Not Entitled to Receive Maintenance.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision
No. - 2487 of 2024

From the Judgment and Order dated 17.02.2024 passed by the Principle Judge, Family Court, Gautam Budha Nagar in Case No.683 of 2019.

Appearances for Parties

Advs. for the Revisionist:

Shreesh Srivastava, Sujan Singh

Advs. for the Opposite Party:

G.A., Nandini Mishra

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Case called out in the revised call. None has appeared on behalf of the opposite party no.2 to press the present revision. Hence this criminal revision is being decided after hearing the arguments of learned counsel for the revisionist as well as learned AGA.

2. Heard Sri Sujan Singh, learned counsel for the revisionist and learned A.G.A. for the State.

3. This criminal revision has been filed by the revisionist with prayer to set aside the impugned judgment and order dated 17.02.2024 passed by the Principle Judge, Family Court, Gautam Budha Nagar in Case No.683 of 2019 (Neha Sahu Vs. Ankit Saha), under Section 125 Cr.P.C., whereby the revisionist has been directed to pay Rs. 5,000/- per month to the opposite party no.2 as maintenance allowance from the date of filing of the application.

4. Learned counsel for the revisionist submits that opposite party no. 2 did not approach the trial court with clean hands by

filing her application under Section 125 Cr.P.C., wherein she claimed that she is unemployed and has no source of income. When as matter of fact, the opposite party no.2 is a Post-Graduate, a Web Designer by qualification, and is working as a Senior Sales Coordinator in Keiath Telecom Pvt. Ltd., getting salary of Rs. 36,000/- per month. Hence, she does not deserve any sympathy and is not entitled to receive maintenance on this very ground. Despite the aforesaid fact, trial court has awarded the maintenance allowance of Rs. 5,000/- per month merely to balance the income between the parties.

5. Learned counsel for the revisionist further submits that, as per the provision of Section 125 Cr.P.C., maintenance can be awarded to a wife only when she is unable to maintain herself or has no sufficient source of income. It is next submitted that the revisionist has the responsibility of maintaining his aged parents, whereas opposite party no. 2 has no such liability. Learned counsel for the revisionist has drawn the attention of the Court towards affidavit filed by opposite party no. 2 before the trial court, which is paper nos. 67-70, wherein the details of her liabilities have been mentioned as "nil." Thus, the sole contention of learned counsel for the revisionist is that opposite party no. 2 has sufficient means to maintain herself, and in such circumstances, she is not entitled to receive any maintenance from the revisionist.

6. Learned AGA has opposed the submissions as advanced by the learned counsel for the revisionist and submits that the amount awarded by the trial to make the parties as equal status to enjoy their lives but could not disputed the fact that the opposite party no. 2 is well educated lady,

and is working as a Senior Sales Coordinator in Keiath Telecom Pvt. Ltd., getting salary of Rs. 36,000/- per month.

7. Considering the facts and circumstances of the case, submissions made by learned counsel for the revisionist and learned AGA as well as perusal of record and order passed by learned trial court. A perusal of page no. 15 of the impugned judgment reflects that the opposite party no.2 is a Post-Graduate, a Web Designer by qualification, and is working as a Senior Sales Coordinator in Keiath Telecom Pvt. Ltd., getting salary of Rs. 36,000/- per month. The trial court while passing the impugned judgment has not taken into consideration the liability of the revisionist and has awarded Rs. 5000/- per month to make the parties equal status to enjoy.

8. For ready reference, Section 125 Cr.P.C. is quoted hereunder:-

125. (1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself.

9. From the perusal of Section 125 Cr.P.C., it is clear that maintenance can be

awarded to the wife, when she is unable to maintain herself.

10. A perusal of the paragraph 23 of the impugned judgment which is at internal page no. 12 of the impugned indicates that in the affidavit filed before the trial court, the opposite party no. 2 herself admitted that she is a Post-Graduate, Web Designer by qualification, and is working as a Senior Sales Coordinator in Keiath Telecom Pvt. Ltd., getting salary of Rs. 34,000/- per month but in her cross-examination she has further admitted that she is earning of Rs. 36,000/- per month and such amount, for a wife who has no other liability, cannot be said to be meagre, whereas the revisionist has the responsibility of maintaining his aged parents and other social obligations.

11. Thus, this Court is of the view that as per the provision of Section 125(1) (a), the opposite party no. 2 is not entitled to get any maintenance from her husband/revisionist as she is an earning lady and able to maintain herself.

12. On the second issue, learned counsel for the revisionist has alleged that she did not come before the trial court with clean hands. A perusal of the affidavit filed by the opposite party no.2 at page no. 67-70 clearly reflects that she has not mentioned that she is an earning lady as well as a perusal of application under Section 125 Cr. P.C. paper no. 33 to 38 at paragraph no. 16 reflects that she has claimed herself as an illiterate and unemployed woman but when the document filed by the revisionist was shown to her before the trial court, she has admitted her aforesaid income during her cross-examination. Thus, it is clear that she did not come before the trial court with clean hands.

13. It is settled law that when a person approaches a Court, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. It is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy, access to justice should not be misused as a licence to file misconceived and frivolous petitions. If a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts".

14. The Hon'ble Apex Court in **Rekha Sharad Ushir Vs. Saptashrunji Mahila Nagari Sahkari Patsansta Ltd.** reported in **2025 SCC OnLine SC641**, para no. 11 is reproduced herein below:

" 11. It is settled law that a litigant who, while filing proceedings in the court, suppresses material facts or makes a false statement, cannot seek justice from the court. The facts suppressed must be material and relevant to the controversy, which may have a bearing on the decision making. Cases of those litigants who have no regard for the truth and those who indulge in suppressing material facts need to be thrown out of the court."

15. In view of the said judgment of Hon'ble Apex Court, the opposite party no. 2 does not deserve any sympathy and is not entitled to receive maintenance from the revisionist.

16. Accordingly, the impugned judgment and order dated 17.02.2024 passed by the Principle Judge, Family Court, Gautam Budha Nagar in Case No.683 of 2019 (Neha Sahu Vs. Ankit Saha), under Section 125 Cr.P.C. is hereby set aside.

17. Accordingly, the instant criminal revision is **allowed**.

(2025) 12 ILRA 473
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 18.12.2025

BEFORE

THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Revision No. 2607 of 2025

Satyaprakash Rai Alias Dablu Rai & Anr.
...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Issue pertains to whether the trial court had lawfully exercised its jurisdiction u/s 319 of Code of Criminal Procedure, 1973 in summoning the revisionists as additional accused in a sessions trial u/s 302 IPC, despite their not having been charge-sheeted by the Investigating Officer, and whether the evidence adduced during trial was of such quality and degree as to satisfy the statutory threshold namely, stronger than a mere prima facie case so as to justify their being tried together with the accused already facing trial.

Headnotes

Indian Penal Code, 1860 - s. 302 - Code of Criminal Procedure Code, 1973 - s. 319 - The instant criminal revision arose out of an order dated 21.04.2025 passed by Additional Sessions Judge/Special Judge, E.C. Act, Azamgarh in Sessions Trial No. 196 of 2016, pertaining to an offence u/s 302 IPC, whereby the trial court, in

exercise of powers u/s 319 of Code of Criminal Procedure, 1973, summoned the revisionists to face trial along with the other accused - The prosecution case originated from an FIR in which the revisionists were named and specific roles were attributed to them in connection with the homicidal incident, however, upon completion of investigation, the Investigating Officer did not submit a charge-sheet against them - During the course of trial, the testimonies of prosecution witnesses, particularly P.W.-1, P.W.-3 and P.W.-4, allegedly disclosed material indicative of complicity of revisionists - On the basis of such evidence emerging during trial, the court below formed an opinion that the revisionists ought to be tried together with the charge-sheeted accused and consequently passed the impugned summoning order, which has been challenged in the instant criminal revision.

Held: The evidence recorded by the court during trial is thus to be accorded primacy and for the purpose of exercise of power u/s 319 of the Code would have to be given weight over the material which was collected during the course of investigation - The contention which has been sought to be raised placing reliance upon the material collected by the investigating officer during the course of investigation, for the purpose of exercise of powers u/s 319 of the Code, thus cannot be accepted - The power u/s 319 of the Code to summon even those persons who are not named in the charge-sheet to appear and face trial, being unquestionable and the object of the provision being not to allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the evidence during the course of trial, the order passed u/s 319 of the Code summoning the revisionists does not contain any material error so as to warrant inference - Thus, criminal revision is accordingly dismissed. [Paras 20 to 22] (E-13)

Case Law Cited

Hardeep Singh and Others v. State of Punjab, (2014) 3 SCC; S. Mohammed Ispahani v.

Yogendra Chandak and others, (2017) 16 SCC; Rajesh and others v. State of Haryana, (2019) 6 SCC 368; Saeeda Khatoon Arshi v. State of Uttar Pradesh and another, (2020) 2 SCC 323 - referred to

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860

List of Keywords

Criminal Revision, s.302 IPC; s. 319 Cr.PC; Summoning Order; Exercise of Powers; Named in the FIR; Assigned Specific Role; Investigating Officer; Column 2 of Charge-sheet; Evidence Recorded During Trial; Testimony of P.W.-1, P.W.-3 and P.W.-4; Complicity of the Revisionists; Cognizance; Arraigned as Accused; Tried Together with the Accused; Degree of Satisfaction; More than Prima Facie Case; Strong and Cogent Evidence; Material Collected During Investigation; No Material Error; Interference Warranted; Dismissal of Criminal Revision

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 2607 of 2025

From the Judgment and Order dated 21.04.2025 passed by the Additional Sessions Judge/Special Judge, E.C. Act, Azamgarh in Sessions Trial No. 196 of 2016.

Appearances for Parties

Adv. for the Revisionist:

Ashish Gupta

Adv. for the Opposite Party:

Amrendra Nath Rai, G.A., Nidhi Rai

(Delivered by Hon'ble Devendra Singh-I, J.)

1. Heard Sri Ashish Gupta, learned counsel for the revisionists, Sri Amrendra Nath Rai, learned counsel for the opposite party no.2 and learned Additional Government Advocate, for the State-opposite party.

2. The present criminal revision has been filed against the order dated 21.04.2025 passed by the Additional Sessions Judge/Special Judge, E.C. Act, Azamgarh in S.T. No.196 of 2016 (State vs. Vedprakash Rai @ Mahanth Rai), under Section 302 IPC, Police Station-Gambhirpur, District-Azamgarh, whereby the revisionist has been summoned by the trial court in exercise of powers under Section 319 of the Code of Criminal Procedure, 1973.

3. Learned counsel for the revisionists has sought to assail the order passed by the trial court by referring to the factual aspects of the case to contend that the revisionists have been falsely implicated in the criminal case. He has submitted that the jurisdiction under Section 319 of the Code is to be exercised in an extra-ordinary situation where there is a strong possibility of the conviction of the accused, who is proposed to be summoned, and the powers are not to be exercised in a routine manner. It is further pointed out that the Investigating Officer did not find any material against the revisionist and no charge-sheet having been submitted against them, there was no further material on the basis of which the trial court could have summoned the revisionist.

4. On the other hand, learned counsel for the opposite party no.2 and learned Additional Government Advocate have controverted the assertions made by the counsel for the revisionists by drawing attention to the fact that the revisionists herein were named in the FIR and specific role has been assigned to them. Attention has also been drawn to the fact that the testimony of P.W.-1, P.W.-3 and PW-4 during the course of trial have pointed to the complicity of the revisionists and their

clear role in the incident. It is also contended that the testimony before the trial judge would have to be given more weight than the report submitted by the Investigating Officer pursuant to the investigation.

5. Rival contentions fall for consideration.

6. The ambit and scope of the powers of the Magistrate under Section 319 of the Code were considered in the Constitution Bench judgment of the Supreme Court in **Hardeep Singh and Others vs. State of Punjab; (2014) 3 SCC**. Referring to the object of the provision it was held that the object of the provision is that the real culprit should not get away unpunished and in a situation where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. It was stated thus :-

"8.The constitutional mandate under Articles 20 and 21 of the Constitution of India, 1950 provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get

punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 Code of Criminal Procedure. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject matter of trial.

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*12. Section 319 Code of Criminal Procedure springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and*

this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC.

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17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Code of Criminal Procedure or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. *The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."*

7. As regards the degree of satisfaction required for invoking the powers under Section 319 of the Code, it was held that the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. It was observed as follows :-

"105. Power under Section 319 Code of Criminal Procedure is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger

evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Code of Criminal Procedure. In Section 319 Code of Criminal Procedure the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused." The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 Code of Criminal Procedure to form any opinion as to the guilt of the accused."

8. The question as to in what situations the power under the section can be exercised in respect of persons not named in the FIR or named in the FIR, but not charge-sheeted or discharged was also considered, and it was held that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the charge-sheet, can still be summoned by the court provided the conditions under the section stand fulfilled. It was observed as follows :-

"111. Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose

name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Code of Criminal Procedure can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

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117.6 A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh."

9. The word 'evidence' as used under Section 319(1) of the Code was also considered and it was held as follows :-

"84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Code of Criminal Procedure. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Code of Criminal Procedure. The "evidence" is thus, limited to the evidence recorded during trial."

10. The principles with regard to exercise of power by the court to summon an accused under Section 319 of the Code were reiterated in **S. Mohammed Ispahani Vs. Yogendra Chandak and others; (2017) 16 SCC**, and it was held that the power under Section 319 to summon even those persons who are not named in the charge-sheet to appear and face trial, is unquestionable. It was observed thus:-

"28. Insofar as power of the Court Under Section 319 of the Code of Criminal Procedure, to summon even those persons who are not named in the charge sheet to appear and face trial is concerned, the same is unquestionable. Section 319 of the Code of Criminal Procedure, is meant to rope in even those persons who were not implicated when the charge sheet was filed but during the trial the Court finds that sufficient evidence has come on record to summon them and face the trial. In Hardeep Singh's case (supra), the Constitution Bench of this Court has settled the law in this behalf with authoritative pronouncement, thereby removing the cobweb which had been created while interpreting this provision earlier. As far as object behind Section 319 of the Code of

Criminal Procedure, is concerned, the Court had highlighted the same as under:

19. The court is sole repository of justice and a duty is cast upon it to uphold the Rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an Accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

11. The power to proceed against persons named in FIR with specific allegations against them, but not charge-sheeted, was reiterated in **Rajesh and others Vs. State of Haryana; (2019) 6 SCC 368**, and it was held that persons named in the FIR but not implicated in charge-sheet can be summoned to face trial, provided during the trial some evidence surfaces against the proposed accused.

12. The exercise of powers under Section 319 of the Code for summoning an additional accused again came up for consideration in **Saeeda Khatoon Arshi Vs. State of Uttar Pradesh and another; (2020) 2 SCC 323** and it was held that it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

13. In the case at hand the trial court has taken note of the fact that the revisionists were not only named in the FIR but they were assigned the role in the incident. The testimony of P.W.-1, P.W.-3 and PW-4 as being indicative of the complicity of the revisionists have also been referred. Upon considering the settled legal position with regard to the exercise of powers under Section 319, the court below has passed the order summoning the revisionists.

14. The FIR version as also the testimony of the P.W.-1, P.W.-3 and PW-4 before the trial judge being indicative of the complicity of the revisionists, though not arraigned as accused in the charge-sheet, it was open to the trial court to form a view that the revisionists be tried together with the other accused, and for the said purpose summon the revisionists in exercise of powers under Section 319 of the Code.

15. The broad principles which have been laid down for exercise of powers under Section 319 of the Code underline the object of the enactment that the real perpetrator of the offence should not get away unpunished and in a situation where the investigating agency for any reason does not array any culprit as an accused the court would not be powerless in calling the accused to face trial; rather it would be duty of the court to do justice by punishing the real culprit.

16. The test which has been laid down with regard to the degree of satisfaction required for invoking the powers under Section 319 is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

17. The power to proceed under Section 319 has also been held to be exerciseable in respect of persons though named in the FIR but not charge-sheeted provided the court is satisfied that the conditions provided under the section stand fulfilled.

18. Section 319 (1) of the Code envisages that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

19. The word evidence used under Section 319(1) of the Code has been held to be understood to refer to the evidence recorded during trial, and also any material that has been received by the court after cognizance is taken and before the trial commences, to be utilized for corroboration and to support the evidence recorded by the court.

20. The evidence recorded by the court during trial is thus to be accorded primacy and for the purpose of exercise of power under Section 319 of the Code would have to be given weight over the material which was collected during the course of investigation. The contention which has been sought to be raised placing reliance upon the material collected by the investigating officer during the course of investigation, for the purpose of exercise of powers under Section 319 of the Code, thus cannot be accepted.

21. The power under Section 319 of the Code to summon even those persons

who are not named in the charge-sheet to appear and face trial, being unquestionable and the object of the provision being not to allow a person who deserves to be tried to go scot-free by being not arraigned in the trial inspite of possibility of his complicity which can be gathered from the evidence during the course of trial, the order passed under Section 319 of the Code summoning the revisionists does not contain any material error so as to warrant inference.

22. Subject to aforesaid observations the instant criminal revision is, accordingly, **dismissed.**

(2025) 12 ILRA 480
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Government Appeal No. 2576 of 1985

State of U.P.		...Appellant
	Versus	
S. Vijai Singh		...Respondents

Issue for Consideration

Matter pertains to consideration of a Government Appeal under S. 378 Cr.P.C. against the judgment and order dated 22.05.1985 whereby the accused-respondents were acquitted of charges under Ss. 147, 148, 302 read with S. 149 IPC, and whether the said acquittal suffered from perversity or illegality warranting interference by the appellate court. (Paras 1, 6, 28-29)

Headnotes

Indian Penal Code, 1860 - Ss. 147, 148, 302 r.w. S. 149 IPC - Criminal Trial - Acquittal - Interference in Appeal - Appellate court will not interfere unless findings are perverse or illegal.

Evidence - Appreciation - Eye-witnesses - Witnesses found to have made material contradictions, embellishments and improvements vis-à-vis statements under S. 161 Cr.P.C. - Evidence not inspiring confidence.

Evidence - Interested / Planted Witnesses - Prosecution witnesses projected as eye-witnesses but presence at scene doubtful and conduct unnatural.

Motive - Enmity - Enmity a double-edged weapon; can be ground for false implication.

Proof - Suspicion - Suspicion, however strong, cannot take the place of proof.

(Paras 6, 12-22, 28)

Held: Prosecution witnesses Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) were not eye-witnesses to the incident; their evidence suffered from major and material contradictions and improvements and did not inspire confidence - Trial Court rightly disbelieved the prosecution version as the alleged eye-witnesses remained mute spectators, made no attempt to save the deceased, nor raised alarm despite presence of nearby village and passers-by - The alleged motive based on enmity and rivalry was insufficient; prosecution appeared to have falsely implicated the accused on suspicion and doubt - Though homicidal death stood proved by medical evidence, there was no direct, circumstantial or incriminating evidence connecting the accused-respondents with the crime - No perversity or illegality was committed by the trial Court; acquittal was based on proper appreciation of evidence - Government Appeal dismissed, confirming the judgment and order of acquittal dated 22.05.1985. (Paras 12 - 29)

Case Law Cited

Sushil and Others v. State of U.P., 1995 SCC (Cri.) 388; State of Punjab v. Sucha Singh, (2003) 3 SCC 153; State of Odisha v. Banabihari Mohapatra and Another, SLP (Cri.) No. 1156 of 2021; Sujit Biswas v. State of Assam, AIR 2013 SC 3817.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Government Appeal; acquittal; suspicion, however strong cannot take place of proof; enmity is a double-edged weapon; improvements; material contradictions; eye-witness.

Case Arising From

APPELLATE JURISDICTION: Judgment and order dated 22.05.1985 passed by the IVth Additional District and Sessions Judge, Gorakhpur in Sessions Trial No. 64 of 1984.

Appearances for Parties

Advs. for the Appellant:

Learned **A.G.A. for the State of U.P.**

Advs. for the Respondents:

Learned counsel for the accused-respondents

(Delivered by Hon'ble Salil Kumar Rai, J.
& Hon'ble Vinai Kumar Dwivedi, J.)

1. This Government Appeal No. 2576 of 1985 under Section 378 Cr.P.C. has been filed by the State against the judgment and order dated 22.05.1985 passed by learned IVth Additional District and Sessions Judge, Gorakhpur in Session Trial No. 64 of 1984, whereby the accused-respondents, namely, Shanti Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rama Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav have been acquitted of the charge under Sections 147, 302 read with Section 149 IPC. The accused-respondents Ram Briksh Singh, Sesh Vijay Singh and Rajeshwari Lal have been acquitted of the charge under Sections 148 and 302 IPC.

2. As per prosecution version, facts of the case are that on 12.08.1982, which was Sri Krishna Janmastmi day, deceased Girijashankar Lal was going to Lakshmipur market on a cycle alongwith his younger daughter Km. Pushpa, who was seated in his front on the frame of the cycle. Complainant Nalin Kumar was following

him and was at a distance of 10-15 paces. At about 10.30 A.M., when Sri Girijashankar Lal reached on the Kacha road near the grove of Sri Yunus Khan, accused Ram Briksh Singh and Shesh Vijai Singh armed with country-made pistol, accused Rajeshwari Lal armed with knife and rest of the accused carrying lathies emerged from the said grove and surrounded Sri Girijashankar Lal. He stopped the cycle and Km. Pushpa immediately got down from the cycle with a push. Thereafter, Ram Briksh Singh and Shesh Vijai Singh fired with their country-made pistols, consequently he sustained injuries and tumbled down. Thereafter, accused persons lifted and took him near the ditch lying to the east of the road and threw him down there. Whereafter, accused Rajeshwari Lal sawed his neck with his knife. Rest of the accused had been holding Sri Girijashankar Lal and when Sri Girijashankar Lal died, the accused persons threw his dead body in the water in the nearby ditch. When accused Rajeshwari Lal was cutting the neck of Sri Girijashankar Lal, Km. Pushpa was entreating the accused and begging for the life of her father, but accused Shanti Vijai Singh threatened and pushed her back. Pancham and Ayodhya, who were coming from the road, saw this occurrence, when the accused noticed their presence on the spot, they threatened and chased them and they fled away raising hue and cry. The accused then ran away. Nalin Kumar, Pancham and Ayodhya then came back to the spot and in the meantime some other villagers also reached there. Complainant Nalin Kumar asked them to supervise the dead body. He started for the police station on his cycle. After covering a distance of 5-6 Km., when he reached in village Mohnapur Dhala, he purchased some papers and prepared a report giving details

of this occurrence, took it to Police Station Purandarpur and lodged the same there at 12.15 P.M.

3. Thereafter, on the information of complainant Nalin Kumar, a case was registered against the named accused persons under Sections 147, 148, 149, 302 IPC. Investigation of the case was handed over to S.I. Ravindranath Pandey (PW-5). He started investigation of the case, inspected the place of incident, prepared the panchayatnama (inquest report) of the deceased Girijashankar Lal, sent his body for autopsy and also prepared the site plan. After completing all the formalities of the investigation, he submitted charge-sheet against the accused persons in the court of concerned Magistrate. Thereafter, the case was committed to the court of Sessions for trial. The accused Shanti Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rama Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav were charged under Sections 147, 302 read with Section 149 IPC and accused Ram Briksh Singh, Shesh Vijay Singh and Rajeshwari Lal under Sections 148, 302 IPC. The accused pleaded not guilty to the charges and claimed trial.

4. In the trial Court, the prosecution produced Pancham (PW-1), informant Nalin Kumar (PW-2), Pushpa (daughter of Girijashankar Lal) (PW-3), Constable Gauri Shankar Singh (PW-4), S.I. Ravindra Nath Pandey (PW-5) and Dr. G.N. Tiwari (PW-6). The prosecution also adduced documentary evidence.

5. Thereafter, the statements of all accused/respondents were recorded under Section 313 Cr.P.C. All accused pleaded their innocence and they stated that they

were falsely implicated in this case due to village enmity and rivalry because of the elections of Gram Pradhan of village Ghurchiha. The defence adduced Murlidhar Mishra as DW-1 in their support and also filed documentary evidence.

6. The trial Court, after appreciating and evaluating the prosecution evidence, as available on record, found that prosecution witnesses Pancham (PW-1), informant Nalin Kumar (PW-2) and Pushpa (PW-3) were not eye-witnesses to the incident. Since the prosecution was unable to prove its case beyond reasonable doubt, the trial Court acquitted all accused persons, namely, Shanti Vijay Singh, Shesh Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rajeshwari Lal, Ram Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Rambriksh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav.

7. In light of the office report dated 24.07.2025, which is based on the letter dated 19.03.2024 of the Chief Judicial Magistrate, Gorakhpur, the appeal is declared to have abated so far as it concerns accused/respondent nos. 1, 5, 7, 8, 10, 11, 12 and 13, namely, Shanti Vijay Singh, Rajeshwari Lal, Hazari Bania, Ram Samujh, Rambriksh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav. The appeal survives for adjudication only so far as it concerns accused/respondent nos. 2, 3, 4, 6 and 9, namely, Shesh Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Ram Singh and Rampati Singh.

8. Learned A.G.A. for the State submitted that the date, time and place of the murder were fully established and the trial Court was not justified in recording a finding contrary to the evidence on record. Pancham (PW-1) is an independent

witness, while Nalin Kumar (PW-2) and Pushpa (PW-3) are members of the deceased's family, therefore, all witnesses are quite natural in this case. It is also submitted that, despite their tender age, Nalin Kumar (PW-2) and Pushpa (PW-3) withstood the test of cross-examination. The minor inconsistencies pointed out by the learned trial Court were not sufficient to discard their testimony. In view of the above arguments, it is again submitted that, taking any view of the matter and considering the total facts and circumstances of the case and the material available on record, the order of acquittal is not justified in the eyes of law. Hence, the Government Appeal deserves to be allowed and the judgment and order of acquittal dated 22.05.1985 passed by the trial Court is liable to be set aside.

9. Per contra, learned counsel for the accused-respondents submitted that the judgment and order of acquittal dated 22.05.1985 passed by the learned trial Court is fully justified and based on appreciation of evidence and law. It is also submitted that it was a blind murder of the deceased Girijashankar Lal. The prosecution has adduced Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) as eye-witnesses of the incident, but these so-called eye-witnesses could not withstand the cross-examination. The trial Court found that Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) are only planted and projected eye-witnesses. All the three witnesses of the so-called incident are not the eye-witnesses of the incident. The trial Court, in proper and legal manner, appreciated and evaluated the evidence adduced by the prosecution and found that Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) were not eye-witnesses of the incident. The order of acquittal

passed by the trial Court is fully supported by evidence and reason. No mistake about appreciation of evidence and application of law has been committed by the trial Court. Thus, learned counsel for the accused-respondents has submitted that the instant Government Appeal filed by the State has no merit and is liable to be rejected.

10. In view of the above arguments of learned A.G.A. for the State and learned counsel for the accused-respondents, we have gone through all the evidence available on record. Apart from this, we have also gone through the judgment and order of acquittal dated 22.05.1985 passed by the trial Court.

11. From perusal of the evidence available on record, it is evident that, as per the prosecution story, the incident occurred on 12.08.1982 and it is said that Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) (daughter of the deceased Girijashankar Lal) witnessed the incident with their own eyes.

12. From perusal of the evidence given by prosecution witness Pancham (PW-1), we find that, in his examination-in-chief, this witness supported the prosecution story as narrated in the first information report, which was lodged by Nalin Kumar (PW-2), but when we examined his cross-examination, we find that he could not stand in his cross-examination. At the same point of fact, this witness has stated a different version in his evidence.

13. It is also evident that this witness has given evidence contrary to his statement recorded by the Investigating Officer under Section 161 Cr.P.C. In other words, Pancham (PW-1) has given a totally different and improved version in the Court

than the statement recorded under Section 161 Cr.P.C. It is also evident from the statement of this witness that when confronted with his earlier statement, the witness has stated that "if darogaji has not written this fact in my statement, I cannot give any reason for it." Due to the inconsistencies, embellishments, material and major improvements, the trial Court did not find this witness reliable. We have also perused the evidence of this witness and find that evidence of this witness does not inspire confidence and is, therefore, considered untrustworthy. The trial Court also found that this witness is not reliable because of the material contradictions and improvements in his statements.

14. Nalin Kumar (PW-2) is the informant of this case. As per the prosecution story, this witness was also going with the deceased Girijashankar Lal on the date of the incident, i.e., 12.08.1982. In his examination-in-chief, this witness stated that he was going behind his maternal uncle (mausa), the deceased Girijashankar Lal, on another bicycle. We find that in his examination-in-chief, this witness has given his evidence as per the version of the F.I.R., which was written by him. In other words, what was stated by this witness in the F.I.R., all those facts and statements were reiterated and stated in his examination-in-chief by this witness.

15. PW-2 Nalin Kumar has got the F.I.R. of this case registered at police station Purandarpur and thereafter, the investigation of the case was started by the police. It is stated in his evidence by the informant Nalin Kumar (PW-2) that he was residing with his maternal uncle (mausa), the deceased Girijashankar Lal, in village Ghurchiya for his education. It was also stated that his uncle was a librarian at

Sardar Patel Inter College, Lakshmipur, and he himself was a student there. When we have gone through his cross-examination, we find that this witness stated this statement, which was not given by him in his statement under Section 161 Cr.P.C. From this, it is amply clear that this witness stated in his evidence that this statement was not given by him to the Investigating Officer. Meaning thereby, this witness totally improved his evidence in the Court from his statement under Section 161 Cr.P.C. given to the police. The major and material contradictions in his evidence were found by the trial Court. We also find that in the evidence of this witness, major and material contradictions and improvements have been made by this witness at the time of recording his evidence in the trial Court. The contradictions and improvements that are committed by this witness are so material and grievous that in such a situation, as per the law of evidence, the statement of this witness as given in the trial Court could not be believed to be true and reliable. From perusal of the evidence of this witness, we find that evidence of this witness does not inspire any confidence. Due to this reason, the trial Court not relied and believed the evidence of this witness. The trial Court found that this witness was also not present at the place of occurrence on 12.08.1982. The trial Court has also given this finding that "if he actually lives in the village and received education in the said intermediate college, the prosecution could file his admission form, mark-sheet, transfer certificate, scholar register showing the name of his local guardian, which would have proved that he was living in the village. His non-appearing in the supplementary examination and passing of the Intermediate examination in 1983 as a private candidate go to show that he never

lived with the deceased and was never a student of that college." Thus, from the appreciation of the evidence of informant Nalin Kumar (PW-2), the trial Court found that this witness was not living with the deceased Girijashankar Lal at village Ghurchiya at the time of the incident. The trial Court also found that this witness was not an eye-witness of the incident. The prosecution, after due deliberation, produced this witness as both informant and eye-witness. Reasoning given by the trial Court is fully supported by the evidence in this respect that this witness is not an eye-witness. Learned trial Court also found that the so-called conduct of this witness is very much suspicious and unnatural to human behaviour. Thus, we are also of the considered opinion that Nalin Kumar (PW-2) is not an eye-witness of the incident and he was not present at the scene of occurrence when the incident occurred on 12.08.1982 as alleged by the prosecution.

16. Pushpa, who is daughter of the deceased Girijashankar Lal, is PW-3 in this case. It is stated by the prosecution that on the date of incident, the deceased Girijashankar Lal was going to Laxmipur market for purchasing Pooja samagri for Sri Krishna Janmashtami festival. PW-3 Pushpa was also accompanying her father Girijashankar Lal. It is stated that Pushpa (PW-3) was sitting in front of the bicycle of his father deceased Girijashankar Lal. As per the prosecution story and the statement of this witness, incident took place in her presence. This witness in her examination-in-chief fully supported the first information report and also corroborated the evidence of Pancham (PW-1) and Nalin Kumar (PW-2). We find that three prosecution witnesses, such as, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa

(PW-3) stated the same way in their examination-in-chief and supported the prosecution case but this witness also could not stand creditworthy and reliable in her cross-examination. During her cross-examination, defence cross-examined this witness and she has also conceded that "if darogaji had not written this fact in my statement under Section 161 Cr.P.C., then I cannot give reason for it." We found that this witness also travelled behind her statement given to the Investigating Officer under Section 161 Cr.P.C. and in her examination-in-chief, she narrated totally different and improved statement. From this, it becomes amply clear that this witness during recording her statement totally improved and changed her version in the Court. We also found that major and material contradictions that go to the root of the prosecution story, has been committed by this witness in her statement. From perusal of the evidence of this witness Pushpa (PW-3), it is amply clear that this witness was also not an eye-witness of the occurrence dated 12.08.1982. This witness was not going with her father deceased Girijashankar Lal for purchasing Pooja samagri and her salwar-suit. Learned trial Court has given lengthy and reasonable discussion and rightly appreciated the evidence of this witness and has found that this witness was projected to strengthen the prosecution story. The trial Court in right perspective and in legal manner disbelieved the veracity of this witness. We found no illegality or perversity in appreciating the evidence of this witness by the trial Court.

17. From the evidence available on the record, it appears that prosecution tried to project Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) as eye-witnesses of the incident. Pancham (PW-1) in his

evidence has stated that he himself had seen the occurrence committed by the accused and Nalin Kumar, Pushpa and Ayodhya had also seen the commission of the occurrence and they were also present at the scene of the occurrence. In the same way, Nalin Kumar (PW-2) has also stated that Pancham (PW-1), Pushpa (PW-3) and Ayodhya had also seen the commission of the occurrence by the accused persons. Nalin Kumar (PW-2) has also stated that apart from him, Pancham, Pushpa, Ayodhya are also eye-witnesses of the incident and they were also present at the scene of the crime.

18. In the same way, Pushpa (PW-3) has also stated in her evidence that, apart from her, Pancham (PW-1), Nalin Kumar (PW-2) and Ayodhya were also present at the scene of the crime and they had seen commission of the crime with their own eyes but the trial Court, after evaluating and appreciating the evidence of all three prosecution witnesses, found that all the above three prosecution witnesses were not present at the scene of the crime. Their presence at the place of occurrence was highly doubtful and suspicious. We have also gone through the evidence of all three prosecution witnesses and we find that the prosecution tried to plant and project Pancham, Nalin Kumar and Pushpa as eye-witnesses of the incident. However, the prosecution miserably failed in its attempt to prove its case beyond reasonable doubt.

19. We found that as per prosecution story, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) and Ayodhya were present at the scene of the occurrence when accused-respondents were committing the crime but we are surprised to see that four persons from the deceased' side were

present at the place of occurrence at a distance of 10-12 paces but none of them tried to save the life or make a hue and cry against the accused persons.

20. It is also clear from the evidence that from the scene of crime, village Rudrapur was situated about 100-150 paces but prosecution witness Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) only as per the prosecution story were present at the spot, but they all were stood as a moot spectator to the commission of crime. None of the prosecution witnesses made any attempt to save the life of deceased Girijashankar Lal and also all the three prosecution witnesses not tried to get help from any other villagers/persons. Although village Rudrapur was near at a distance of about 100-150 paces. Time of commission of the occurrence was 10:30 A.M. and at that time, pathway may be full of passers-by. Apart from the prosecution witnesses, many other people may come and go from the road where incident took place. No single injury of abrasion or fire-arm injury of pellet has been received by the prosecution witnesses, such as, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3).

21. In view of the above facts, it is clearly evident that prosecution purposely projected Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) as eye-witnesses of the incident, but in reality Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) are not the eye-witnesses of the incident and they were not present at the place of occurrence.

22. On the point of motive, trial Court in respect of enmities between some of the accused and deceased Girijashankar Lal on one hand, and between accused Shanti

Vijay Singh and deceased Girijashankar Lal on the other hand are concerned, trial Court in para 22 of the judgement has fully discussed the motive about commission of the crime. As per the prosecution story, the motive for commission of the crime was enmity between some of the accused and Girijashankar Lal, secondly between accused Shanti Vijay Singh and Girijashankar Lal, who were rival candidates in the elections of Pradhan and thirdly Shanti Vijay Singh and others, who are the erstwhile Zamindars, who used to ill-treat the poor villagers and Girijashankar Lal used to provide succour to the villagers. The trial Court fully discussed the so-called above three kinds of enmities between the deceased Girijashankar Lal and accused persons and found that only on the ground of enmity, accused-respondents were falsely implicated in this case. We have also perused the evidence in this regard and also finding given by the trial Court on the point, then we find that prosecution only on the ground of enmities and rivalry between the deceased Girijashankar Lal and accused-respondents, has falsely implicated the accused-respondents in this case.

23. Hon'ble Supreme Court in the case of **Sushil And Others v. State of U.P., 1995 SSC (Cri.) 388** and in the case of **State of Punjab v. Sucha Singh, (2003) 3 SCC 153**, has held that "enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication." Therefore, only on the basis of enmity, the accused-respondents cannot be connected with the crime and held guilty for the crime. For holding guilty any man for the commission of any crime, full proof evidence either circumstantial or direct or last seen together must be present so

cogently that accused persons could be connected with the crime on the basis of that evidence. Thus, it appears and evident from the evidence that prosecution on the ground of enmities and rivalry falsely implicated the accused-respondents in this case for commission of the crime.

24. We also found that due to so-called enmity and rivalry between the deceased Girijashankar Lal and accused-respondents, prosecution falsely implicated accused/respondents in this case. Prosecution due to so-called enmity and rivalry only on the ground of suspicion and doubt has falsely implicated the accused-respondents in this case but suspicion and doubt, however, so strong cannot take place of proof or evidence. For holding any person guilty for any crime, strong evidence beyond reasonable doubt must be adduced by the prosecution.

25. Hon'ble Supreme Court in the case of **State of Odisha v. Banabihari Mohapatra And Another, Special Leave Petition (Criminal) No. 1156 of 2021; decided on 12.02.2021** has held that "it is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

26. This proposition had also been asserted by the Hon'ble Supreme Court in the case of **Sujit Biswas v. State of Assam; reported in AIR 2013 SC 3817**. Thus, we find that due to so-called enmities and rivalry, accused-respondents were implicated in this case on the ground of suspicion and doubt without any cogent and reliable evidence against them.

27. From the postmortem report of deceased Girijashankar Lal, Ext.Ka-15, prepared by medical witness Dr. G.N. Tiwari (PW-6), total six injuries were found on his body. From perusal of the postmortem report, it is clear that the deceased Girijashankar Lal was murdered by gunshot injury and also by cutting his respiratory system by sharp-edged weapon but there is no direct evidence against the accused-respondents and there is also no indirect evidence or incriminating material from which accused-respondents can be connected with the crime. Thus, we find that so-called eye-witnesses as projected by the prosecution, i.e., Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) were not an eye-witnesses of the incident. Prosecution could not adduce any circumstantial evidence and also prosecution could not produce any incriminating material against the accused persons by which accused-respondents could be held guilty for commission of the crime.

28. In light of the above observations and discussions of the evidence, we find that no perversity or illegality was committed by the trial Court regarding the order of acquittal in respect of the accused-respondents. We are also of the considered view that acquittal order passed by the trial Court is fully based on evidence on the record and supported by lengthy reasoning, therefore, in view of the above, we find no force in the arguments of learned A.G.A. in this respect, hence we find the Government Appeal is liable to be rejected.

29. The Government Appeal is, accordingly, dismissed confirming the judgment and order dated 22.05.1985 passed by learned trial Court.

30. Office to send copy of this judgment to the trial Court. The trial Court records be transmitted.

(2025) 12 ILRA 489
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.12.2025

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE PRASHANT KUMAR, J.

Special Appeal Defective No. 387 of 2025

Vinay Mohan ...Appellant
Versus
Smt. Nidhi Singh & Anr. ...Respondents

Issue for Consideration

(1) Maintainability of Special Appeal against the Judgment an order passed by Single Judge in an application u/s 24 CPC.

(2) Definition of word 'Judgment' used in Rule 5 of Chapter VIII of the Allahabad High Court Rules, 1952.

(3) Effect of exclusory provision of S. 105 CPC on the maintainability of appeal.

Headnotes

(A) Practice and procedure – Special Appeal – Maintainability – Impugned order was passed in a petition arising out of proceeding u/s 24 CPC – Against which Special Appeal was filed – Preliminary objection on its maintainability was raised – Question of scope of the word ‘Judgment’ used in Ch. VIII Rule 5 also felt into consideration. (E-1)

Held : An order passed under Section 24 CPC is not a judgment, therefore, an appeal is not amenable on this count under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. [Para 5]

Further held : Right to appeal is not inherent unless it is specifically provided by the statute. Since the Code of Civil Procedure does not specially provide for an appeal against an order passed on a transfer application under Section 24 CPC and at the same time by implication excludes an appeal against such an order by

virtue of Section 105 CPC, therefore, the Division Bench opined that merely for the reason Rule 5 Chapter VIII of the Rules of the Court, 1952 is silent in this regard it would not confer jurisdiction of appeal, if any contrary interpretation is made and the appeal is held to be maintainable it would amount to conferring jurisdiction of appeal which otherwise is not specifically provided but is expressly as well as by implication excluded by Section 105 C.P.C. [Para 6]

Case Law Cited

Amit Khanna vs. Smt. Suchi Khanna, 2009 (1) AWC 929; Asrumati Debi vs. Kumar Rupendra Deb Raikot, AIR 1953 SC 198; Midnapore Peoples' Coop. Bank Ltd. and Ors. vs. Chunilal Nanda and Ors., (2006) 5 SCC 399; South Asia Industries (P) Ltd. vs. S.B. Sarup Singh and Ors., AIR 1965 SC 1442; Special Appeal No. 1126 of 2018; Akshay Gupta vs. Smt. Swati Gupta decided on 16.11.2018; Mahendra Pratap Bhatt vs. Saroj Mahana, 2016 (5) ADJ 282; Subal Paul Vs. Malina Paul and Anr., 2003 (5) JT 193; K.VS. Balan and Anr. Vs. Sivagiri Sree Narayana Dharma Sanghom Trust and Ors., AIR 2006 Kerala 58; Neelam Kanwar Vs. Devinder Singh Kanwar, 2001 (1) ECrc 109; Krishna Veni Nagam Vs. Harish Nagam, AIR 2017 SC 1345; Shyam Sel and Power Limited and Anr. Vs. Shyam Steel Industries Ltd. decided on 14.03.2022 (Supreme Court); Amruta Vs. Sachin decided on 01.08.2025 (Bombay High Court) –
referred to.

List of Acts

Allahabad High Court Rules, 1952 – Chapter VIII, Rules 5; Code of Civil Procedure, 1908 – Ss. 24, 104 and 105.

List of Keywords

Transfer Application; Special Appeal; Maintainability; Original jurisdiction; Appellate jurisdiction; Revisional jurisdiction; Later Patent Appeal; Judgment; Appropriate legislation; Irregularity; Right to appeal; Inherent.

Case Arising From

Judgment and order dated 20.05.2025 passed by Hon'ble Single Judge in Transfer Application (Civil) No. 166 of 2022.

Appearances for Parties

Appellant-in-person

Adv. for the Respondents : Vikas Pandey,
Advocate

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Vinay Mohan -appellant in person and Shri Vikas Pandey, learned counsel appearing for the respondent no. 1.

2. This is an appeal under Chapter VIII, Rules 5 of the Allahabad High Court Rules, 1952 challenging a judgment and order dated 20.05.2025 passed by learned Single Judge of this Court in Transfer Application (Civil) No. 166 of 2022.

3. Though, the appellant appearing in person sought to address the Court on merits of the matter, but, first and foremost the question arose as to whether this appeal against the order impugned is maintainable under Chapter VIII, Rules 5 of the Allahabad High Court Rules, 1952 or not ? The aforesaid provision reads as under:-

"5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of Appellate Jurisdiction) in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State

List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of Appellate or Revisional jurisdiction under any such Act of one Judge."

4. It is true that the order has been passed on an application under Section 24 of the Code of Civil Procedure, 1908 which is not in exercise of any appellate or revisional jurisdiction but under the jurisdiction vested in the High Court under Section 24 of the CPC. First and foremost it has been held in a catena of decisions that such an order passed under Section 24 CPC is not a judgment within the meaning of the term as used in Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and similar provisions contained in Letter Patent Appeal Rules etc. pertaining to other High Courts. We may in this context refer to a co-ordinate Bench judgment rendered in the case of **Amit Khanna Vs. Smt. Suchi Khanna reported in 2009 (1) AWC 929**, wherein this issue was considered at length and referring to various decisions including the judgment of Hon'ble the Supreme Court reported in **AIR 1953 SC 198; Asrumati Debi v. Kumar Rupendra Deb Raikot** it was opined that an order of transfer under Section 24 is not a judgment within the meaning of Clause 15 of Letters Patent (Calcutta) and, therefore, is not appealable under the said provision. Such an order neither affects the merit of the controversy between the parties to the suit nor does it terminate or dispose of the suit on any ground. Therefore, an order of transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground. In this context the Division Bench also considered the Supreme Court decision

reported in **(2006) 5 SCC 399; Midnapore Peoples' Coop. Bank Ltd. and Ors. Vs. Chunilal Nanda and Ors.** and the decisions cited therein. The Division Bench ultimately opined that an order passed by the learned Single Judge of this Court on a transfer application falls in the category 4 or 5 (Para 11) as categorized in **Midnapore's case** (supra), meaning thereby, it was either a routine order which was passed to facilitate the progress of the case till its culmination in the final judgment or it was an order which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties. Such an order is made only to facilitate the final decision but it in itself is not a decision at all to be called a judgment.

5. In view of this, as, an order passed under Section 24 CPC is not a judgment, therefore, an appeal is not amenable on this count under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

6. This apart, there is another aspect of the matter. Such an appeal is maintainable under the aforesaid provision only if it has not been expressly or impliedly taken away by appropriate legislation. The Division Bench in **Amit Khanna's case** (supra) relied upon a constitution Bench judgment of the Supreme Court rendered in the case of **South Asia Industries (P) Ltd. Vs. S.B. Sarup Singh and Ors.** reported in **AIR 1965 SC 1442** in this regard. Based on the discussion, it opined that an appeal against an order passed under Section 24 CPC is not prescribed under Section 104 CPC and it is specifically excluded by Section 105 CPC, according to which -"Save as otherwise expressly provided, no appeal shall lie from any Order made by a Court in

the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal." Thus, no appeal is maintainable from any order of the Court passed in exercise of its original or appellate jurisdiction except against orders which have been made appealable under Section 104 CPC. Right to appeal is not inherent unless it is specifically provided by the statute. Since the Code of Civil Procedure does not specially provide for an appeal against an order passed on a transfer application under Section 24 CPC and at the same time by implication excludes an appeal against such an order by virtue of Section 105 CPC, therefore, the Division Bench opined that merely for the reason Rule 5 Chapter VIII of the Rules of the Court, 1952 is silent in this regard it would not confer jurisdiction of appeal, if any contrary interpretation is made and the appeal is held to be maintainable it would amount to conferring jurisdiction of appeal which otherwise is not specifically provided but is expressly as well as by implication excluded by Section 105 C.P.C. The Division Bench in **Amit Khanna** (supra), thus, opined that in the above scenario the right of special appeal as contemplated by Rule 5 Chapter VIII of the Rules of the Court, even though the same is independent to the provisions of C.P.C., against the order of the single judge passed on a transfer application under Section 24 C.P.C. stands impliedly excluded.

7. The Division Bench in **Amit Khanna** (supra) was followed by another Division Bench in **Special Appeal No. 1126 of 2018; Akshay Gupta Vs. Smt. Swati Gupta** decided on 16.11.2018. In this very context we may refer another

judgment, also by a Division Bench of this Court, rendered in the case of **Mahendra Pratap Bhatt Vs. Saroj Mahana** reported in 2016 (5) ADJ 282, wherein, after considering the Division Bench judgment in **Amit Khanna's case** (supra) and certain other decisions, especially, the Supreme Court decision rendered in the case of **Subal Paul Vs. Malina Paul and Anr.** reported in 2003 (5) JT 193, it was opined that in **Amit Khanna** (supra) the aforesaid decision in **Subal Paul** (supra) as regards the purport and application of Section 104 C.P.C. was not considered and ultimately the Division Bench opined that irrespective of the Division Bench judgment in **Amit Khanna's case** (supra), as, the case before it was one where the order impugned was without jurisdiction which was not the case in **Amit Khanna** (supra), and as it was of the opinion that essentially the impugned judgment was one passed in exercise of powers under Article 226 of the Constitution of India, therefore, it entertained the appeal. We are of the opinion that the said judgment turns on its own facts. In the case at hand, it is not, as, if the judgment impugned is without jurisdiction, therefore, the judgment rendered in **Mahendra Pratap Bhatt** (supra) does not apply in this appeal, instead, the judgments rendered in **Amit Khanna** (supra) and **Akshay Gupta** (supra) apply. In the case of **Akshay Gupta** (supra) not only the judgment in **Amit Khanna** (supra) but also **Mahendra Pratap Bhatt** (supra) have also been considered and it was opined that from a joint reading of the judgments in the said cases it would be evident that special appeal under Chapter VIII Rule 5 of the Rules, 1952 against an order passed by learned Single Judge on an application filed under Section 24 C.P.C. would not be maintainable except where the order passed

by the learned Single Judge is without jurisdiction, which is not case in this appeal before us.

8. We are, therefore, of the considered opinion that on both the grounds, firstly that an order passed under Section 24 C.P.C. is not a judgment so as to maintain an appeal against such an order under Chapter VIII Rule 5 of the Rules, 1952, secondly, such an appeal is barred by Section 105 C.P.C., therefore, holding that this appeal is maintainable will be contrary to the letter and intent of Section 104 read with Section 105 C.P.C. as held by the Division Bench in the case of **Amit Khanna** (supra) with which we concur.

9. As regards the Supreme Court decision in **Subal Paul** (supra) that was a case where special appeal arose out of proceedings under Section 299 of the Indian Succession Act, 1925 and Hon'ble the Supreme Court has held that the rigor of Section 104 C.P.C. would not apply to the said proceedings because the appeal was prescribed under special enactment and not the C.P.C. In the case at hand the factual position is different, as, the order which has been impugned, has been passed under Section 24 C.P.C. and not under any special enactment, therefore, the decision in **Subal Paul** (supra) also does not help the appellant herein.

10. The appellant has relied upon the decision reported in **AIR 2006 Kerala 58; K.V. Balan and Anr. Vs. Sivagiri Sree Narayana Dharma Sanghom Trust and Ors., 2001 (1) ECrc 109; Neelam Kanwar Vs. Devinder Singh Kanwar, AIR 2017 SC 1345; Krishna Veni Nagam Vs. Harish Nagam** and other judgment rendered by Hon'ble the Supreme Court in the case of **Shyam Sel and Power Limited**

and Anr. Vs. Shyam Steel Industries Ltd. decided on 14.03.2022 and judgment of Bombay High Court rendered in the case of Amruta Vs. Sachin decided on 01.08.2025. None of the decisions cited by the appellant appearing in person help his case in view of the above discussion.

11. For all these reasons, we are of the opinion that the special appeal is not maintainable.

12. Accordingly, the special appeal is **dismissed** as not maintainable.

(2025) 12 ILRA 493

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 19.12.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 13255 of 2025

Shubham Bhargava **...Petitioner**
Versus
Union of India & Ors. **...Respondents**

Issue(s) for consideration

Whether the request of the petitioner for cancellation of his transfer in terms and conditions as provided in the transfer policy of the Bank, can be rejected by the Bank on the ground of special services being rendered by the petitioner?

Headnotes

A. Service Law – Specialization of an employee should not be used as a tool against him, as a specialist can well render his services with cool and calm state of mind and if he is being transferred from one place to another, in an unpleasant situation, perhaps his/her skill being specialist; would have of no avail; for the Bank or any of the Institution. (Para 16)

The petitioner being Law Manager, renders special services, in term of clause of the transfer policy of the Bank. He has been transferred frequently, which is against the transfer policy. The authorities undoubtedly have to look into the interest of the Bank/Institution but at the same time, it has also to be considered that if the employees of the Bank or any Institution are given conducive atmosphere of working, the same may enhance the productivity of such Institution, as the employees are ultimately the human beings. This principle cannot be a strait-jacket formula but the same shall be applicable in the peculiar facts and circumstances of each and every case. (Para 16)

B. Clause 1.3 of the transfer policy provides that normal tenure of the officer at one place of the posting will be three years of active service and further clause 1.07 also provides that the Bank shall make all endeavour to complete the transfer exercise by 30th June of every year and the mid session transfer shall be considered only in case of promotion and administrative exigencies. When this Court examines the whole scenario of the transfer of the petitioner as well as the transfer policy, it is apparent that post of the petitioner is transferable as per Regulations 1979 and for putting unanimity, the Bank itself has issued an exhaustive transfer policy. The petitioner, who served more than nine years outside the State, while working at Nagpur and Jabalpur, was transferred in the State of Uttar Pradesh and was posted at Zonal Office Kanpur in the year 2023 and in between two years, he has been transferred from Kanpur to Bahraich and again from Bahraich to Salem in Tamil Nadu, in the month of July 2025. Normal tenure, which is provided for posting at one place, is three years of active service, whereas the petitioner within two years has been transferred two times and that too, lastly about 2000 kms away, in the mid term. (Para 14, 15)

The order impugned dated 10.11.2025 (which is reiteration of earlier ground of rejection and Bank authorities failing to consider the request of the petitioner for cancellation of his transfer in terms and conditions as provided in the transfer policy of the Bank) and the subsequent orders thereof, are hereby quashed. (Para 17, 18)

The petitioner is given liberty to move a fresh claim, agitating all the grounds, before the competent authority. For this period, the effect and operation of the impugned transfer order dated 18.7.2025 shall remain stayed and the petitioner shall not be forced to join on the transferred place of posting. (Para 19 to 21)

Writ petition allowed. (E-4)

Case Law Cited:

Shilpi Bose (Mrs) and others Vs. State of Bihar and others, 1991 Supp (2) SCC 659 (Para 13)

List of Acts

Indian Bank Officers Service Regulations, 1979.

List of Keywords

transfer order, policy, cancellation, special services.

Appearances for Parties

For Petitioner(s): Vivek Kumar Shukla, Shweta Shukla

For Respondent(s): A.S.G.I., Gopal Kumar Srivastava, Surya Prakash

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Vivek Kumar Shukla and Ms. Shweta Shukla, learned counsel for the petitioner, Mr. Asit Chaturvedi, learned Senior Advocate assisted by Mr. Gopal Kumar Srivastava and Mr. Akash Deep Srivastava, learned counsel for the respondent nos. 2 to 5 and Mr. Varun Pandey, learned counsel for the Union of India.

2. By means of the present writ petition, the petitioner has assailed the transfer order dated 18.7.2025 issued by the Corporate Office, HRM, Indian Bank which is communicated by Assistant General Manager, HRM, Indian Bank. Further prayer is made for quashing of the order dated 4.10.2025 passed by the Grievance Redressal Authority and the order dated 10.11.2025 passed by the appellate authority alongwith the order dated 5.8.2025, by which the petitioner is relieved.

3. He submitted that against the transfer order, the petitioner moved a letter on 21.7.2025 before the Grievance Redressal Cell and, when that remained unheard, within a period 15 days, he filed a writ petition bearing Writ-A No. 9921 of 2025 wherein this Court was pleased to pass the order on 1.9.2025, which is quoted hereinunder:-

"1. Heard learned counsel for the petitioner, Sri Arvind Kumar, learned counsel, who files memo on behalf of respondent no.1, and Sri Gopal Kumar Srivastava, learned counsel for respondents no.2 and 3.

2. With the consent of learned counsels for the parties the matter is being decided finally.

3. The petitioner is aggrieved by the transfer order dated 18.07.2025, a copy of which is Annexure-1 to the petition, whereby the petitioner has been transferred from Bahraich to Salem.

4. It has also been pointed out by Sri Srivastava that the petitioner has already been relieved on 05.08.2025. He also states that as the petitioner has been relieved as such his entire matter now would be considered by the competent

authority where the petitioner has been transferred.

5. Various grounds have been taken by the learned counsel for the petitioner to challenge the said order.

6. However, it has been pointed out that in terms of Clause 26 of the Transfer Policy for Officers up to scale III issued by the Indian Bank, a copy of which is Annexure-5 to the petition, the petitioner can raise his grievance before the Zonal Officer/FGMO Corporate Office and that the petitioner has already raised his grievance vide grievance dated 21.07.2025, a copy of which is Annexure-4 to the petition. As such, it is prayed that the said grievance be directed to be decided by the competent authority who is said to be respondents no.2 and 3.

7. Accordingly, considering Clause 26 of the Transfer Policy the writ petition is disposed of with a direction to the competent authority to consider and dispose of the grievance as raised by the petitioner, a copy of which is Annexure-4 to the petition, in accordance with law and relevant rules which grievance would be decided within a period of two weeks from the date of receipt of a certified copy of this order.

8. Till then no coercive action has been taken against the petitioner in pursuance to the impugned transfer order dated 18.07.2025."

4. Further submission is that vide the aforesaid order, the competent authority of the Bank was directed to consider the grievance of the petitioner as per clause 26 of the transfer policy and it was also provided that till the decision is taken no coercive action shall be taken against him. He submitted that in compliance of the order aforesaid, the order dated 8.9.2025 has been passed but the grievance of the

petitioner has not been redressed and the request of the petitioner has been rejected and, being aggrieved, the petitioner again moved writ petition bearing Writ-A No.11252 of 2025, wherein again an order was passed on 25.9.2025, for deciding the representation of the petitioner afresh and again protection was granted for not taking any coercive action against the petitioner. The order dated 25.9.2025 passed in Writ-A No.11252 of 2025 is quoted as under:-

"1. Heard learned counsel for the petitioner and Sri Asit Chaturvedi, learned Senior Advocate assisted by Sri Gopal Kumar Srivastava, Advocate & Sri Akash Deep Srivastava, learned counsel for the respondents no. 2 to 4.

2. At the very outset, Sri Chaturvedi, learned Senior Advocate informs that the order dated 18.09.2025, a copy of which is annexure 3 to the writ petition per which the representation of the petitioner dated 21.07.2025 has been rejected, has been withdrawn. He further states that now a fresh decision would be taken on the representation by the Chief General Manager (CDO/CLO) which is the next higher authority to the General Manager (HRM) who effected the initial order of transfer dated 18.07.2025.

3. Learned counsel for the petitioner is satisfied with the aforesaid.

4. Considering the aforesaid, the writ petition is disposed of leaving it open for the competent authority to decide the representation of the petitioner a fresh as per statement given by Sri Asit Chaturvedi, learned Senior Advocate appearing on behalf of the respondents which would be decided within a period of ten days, the time frame as suggested by Sri Chaturvedi, learned Senior Advocate in accordance with law and the relevant rules.

5. Till then, no coercive action shall be taken against the petitioner in pursuance to the transfer order dated 18.07.2025.

6. It is further provided that in case any grievance of the petitioner still subsist it would be open for the petitioner to approach the competent Court of law"

5. He submitted that once the order was not passed, the petitioner again approached this court by way of filing Writ-A No.12942 of 2025 wherein on 11.11.2025 following order was passed:-

"It has been informed by Mr. Asit Chaturvedi, learned Senior Counsel assisted by Mr. Gopal Kumar Srivastava, learned counsel for the respondent nos. 2, 3 & 4 that the appeal against the order passed on representation has been decided on 10.11.2025 by the competent authority.

Learned counsel for the petitioner submits that he may be permitted to withdraw instant petition with liberty to file afresh while challenging the subsequent order dated 10.11.2025. He further submits that a copy of this order has been furnished to the learned counsel for the petitioner today in itself in the Court.

With the aforesaid observations, instant writ petition is dismissed as withdrawn with the liberty as sought above."

6. Referring the aforesaid, he submitted that the order dated 11.11.2025 passed by appellate authority was placed before this Court and the writ petition was dismissed as withdrawn with liberty to the petitioner to challenge that order and now, against the transfer order as well as the order passed by the appellate authority, present writ petition has been preferred.

7. Submission of the learned counsel for the petitioner is that the petitioner was initially appointed on the post of Law Officer in the Allahabad Bank on 23.9.2013 and he was posted at Nagpur and thereafter, he was transferred to Jabalpur in the year 2017 and he served at Jabalpur till 5.2.2023 and on 6.2.2023, he joined at Zonal Office, Kanpur as Senior Manager and, hence, the petitioner rendered more than nine years of services outside the home State.

8. Adding his arguments, he submitted that on 29.5.2025, within span of two years and three months, the petitioner has again been transferred as Senior Manager, Zonal Office, Indian Bank, Bahraich and just after two months, he has again been transferred on 18.7.2025 from Zonal Office, Baraich to Zonal Office Salem, Tamil Nadu, vide impugned transfer order dated 18.7.2025 and being aggrieved, the petitioner preferred an appeal, as per para 26 of the transfer policy, before the Chief General Manager on 21.7.2025. He argued that the Bank, for making unanimity in the transfer policy, has issued transfer policy for officers upto scale III. He submitted that as per clause 1.3 of the transfer policy of the Bank, normal tenure of an officer at one place of posting, has been provided as three years and it has also been provided in clause 1.6 that the Bank shall endeavour to complete transfer by 30th June of every year and mid term transfer shall only be considered in case of promotion and administrative exigencies. He has also drawn attention towards clause 5.5 of the transfer policy and submitted that the transfer policy also envisages that all endeavour shall be made to accommodate officers in respect of linguistic region so as to ensure seamless customer service to the maximum extent possible. He argued that

the transfer of the petitioner is being done frequently and in the mid-term, which is not permitted under the policy.

9. He also submitted that within the period of three years, the petitioner has been transferred from Zonal Office Bahraich to Zonal Office Salem at Tamil Nadu, which is two thousand kilometers away, moreso, the official language of State of Tamil Nadu is 'Tamil' and the customers can be dealt with mostly in the local language, which would be a hurdle in communication between the petitioner and the customers. Secondly, even after serving more than nine years outside the State, the petitioner has again been transferred within a span of two years, out of the State, i.e., more than thousand kilometers away in State of Tamil Nadu.

10. He has also emphasized that within a period of two months, he has been transferred from one place to another, which shows that there is implied mala fide intention of the authorities, best known to them only. He submitted that once the policy itself says that all endeavour shall be made regarding the transfer upto 30th June of every year then there was no occasion to transfer the petitioner in the month of July 2025. He added that the petitioner is a human being and transferring the petitioner in frequent way, that too, thousand kilometers away, in another State, amounts to harassment and that also shows that something is running behind the back of the petitioner in the Bank. He submitted that the transfer of the petitioner has been done on whims and fancies of the Bank officers and in fact, it is not due to any exigency but for the reason of being an expert. He also added that being an expert is one of the special quality of an employee but the same shall not be used as a tool for harassment of his goodness.

11. Lastly, he submits that wife of the petitioner is a bank employee serving at Kanpur and if the petitioner is transferred thousand kilometers away, his whole personal and family life shall be ruined. Thus, submission is that the transfer of the petitioner is violative of the transfer policy of the Bank itself and, as such, the transfer order dated 18.7.2025 and subsequent adversarial order passed thereof may be quashed.

12. Per contra, learned Senior Advocate appearing for the Bank has opposed the contentions aforesaid and submits that the petitioner is specialized officer, i.e., Senior Manager Law Scale-III and looking into the administrative exigency, i.e., special services of the petitioner, being a Law Manager, in consonance with clause 5.2 of the transfer policy, he has been transferred from Zonal Office Bahraich to Zonal Office Salem, Tamil Nadu. He argued that the petitioner's services are governed with the provisions of Indian Bank Officers Service Regulations, 1979 (hereinafter referred to as 'the Regulations, 1979') and Regulation 47 of the said Regulations provides that 'every officer is liable to transfer to any office or branch of the Bank to any place of India', therefore, the transfer of the petitioner has been made in consonance with the provisions of law and Regulation 47 of the Regulations 1979, and the clause 5.2 of the Transfer Policy is concomitant and, therefore, there is no unlawfulness or any contradiction thereof. He also added that the transfer is an incident of service and no officer can claim posting at a particular place, more particularly, when the Regulation 47 of the Regulations 1979 specifically provides regarding the transfer of an employee from one branch to another branch in India and, more particularly, this

policy is well known to the petitioner, from the first date of his joining, in the Bank. Adding his arguments, he submitted that clauses 1.2, 4.0, 6.2 and 24.2 including 25.1 very clearly speak about the transfer of a bank employee and the terms and conditions thereof, has strictly been followed by the Bank. He next added that so far as the ground is taken that the wife of the petitioner is working at Kanpur, the same has been taken for the first time before this Court and in appeal, this ground had not been take by the petitioner.

13. Concluding his arguments, he submitted that as per the settled law started from **Shilpi Bose (Mrs) and others Vs. State of Bihar and others reported in 1991 Supp (2) SCC 659**, upto this time, the Supreme Court has time and again reiterated that the transfer can only be interfered if the same is hit with malice or mala fide or there is frequent transfers or if those are against the provision of any law. Thus, submission is that there is no merit in the writ petition, therefore, the same may be dismissed.

14. Upon considering the submissions of the learned counsel for the parties and after perusal of the record, it emerges that the petitioner came into service of the respondent Bank on 23.9.2013 and since 2013 to 5th February 2023, he was working outside the home district. In the State of Uttar Pradesh, the petitioner has been transferred from one place to another within span of two years as once the petitioner was transferred from Jabalpur to Kanpur on 5.2.2023, he was again transferred on 29.5.2025 to Zonal Office at Bahraich and further within a period of two months, i.e., on 18.7.2025, he has been transferred from Zonal Office Bahraich to Zonal Office Salem in State of Tamil Nadu,

i.e., thousand kilometers away from the place of posting.

15. When this Court examines the whole scenario of the transfer of the petitioner as well as the transfer policy, it is apparent that post of the petitioner is transferable as per Regulations 1979 and for putting unanimity, the Bank itself has issued an exhaustive transfer policy. Clause 1.3 of the transfer policy provides that normal tenure of the officer at one place of the posting will be three years of active service and further clause 1.07 also provides that the Bank shall make all endeavour to complete the transfer exercise by 30th June of every year and the mid session transfer shall be considered only in case of promotion and administrative exigencies. The petitioner, who served more than nine years outside the State, while working at Nagpur and Jabalpur, was transferred in the State of Uttar Pradesh and was posted at Zonal Office Kanpur in the year 2023 and in between two years, he has been transferred from Kanpur to Bahraich and again from Bahraich to Salem in Tamil Nadu, in the month of July 2025. Normal tenure, which is provided for posting at one place, is three years of active service, whereas the petitioner within two years has been transferred two times and that too, lastly about two thousand kilometers away, in the mid term.

16. The petitioner being Law Manager, renders special services, in term of clause of the transfer policy of the Bank. He has been transferred frequently, which is against the transfer policy. This court is of considered opinion that specialization of an employee should not be used as a tool against him, as an specialist can well render his services with cool and calm state of mind and if he is being transferred from

one place to another, in an unpleasant situation, perhaps his/her skill being specialist; would have of no avail; for the Bank or any of the Institution. In fact, the authorities undoubtedly have to look into the interest of the Bank/Institution but at the same time, it has also to be considered that if the employees of the Bank or any Institution are given conducive atmosphere of working, the same may enhance the productivity of such Institution, as the employees are ultimately the human beings. This principle cannot be a strait-jacket formula but the same shall be applicable in the peculiar facts and circumstances of each and every case.

17. This Court has also noticed that reiterating the same ground, the decision has been taken by the Bank while rejecting the request of the petitioner for cancellation of his transfer and, therefore, this Court has twice intervened in the matter. This time also, the order dated 10.11.2025 is reiteration of earlier ground of rejection and the Bank authorities have also failed to consider the request of the petitioner cancelling of his transfer in terms and conditions as provided in the transfer policy of the Bank.

18. In view of the above submissions and discussions, the order impugned dated 10.11.2025 and the subsequent orders thereof, are hereby quashed.

19. The petitioner is given liberty to move a fresh claim, agitating all the grounds, before the competent authority, within a period fifteen days and on receiving such representation, the competent authority is directed to consider and decide the same within further period of six weeks, strictly in accordance with law.

20. The order passed on representation shall be communicated by the competent authority to the petitioner.

21. For the aforesaid period, the effect and operation of the impugned transfer order dated 18.7.2025 shall remain stayed and the petitioner shall not be forced to join on the transferred place of posting.

22. The writ petition is **allowed** accordingly.

(2025) 12 ILRA 499
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.12.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 15202 of 2025

Mohar Singh Kushwaha ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Issue for consideration

Whether a fresh attachment order could have been passed in the garb of reinstating petitioner in service, when the petitioner prior to suspension was posted in District Mathura and operation of suspension order was stayed?

Headnotes

A. Service Law – Code of Civil Procedure, 1908: Section 144 - The party aggrieved is required to be placed in the same position in which he/she was prior to passing of the order which was impugned and has either been stayed or quashed. The said principle is an existing rule of justice, equity and fair play. (Para 11)

Although specific provisions of the Code Civil Procedure are not applicable in writ jurisdiction, but the general principles, particularly that of restitution, would be applicable in the present case as well. (Para 12)

Earlier, petitioner while being posted as Food Safety Officer at Mathura was suspended vide order dated 16.10.2025 which was challenged in Writ A No.13092 of 2025 and vide order dated 19.11.2025, the operation of suspension order was stayed. It is submitted that in pursuance thereof, impugned order dated 17.12.2025 has been passed but instead of posting petitioner at the original place of posting, he has been attached to the Head Office at Lucknow. (Para 3)

It is submitted that once the petitioner prior to suspension was posted in District Mathura and with the stay order of this Court in operation, the fresh attachment order could not have been passed in the garb of reinstating petitioner in service. (Para 4)

In present case, it being evident that impugned order dated 17.12.2025 is not in consonance with the directions issued by this Court on 19.11.2025, the same is quashed by issuance of a writ in the nature of certiorari, directing opposite party no.2 i.e. Commissioner Food Safety and Drug Administration, Sector-C, Aliganj, Lucknow to post petitioner in the place where he was posted prior to issuance of suspension order. (Para 13)

Writ petition allowed. (E-4)

Case Law Cited

Citibank N.A. Vs. Hitten P. Dalal, (2016) 1 SCC 411 (Para 11)

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

suspension, stay order, restitution, service, justice, equity, fair play.

Appearances for Parties

For Petitioner(s): Ajay Kishor Pandey, Tanveer Ahmad Lari

For Respondent(s): C.S.C.

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard learned counsel for petitioner and learned State counsel for opposite parties.

2. Petition has been filed challenging order dated 17.12.2025 whereby petitioner has been attached to the Headquarter at Lucknow.

3. It is submitted that earlier, petitioner while being posted as Food Safety Officer at Mathura was suspended vide order dated 16.10.2025 which was challenged in Writ A No.13092 of 2025 and vide order dated 19.11.2025, the operation of suspension order was stayed. It is submitted that in pursuance thereof, impugned order has been passed but instead of posting petitioner at the original place of posting, he has been attached to the Head Office at Lucknow.

4. It is submitted that once the petitioner prior to suspension was posted in District Mathura and with the stay order of this Court in operation, the fresh attachment order could not have been passed in the garb of reinstating petitioner in service.

5. It is further submitted that since inquiry proceedings are already continuing against petitioner in District Agra Division, it is necessary for petitioner to continue in his earlier place of posting, particularly since no proceedings against petitioner are ongoing at Lucknow.

6. Learned State counsel has been provided written instructions dated 19.12.2025, a copy of which is taken on record and as per which even by passing of impugned order, no adverse effect would occasion to petitioner since he is continuing in service. It is also indicated that serious

charges have been levelled against petitioner and therefore it will not be conducive for petitioner's posting in his erstwhile place.

7. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the fact pertaining to petitioner's suspension and stay thereof as indicated here-in-above are admitted.

8. In the considered opinion of this Court, once the suspension order of petitioner dated 16.10.2025 was stayed in its entirety, it was incumbent upon opposite parties to have continued petitioner in his place of posting prior to passing of the suspension order.

9. However instead of adopting the aforesaid method, opposite parties in the garb of reinstating petitioner in service, have attached him at Lucknow.

10. The aforesaid procedure is totally alien to service jurisprudence and even otherwise the concept of prejudice being caused is irrelevant since opposite parties were bound to comply with direction issued by this Court.

11. The aspect can also be considered in terms of principles of restitution as specified in Section 144 of the Code of Civil Procedure whereby the party aggrieved is required to be placed in the same position in which he/she was prior to passing of the order which was impugned and has either been stayed or quashed. The said principle is an existing rule of justice, equity and fair play. The said proposition has been considered by Supreme Court in the case of **Citibank N.A. v. Hitten P. Dalal**

[(2016) 1 SCC 411] in the following manner:-

"17. In Kerala SEB v. M.R.F. Ltd. (1996) 1 SCC 597 also the view taken by this Court was similar. But it was further clarified that the Court has a duty that in the matter of restitution justice be done as per facts of the case. In granting relief of restitution the Court "should not be oblivious of any unmerited hardship to be suffered by the party against whom action by way of restitution is taken." This Court favoured a pragmatic view and grant of relief in a manner as may be reasonable, fair and practicable without causing unmerited hardships to either of the parties. In South Eastern Coalfields Limited v. State of M.P., (2003) 8 SCC 648, this Court re-emphasized that restitution is for meeting the ends of justice and depends upon the peculiar facts and circumstances of the case. This Court further clarified in para 27 that as held by Privy Council in the case of Jai Berham vs. Kedar Nath Marwari, AIR 1922 PC 269, Section 144 CPC is rather a statutory recognition of an already existing rule of justice, equity and fair play and therefore even apart from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. This Court approved the view of the Privy Council that the Court has to act rightly and fairly according to the circumstances, towards all parties involved.

19. In the ultimate analysis we find that the law on restitution under Section 144 of the CPC is quite well settled. It vests expansive power in the Court but such power has to be exercised to ensure equity, fairness and justice for both the

parties. It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale etc., the Court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. It is also one of the established propositions that in the context of restitution the Court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties."

12. Although specific provisions of the Code Civil Procedure are not applicable in writ jurisdiction, but the general principles, particularly that of restitution, would be applicable in the present case as well.

13. In view of aforesaid facts and circumstances, it being evident that impugned order dated 17.12.2025 is not in consonance with the directions issued by this Court on 19.11.2025, the same is quashed by issuance of a writ in the nature of certiorari, directing opposite party no.2 i.e. Commissioner Food Safety and Drug Administration, Sector-C, Aliganj, Lucknow to post petitioner in the place where he was posted prior to issuance of suspension order.

14. Resultantly, petition succeeds and is allowed at the admission stage itself. Parties to bear their own costs.

(2025) 12 ILRA 502
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.12.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 16556 of 2024

Manoj Kumar Mishra ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Issue(s) for consideration

Whether the delayed issue of the regularization order would divest the petitioner of the right to receive pension under the old pension scheme that was in vogue at the time when his right to regularization crystallized?

Headnotes

A. Service Law – Uttar Pradesh Palika (Centralised) Services Rules, 1966: Rules 21-A, 31 - The delayed issue of the regularization order on 11.10.2006 would not divest the petitioner of the right to receive pension under the old pension scheme that was in vogue at the time when his right to regularization crystallized. Apparently, the petitioner had been appointed on an *ad hoc* basis way back on 07.03.1995, and that *ad hoc* appointment had to be against a vacant post, substantive or temporary, as the said Rule contemplates. There was, therefore, no justification for the respondents to have delayed issuing regularization orders after the amendment was notified on 10.04.2003. Therefore, the State's inaction or prolixity in issuing the necessary regularization order would not divest the petitioner of his right to regularization that accrued u/Rule 21-A(1) of the Rules of 1966 at the relevant point of time, when the old pension scheme was still in force. (Para 14 to 16)

If a different view of the matter is taken and one were to go simply by the date of regularization and the prevalent pension scheme, it would introduce an element of arbitrariness, in that, that the State could delay issuing the regularization order, to which the petitioner was entitled under the Rules on the date the Rule came into force until such time that the new pension scheme was introduced. There is no valid justification offered by the respondents for all the delay between 10.04.2003, when Rule 21- A

came into force and 11.10.2006, when the regularization order was actually issued. The petitioner must, therefore, be held entitled to the benefit of the old pension scheme that was in force prior to 01.04.2005, the date of the regularization order notwithstanding. (Para 17)

B. The entitlement to pension has to be limited to the date when the petitioner was actually regularized or in a case, such as this, when he was entitled to be regularized, but wrongfully deprived due to the respondents' inaction. It cannot be anything more. The contention of the petitioner that he is entitled to pension w.e.f. 07.03.1995, when he was appointed on *ad hoc* basis cannot be accepted. (Para 23)

A mandamus is issued, directing the Principal Secretary, Nagar Vikas, Government of U.P., Lucknow, the Director, Local Bodies, U.P., Lucknow and the Secretary, Agra Development Authority, Agra, to ensure amongst themselves payment of pension and gratuity to the petitioner, reckoning his entitling service w.e.f. 10.04.2003 and pay the pension with effect from the month following his retirement, together with arrears, which will carry simple interest at the rate of 6% per annum.

Writ petition allowed. (E-4)

Case Law Cited:

1. State of U.P. and others Vs. Chandra Mohan Yadav Retired Junior Engineer Civil, Nagar Nigam, 2025 SCC OnLine All 5210 (Para 18)
2. State of U.P. and another Vs. Chandra Mohan Yadav and another, Special Leave to Appeal (C) No(s).22890-22893/2025, (Para 19)
3. State of U.P. and others Vs. Raj Bahadur Pastor, 2022 (3) ADJ 5 (DB) (Para 20)
4. State of U.P. and another Vs. Badri Narayan Agnihotri and others, 2022:AHC:92589-DB, (Para 21)
5. The State of Uttar Pradesh and another Vs. Badri Narayan Agnihotri and others, SLP (Civil) Diary No(s). 29048/2022, decided on 21.11.2022 (Para 22)

List of Acts

Uttar Pradesh Palika (Centralised) Services Rules, 1966; Uttar Pradesh Palika (Centralised)

Services (Twenty-First Amendment) Rules, 2003.

List of Keywords

pension, gratuity, service, arrears, payment, daily, wage, contract, continuously, *ad hoc* basis, regularization.

Appearances for Parties

For Petitioner(s): Siddharth Khare, Sr. Advocate

For Respondent(s): Suresh C. Dwivedi, C.S.C.

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition has been instituted by the petitioner, Manoj Kumar Mishra, a retired Assistant Engineer (Civil), belonging to the U.P. Palika Centralised Service, seeking our mandamus, ordering the respondents to sanction and fix his pension and gratuity, taking into account his entire length of service from 07.03.1995 to 30.06.2024, that is to say, including the period during which he worked *ad hoc*. The petitioner has further prayed that he be paid his monthly pension regularly, together with arrears, and, further, that gratuity be also determined and paid to him.

2. The petitioner's case is that he was appointed as a Junior Engineer (Civil) on daily-wages w.e.f. 29.05.1985 with the Nagar Palika Parishad, Mainpuri. He has remained in employment continuously ever since. In the year 1995, proceedings were taken by the State Government to grant appointment as Junior Engineers (Civil) under Rule 31 of the Uttar Pradesh Palika (Centralised) Services Rules, 1966 (for short, 'the Rules of 1966') to persons working on daily-wage/ contract/ *ad hoc* basis in the various Nagar Nigam/ Nagar Palika Parishad. In the aforesaid proceedings, the petitioner's name was also included for consideration. On 07.03.1995, an order was issued by the State

Government, whereby 58 persons were appointed as Junior Engineers (Civil) under Rule 31 of the Rules of 1966. The petitioner's name figures at serial No.53 of the said list. In terms of the order dated 07.03.1995, the petitioner submitted his joining report to the Director, Local Bodies, U.P., Lucknow. He was posted at Nagar Palika Parishad, Mahoba, where he joined and discharged duties assigned to him. The petitioner was transferred and posted to different establishments. His work and conduct was always found satisfactory. There was no complaint with regard to his performance etc. by his superiors.

3. The petitioner's appointment vide order dated 07.03.1995 was an ad hoc appointment under Rule 31 of the Rules 1966. The Rules of 1966 were amended on 10.04.2003 vide the Uttar Pradesh Palika (Centralised) Services (Twenty-First Amendment) Rules, 2003, which introduced Rule 21-A into the said Rules. It provided for regularization of ad hoc employees, which applies to the petitioner's case. The petitioner asserts that under Rule 21-A of the Rules of 1966, as amended by the 21st Amendment, his services should have been regularized in the year 2003 itself, but on account of the respondents' lethargy, there was a time lag in issuing the necessary regularization orders. A regularization order, relating to the petitioner along with some other employees, was made on 11.10.2006 by the Director, Local Bodies, U.P., Lucknow.

4. At the time when the regularization order was made, the petitioner was posted with the Nagar Nigam, Agra. He continued with that Nagar Nigam until the year 2016, when he was transferred to the Nagar Palika Parishad, Kayamganj, District Farrukhabad. In the year 2017, the petitioner was moved to the Agra

Development Authority, Agra. While working with the Development Authority aforesaid, he was promoted as an Assistant Engineer (Civil) in the year 2023. He retired from service on 30.06.2024 upon attaining the age of superannuation. The petitioner says that regular deductions from his salary were made towards his GPF from the month of March, 1995 until his retirement. During his service, he was sanctioned several benefits worked out on the basis of his length of service, reckoned w.e.f. 07.03.1995.

5. On 23.05.2017, an office order was issued by the Director, Local Bodies, whereby benefits of financial upgradation were sanctioned to persons, whose names appear in the said order. The petitioner's name finds place at serial No.41 of the last mentioned order. A perusal of the order indicates, as the petitioner says, that on completion of 10 years' satisfactory service, he was sanctioned his first financial upgradation w.e.f. 01.12.2008, and, upon completion of 16 years of service, a second financial upgradation w.e.f. 09.03.2011. It is also said that the benefit of the Assured Career Progression (ACP) scheme was sanctioned for the petitioner, computing his service from the month of March, 1995. The case of the petitioner is that upon retirement, he was paid his provident fund and dues on account of leave encashment. However, he was neither paid gratuity nor sanctioned or disbursed his pension. Apparently, as the petitioner acknowledges, he has been denied his pension and gratuity on ground that his services were regularized on 11.10.2006, and that being a date subsequent to 01.04.2005, the new pension scheme had come into force, which was a contributory pension scheme and the old pension scheme had been abolished.

6. It is pleaded on behalf of the petitioner that he was appointed on

07.03.1995 in accordance with Rule 31 of the Rules of 1966. This appointment, though called ad hoc, is indeed one made in accordance with Rules and is not ad hoc in the sense in which the term is understood. Since the petitioner has functioned continuously from 07.03.1995, after being appointed under Rule 31 of the Rules of 1966, followed by regularization in service on 11.10.2006, the entire period has to be reckoned as regular service, entitling him to pension under the pre-existing or old pension scheme.

7. It is also asserted that the entitlement of the petitioner to regularization would crystallize under the Amendment of 2003 to the Rules of 1966 in the month of April, 2003. The delay in issue of the regularization order is a lapse on the respondents' part, for which the petitioner cannot be denied his right, that would otherwise accrue. It is also pleaded that the regularization order, albeit issued on 11.10.2006, would relate back to the date of the petitioner's entitlement to regularization. The petitioner represented his cause to the Director, Local Bodies in June, 2021, but the representation did not elicit response. No action was taken.

8. It is the denial of the petitioner's pension and gratuity, which has brought him to this Court.

9. A notice of motion was issued on 25.10.2024. A counter affidavit filed on behalf of the Agra Development Authority on 14.11.2024. Two separate counter affidavits were filed, one on behalf of the State, and the other, the Director, Local Bodies, on 09.12.2024 in Court. These were taken on record. Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Aditendra Singh,

learned Counsel for the petitioner, waived his right to file a rejoinder.

10. Parties having exchanged affidavits, the writ petition was admitted to hearing, which proceeded forthwith. It was re-heard on 02.06.2025, connecting it to Writ-A No.17940 of 2024. We do not think that connection of the two writ petitions was required, because a different set of rules apply to the petitioners in the two writ petitions, notwithstanding the similarity of cause of action and relief. This petition was heard further on 18.07.2025, 04.08.2025, 19.08.2025 and 25.08.2025, when judgment was reserved.

11. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Kauntey Singh, learned Counsel for the petitioner, Mr. Akhilesh Kumar Tripathi, learned Standing Counsel on behalf of respondent Nos. 1 and 2, Mr. S. C. Dwivedi, learned Counsel appearing on behalf of the Agra Development Authority and Mr. Kunal Shah, learned Amicus Curiae.

12. Upon hearing learned Counsel for the parties, we find that the petitioner was appointed as a daily-wager way back on 29.05.1985. Some orders were made by the State Government under Rule 31 of the Rules of 1966 to appoint daily-wagers, who had worked for three years or more, prior to 01.10.1994, and were in service on 07.03.1995 on ad hoc basis. It is not in dispute that the petitioner was found fit and eligible to be appointed on ad hoc basis under Rule 31 of the Rules of 1966 as a Junior Engineer. Now, this was not an appointment de hors the rules, but had some regularity about it. Rule 31 of the Rules of 1966 reads:

“31. *Ad hoc and temporary officiating appointments.*- Notwithstanding anything contained in Rule 21, the State Government may also make ad hoc appointments or temporary officiating arrangements for the posts falling vacant substantively or temporarily”

13. Rule 21-A was introduced in the Rules of 1966 vide notification dated 10.04.2003. It reads:

“21-A. *Regularisation of ad hoc appointments.*- (1) Any person who-

(i) was directly appointed on ad hoc basis before June 30, 1998 and is continuing in service as such on date of commencement of these rules;

(ii) possessed requisite qualifications prescribed under Rule 12 for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or as the case may be, after he has completed three years continuous service, shall be considered for appointment in permanent or temporary vacancy as may be available on the basis of his service record and suitability before any regular appointment is made in such vacancy in accordance with the provisions contained in these rules.”

(2) In making regular appointment under these rules reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1) Government shall constitute a, Selection Committee and consultation with the Commission shall not be necessary.

(4) The Director of local bodies shall prepare an eligibility list of the

candidates, arranged in order of seniority as determined from the date of order of their ad hoc appointment and if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with their character rolls and such other service records pertaining to them as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the case of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority and forward it to the Government and the Director of Local Bodies.

(7) The Government or Director of Local Bodies shall, subject to the provisions of sub-rule (2) of this rule and sub-rule (1) of Rule 6, make appointment from the list prepared under sub-rule (6) of these rules in order in which their names stand in the list.

(8) Appointments made under sub-rule (7) shall be deemed to be made under relevant provision contained in Rule 21.

(9) A person appointed under this rule shall be entitled to seniority only from the date of order of appointment after selection in accordance with this rule and shall, in the cases, be placed below the persons appointed in accordance with the procedure for direct recruitment contained in Part V of these rules prior to the appointment of such person under this rule.

(10) If two or more persons are appointed together under this rule, their seniority inter se shall be determined in the order mentioned in the order of appointment.

(11) The services of a person, appointed on ad hoc basis who is not found suitable or whose case is not covered by sub-rule (1) of this rule, shall be terminated forthwith and on such termination, he shall be entitled to receive one month's pay."

14. The petitioner was regularized under Rule 21-A of the Rules 1966, because he had been working for the requisite number of years, as contemplated under the relevant Government Order, galvanizing the process of regularization under Rule 21-A. He was found to have the necessary qualifications under the Rules and the regularization certainly contemplated the existence of a vacancy. It would also be noticed that when the petitioner was given an ad hoc appointment, that too was against a post, that was substantively or temporarily vacant. Rule 21-A also required that ad hoc appointees be considered for regularization before any regular appointment was made under the Rules of 1966.

15. It is asserted in paragraph No.25 of the writ petition that the petitioner was entitled to regularization in February, 2003, that is to say, the date when Rule 21-A was introduced in the Rules of 1966, and, further, that the mere fact that there existed a default on the respondents' part in passing timely orders, cannot affect the petitioner's legal entitlement, which means his entitlement to pension etc. The said paragraph is not specifically denied in the counter affidavit about the factum of delay in taking action for the petitioner's regularization. All that is said is that the petitioner was appointed on a regular basis to the post of Junior Engineer (Civil) against a vacant post by means of the Directorate's letter dated 11.10.2006. There is no justification offered as to why the

delay occurred. There is no assertion of the fact that there was no vacant post, against which the petitioner could be regularized, when Rule 21-A was introduced.

16. Apparently, the petitioner had been appointed on an ad hoc basis way back on 07.03.1995, and that ad hoc appointment had to be against a vacant post, substantive or temporary, as the said Rule contemplates. There was, therefore, no justification for the respondents to have delayed issuing regularization orders after the amendment was notified on 10.04.2003. Therefore, the State's inaction or prolixity in issuing the necessary regularization order would not divest the petitioner of his right to regularization that accrued under Rule 21-A(1) of the Rules of 1966 at the relevant point of time, when the old pension scheme was still in force. The delayed issue of the regularization order on 11.10.2006 would not divest the petitioner of the right to receive pension under the old pension scheme, that was in vogue at the time when his right to regularization crystallized.

17. If a different view of the matter is taken and one were to go simply by the date of regularization and the prevalent pension scheme, it would introduce an element of arbitrariness, in that, that the State could delay issuing the regularization order, to which the petitioner was entitled under the Rules on the date the Rule came into force until such time that the new pension scheme was introduced. There is no valid justification offered by the respondents for all the delay between 10.04.2003, when Rule 21-A came into force and 11.10.2006, when the regularization order was actually issued. The petitioner must, therefore, be held entitled to the benefit of the old pension

scheme, that was in force prior to 01.04.2005, the date of the regularization order notwithstanding.

18. This issue was answered, the way we have understood it, in **State of U.P. and others v. Chandra Mohan Yadav Retired Junior Engineer Civil, Nagar Nigam, 2025 SCC OnLine All 5210**, where it has been held:

“16. There is, however, another aspect which may not be lost sight of. All the writ petitioners were appointed initially on temporary basis in late 1980s and they were offered ad hoc appointments with effect from 7.3.1995. They possessed requisite qualification for appointment to the post. By virtue of Rule 21-A(1), their services were liable to be considered for regularisation soon after the introduction of Rule 21-A(1) in the Rules, 1966. Merely because the State did not consider their services for regularisation for sufficiently long would not be a valid ground to allow the State to contend now that since their entry into service is after 1.4.2005, therefore, they would not be entitled to the benefit under the Old Pension Scheme.”

19. The aforesaid decision of the Division Bench was assailed before the Supreme Court by means of **Special Leave to Appeal (C) No(s).22890-22893/2025, State of U.P. and another v. Chandra Mohan Yadav and another**, where the Supreme Court vide order dated 22.08.2025 declined to grant leave and dismissed the petition for grant of special leave.

20. The issue is also covered by another Bench decision of this Court in **State of U.P. and others v. Raj Bahadur Pastor, 2022 (3) ADJ 5 (DB)**.

21. Likewise, in **State of U.P. and another v. Badri Narayan Agnihotri and others, 2022:AHC:92589-DB**, it was held in the context of the same Rule 21-A of the Rules of 1966, which is subject matter of consideration in the present matter, thus:

“A perusal of the aforesaid provisions of the Service Rules governing the field, it is borne out that an ad-hoc appointment is not to be treated as substantive appointment and an ad-hoc appointee becomes a Member of the Service only on the appointment to a post in the cadre of the Centralized Services under the Rules. The writ petitioner / respondent admittedly was appointed as Revenue Inspector on ad-hoc basis on 25.8.1989 and was regularized by order dated 5.2.2008 and thus became a Member of the Service of the Municipal Corporation, Kanpur on regularization of his services i.e. on 5.2.2008. The New Pension Scheme has been introduced w.e.f. 1.4.2005 and in such view of the matter, the learned counsel for the appellants appears to be justified in submitting that the writ petitioner / respondent is entitled for Old Pension Scheme and not the New Pension Scheme.

However, we find that the writ petitioner / respondent was directly appointed on ad-hoc basis on 25.8.1989 i.e. on a date anterior to June 30, 1998 mentioned under Rule 21-A (i) and has been continuing in service as such on the date of commencement of the Rules, 2003 and possessed the requisite qualifications prescribed under Rule 12 for regular appointment and has also completed three years continuous service was liable to be considered for appointment in permanent or temporary vacancy and as such, absorbed as "Member of the Service" since July, 2001 and in such view of the matter,

he would stand entitled to the Old Pension Scheme. The State Government has proceeded to regularize the services of the writ petitioner / respondent only in the year 2008 even though he stood entitled to the same in the year 2001 itself. In our opinion, the writ petitioner / respondent could not be deprived of his absorption as a member of the services merely on account of the lackadaisical attitude of the Government."

22. The aforesaid judgment of the Division Bench, upholding the Single Judge, when put in issue before the Supreme Court by the State vide **Special Leave Petition (Civil) Diary No(s). 29048/2022, The State of Uttar Pradesh and another v. Badri Narayan Agnihotri and others**, decided on 21.11.2022, was affirmed and the SLP dismissed. The following remarks of the Supreme Court in **Badri Narayan Agnihotri** (supra) are illuminating:

"Respondent No.1- employee joined service on ad-hoc basis as Revenue Inspector in Municipal Corporation, Kanpur on 25.08.1989. Rule 21-A of The Uttar Pradesh Palika (Centralized) Services (Twenty First Amendment) Rules, 2003 indicates that such of the ad-hoc employees who have completed 3 years of continuous service, a right is conferred upon them to be considered for appointment, in permanent or temporary vacancy as may be available on the basis of his services record and suitability before any regular appointment is made in accordance with the provisions contained in these Rules.

The learned counsel for the respondent contends that as he was appointed on ad-hoc basis as Revenue Officer on 25.08.1989 and on completing 3 years of services in the month of August

1992, he became eligible to be considered for appointment in permanent/temporary vacancy as available and his suitability was to be considered on the basis of his service record.

Much before the new Pension Scheme came into force with effect from 01.04.2005, the rights were confirmed in favour of the employee seeking regular employment in terms of Rule 21-A (iii). It was never the case of the petitioner that there was no vacancy, permanent or temporary, available against which his candidature would have been considered for regular appointment prior to his order of regular appointment passed by the authorities on 05.02.2008."

23. The contention of the petitioner that he is entitled to pension w.e.f. 07.03.1995, when he was appointed on ad hoc basis, however, cannot be accepted. The entitlement to pension has to be limited to the date when the petitioner was actually regularized or in a case, such as this, when he was entitled to be regularized, but wrongfully deprived due to the respondents' inaction. It cannot be anything more.

24. In the result, this petition succeeds and is **allowed**. A mandamus is issued, directing the Principal Secretary, Nagar Vikas, Government of U.P., Lucknow, the Director, Local Bodies, U.P., Lucknow and the Secretary, Agra Development Authority, Agra, to ensure amongst themselves payment of pension and gratuity to the petitioner, reckoning his entitling service w.e.f. 10.04.2003 and pay the pension with effect from the month following his retirement, together with arrears, which will carry simple interest at the rate of 6% per annum. The arrears shall be paid within a period of two months from the date of communication of this order.

The current pension shall be paid regularly month-by-month forthwith. Likewise, due gratuity shall be paid to the petitioner, also within a period of two months from the date of communication of this order.

25. There shall be no order as to costs.

26. Let a copy of this judgment be communicated to the Principal Secretary, Nagar Vikas, Government of U.P., Lucknow, the Director, Local Bodies, U.P., Lucknow and the Secretary, Agra Development Authority, Agra by the Registrar (Compliance).

(2025) 12 ILRA 510
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.12.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.
THE HON'BLE JASPREET SINGH, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ B No. 757 of 2024

Kaushal Kishore & Ors. ...Petitioner
Versus
Deputy Director of Consolidation/ Chief
Revenue Officer, Gonda & Ors.
...Respondent

ISSUE FOR CONSIDERATION

- (i) What is the true scope of powers vested with the Deputy Director of Consolidation in terms of Section 48(3) of the U.P. Consolidation of Holdings Act, 1953, i.e., whether it is corrective in nature or adjudicatory;
- (ii) Whether the power of reference can be exercised by the Deputy Director of Consolidation after a notification is issued under Section 52(1) of the Act;
- (iii) Whether reference proceedings can be said to be saved in terms of Section 52(2) of the Act.

HEADNOTE

Reference under Section 48(3) of the U.P. Consolidation of Holdings Act, 1953 – Nature and scope – Whether reference power is inherent or adjudicatory – Exercise of reference power after de-notification under Section 52(1) – Saving of reference proceedings under Section 52(2) – Effect of closure of consolidation operations – Jurisdiction of consolidation authorities post de-notification

HELD:

Issue (i): Nature and scope of "Reference" under Section 48(3).

Disputes between parties which fall in the categories mentioned in Sections 9-A, 9-B and 9-C, Sections 12 and 21 of the Act have a clear trajectory, i.e., they are filed before the Consolidation Officer and decided after affording an opportunity to lead evidence and hearing by the Consolidation Officer; the order is appealable before the Settlement Officer of Consolidation and if still dissatisfied, the aggrieved party can further invoke the provision of revision before the Deputy Director of Consolidation in terms of Section 48(1) of the Act. The orders passed under the aforesaid sections cannot be ordinarily varied, modified or changed by taking recourse to a reference. However, there may still be disputes which may not clearly be within the parameters of Sections 9-A, 9-B or 9-C or Sections 12 and 21 of the Act, but they may arise while attempting to give effect to the Scheme of Consolidation, on account of any error in preparation of records or anomalies, difficulties and disputes which may occur on the ground level while implementing the Scheme on the spot, which come to the notice of the Consolidation Officer and Settlement Officer of Consolidation, who, being the first responders in terms of the Act, take note, hear the parties and, where some genuine grievance occurs or surfaces, are required to refer the same to the highest authority, i.e., the Deputy Director of Consolidation.

The Court held that the power of reference may arise out of the corrective and executory jurisdiction but it partakes the nature of adjudication, and since the power of reference is somewhat different than the power of

revision, hence, the legislature has provided for a two tiered hearing, one before the Consolidation Officer or the Settlement Officer of Consolidation, as the case may be and the other before the Deputy Director of Consolidation himself. It was emphasised that the power of reference is exercised not in an ordinary course, hence, it should be resorted to sparingly with utmost caution and only in expedient circumstances, and that the power of reference though may arise out of the corrective and executory jurisdiction but it partakes the nature of adjudication and it matures through a decision making process which makes it adjudicatory in nature and it has the effect of binding the parties and also makes it subject to challenge like any order of the Deputy Director of Consolidation passed in its revisional jurisdiction. Question No. (i) was answered accordingly. (*Paras 112, 116, 137, 187-188*)

Issue (ii) & (iii): Effect of de-notification under Section 52(1) and saving under Section 52(2).

The Court held that upon the issuance of notification under Section 52(1), the consolidation authorities lose their jurisdiction and any proceeding initiated by them after the date of notification would be rendered without jurisdiction and non est, and further that if the Deputy Director of Consolidation cannot suo-moto exercise its revisional powers under Section 48(1) upon de-notification, on the same premise it cannot be held to exercise the power of reference after the de-notification. It was held that the power of reference cannot be exercised by the Deputy Director of Consolidation after the notification is made in terms of Section 52(1) of the Act. The Court further held that only those proceedings, including a reference, which are pending either before the Constitutional Courts or before the Consolidation Authorities on the date of notification under Section 52(1) are saved under Section 52(2) of the Act and not otherwise, and that only such reference proceedings, i.e., where reference has been made or in such cases where hearing on the reference is pending before the Consolidation Officer/Settlement Officer of Consolidation or pending before

the Deputy Director of Consolidation on the date of notification under Section 52(1), can be treated to be pending and are saved under Section 52(2) of the Act". Accordingly, Questions Nos. (ii) and (iii) were answered. (*Paras 170-171, 184-186*) (E-5)

CASE LAW CITED

Ram Bahadur v. Deputy Director of Consolidation and others, 1974 RD 53 (DB);
Brij Bir Singh and another v. Deputy Director of Consolidation, Meerut Camp, Muzaffarnagar and others, 1987 RD 66;
Mukhtar v. Deputy Director of Consolidation, Azamgarh and others, 1993 RD 457 (DB);
Ram Pati v. Deputy Director of Consolidation, Banda and others, 1999 RJ 926;
Abdul Sami and others v. Deputy Director of Consolidation and others, 2015 (1) ADJ 214;
Shiv Shankar and another v. State of U.P. and others, 2018 RD (138) 297;
Ghafoor v. Additional Commissioner, 1979 RD 76 (DB);
Raja Ram and others v. Deputy Director of Consolidation, Lucknow, 1986 RD 387 (DB);
Hari Ram v. Deputy Director of Consolidation, Azamgarh and others, 1989 RD 281 (DB);
Nanhki v. Deputy Director of Consolidation, Pratapgarh and others, 1995 (13) LCD 1;
Ram Narain and others v. Deputy Director of Consolidation, Barabanki, 2020 (147) RD 185;
Smt. Malti Devi v. State of U.P. and others, 2021 (151) RD 3;
Sri Pal and others v. Deputy Director of Consolidation, Raebareli and others, MANU/UP/2145/2017;
Raj Karan Singh v. Chief Revenue Officer, MANU/UP/3069/2019;
Smt. Jagrani @ Ram Jiyayi v. Deputy Director of Consolidation, Shrawasti and others, 2024 (164) RD 238;
Smt. Anar Kali v. Deputy Director of Consolidation, 1997 (15) LCD 921 (FB);
State of Jharkhand v. Govind Singh, (2005) 10 SCC 437;
Taylor v. Taylor, (1876) 1 Ch D 426.

List of Acts

U.P. Consolidation of Holdings Act, 1953;
Code of Civil Procedure, 1908;
U.P. Land Revenue Act, 1901;
U.P. Revenue Code, 2006.

List of Keyword

Reference – Consolidation Proceedings – De-notification – Jurisdiction after closure – Saving clause – Adjudicatory power – Corrective jurisdiction – Finality of consolidation records

CASE ARISING FROM

Reference made by learned Single Judge noticing conflicting views of different Single Benches and Division Benches on the scope of power under Section 48(3) of the U.P. Consolidation of Holdings Act, 1953 and its exercise after de-notification under Section 52(1).

Appearances for Parties

Advs For Petitioner: Devraj Singh, Bhavana Gupta, Uma Shankar Sahai.

Advs For Respondents: C.S.C., Pankaj Gupta, Saurabh Yadav, Shyam Mohan Pradhan.

(Delivered by Hon'ble Jaspreet Singh, J.)

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I EXORDIUM:-

1. This Full Bench endeavors to answer seminal questions of importance relating to the scope and exercise of powers under Section 48 (3) of the Uttar Pradesh Consolidation of Holdings Act, 1953

(hereinafter referred to as, 'the Act') by the Authorities empowered under the Act and whether such powers can be exercised after de-notification of the village from the consolidation operations in terms of Section 52(1) and (2) of the Act.

2. A large number of petitions involving the aforesaid questions flood this Court and more often than not, keep engaging the attention of this Court. In one such case, in WRIT-B No.757 of 2024 - Kaushal Kishore and others v. Deputy Director of Consolidation / Chief Revenue Officer, Gonda and others, a learned Single Judge of this Court noticing the divergent opinions on the issue rendered by the different Single Judges and different Division Benches of this Court, found it appropriate to refer the matter to a Larger Bench for an authoritative pronouncement.

3. The reference order dated 20.12.2024 noticed a string of judgments which propagated the view that the consolidation authorities do not loose their jurisdiction even after de-notification of the village under Section 52(1) and (2) of the Act, rather they retain the powers to correct the records.

4. The judgments approving the aforesaid view are (i) **Ram Bahadur v. DDC and others, 1974 RD 53 (DB)**; (ii) **Brij Bir Singh and another v. DDC, Meerut Camp of Muzaffarnagar and others, 1987 RD 66**; (iii) **Mukhtar v. DDC, Azamgarh and others, 1993 RD 457 (DB)**; (iv) **Ram Pati v. DDC, Banda and others, 1999 RJ 926**; (v) **Abdul Sami and others v. DDC and others, 2015 (1) ADJ 214** and (vi) **Shiv Shankar and another v. State of U.P. and others, 2018 RD (138) 297**.

5. The other set of decisions, which propagate the view that after de-notification of the village, the consolidation authorities are denuded of their jurisdiction, except in cases where the proceedings are saved in terms of Section 52(2) of the Act, are (i) **Ghafoor v. Additional Commissioner, 1979 RD 76 (DB)**; (ii) **Raja Ram and others v. DDC, Lucknow, 1986 RD 387 (DB)**; (iii) **Hari Ram v. DDC, Azamgarh and others, 1989 RD 281 (DB)**; (iv) **Nanhki v. DDC, Pratapgarh and others, 1995 (13) LCD 1**; (v) **Ram Narain and others v. DDC Barabanki, 2020 (147) RD 185**; (vi) **Smt. Malti Devi v. State of U.P. and others, 2021 (151) RD 3**; (vii) **Sri Pal and others v. DDC, Raebareli and others, MANU/UP/2145/2017**; (viii) **Raj Karan Singh v. Chief Revenue Officer, MANU/UP/3069/2019** and (ix) **Smt. Jagrani @ Ram Jiyayi v. DDC, Shrawasti and others, 2024 (164) RD 238**.

6. Looking into the gravity of the questions involved and its impact on a large number of petitions, this Court invited the Members of the Bar to address this Court on the questions referred, for a threadbare consideration of the law relating to the questions to be resolved by this Full Bench.

7. Primarily, on behalf of the petitioners Shri U.S. Sahai, learned counsel supported the view that after de-notification of the village under Section 52(1) of the Act, the consolidation authorities lose their jurisdiction, except where the proceedings are saved in terms of Section 52(2) of the Act.

8. Members of the Bar, who addressed the Court were led by Dr. R.S. Pandey, learned Senior Counsel assisted by Shri Ankit Pandey, who also advanced his submissions in favour of the view that

Consolidation Authorities after the de-notification lose their jurisdiction, including to entertain a reference, except where the proceedings are saved under Section 52(2) of the Act.

9. Per contra, Shri Prithish Kumar, learned Additional Advocate General for the State of U.P. assisted by Shri Nishant Shukla, learned Additional Chief Standing Counsel along with Shri Vishwas Saraswat, Shri Amal Rastogi and Shri Utkash Srivastava, contended that the authorities retain power after de-notification, including the power to entertain and decide a reference. This view was also subscribed by the other learned Members of the Bar, who made submissions, namely, Shri Arun Kumar, Shri Saurabh Yadav and Shri Ishan Kumar Gupta.

II QUESTIONS REFERRED:-

10. The questions referred to this Full Bench are as under: -

(i) What is the true scope of powers vested with the Deputy Director of Consolidation in terms of Section 48(3) of the Act i.e. to say whether it is corrective in nature or adjudicatory;

(ii) Whether the power of reference can be exercised by the Deputy Director of Consolidation after a notification is issued in terms of Section 52(1) of the Act;

(iii) Whether the reference proceedings can be said to be saved in terms of Section 52(2) of the Act.

III SUBMISSIONS ON BEHALF OF THE PETITIONERS:-

11. Dr. R.S. Pandey, learned Senior Counsel and Shri U.S. Sahai, learned

counsel for the petitioners submitted that the power of reference as per Section 48(3) of the Act, as envisaged in the U.P. Consolidation and Holdings Act, 1953, was not a part of the original legislative scheme. The said provision came to be incorporated in the Act by an amendment which came into effect on 02.03.1963. By virtue of the amendment, the power of reference was introduced and bestowed on Deputy Director of Consolidation (in short, 'the DDC'), who is the highest authority in the hierarchy of adjudicating authorities under the Act.

12. It was contended that the consolidation operations begin in the village by notification under Section 4(1) of the Act and the same are concluded by de-notifying the village by issuing a notification under Section 52(1) of the Act. Between these two notifications, the consolidation authorities continue to exercise their powers as conferred under the Act.

13. It was submitted that only such proceedings under the Act are saved which fall within the ambit of Section 52(2) of the Act. Such proceedings are the ones which on the date of such notification made under Section 52(1) of the Act are pending before the Constitutional Courts or any of the Consolidation Authorities and any such other proceedings which require the orders passed, by the Constitutional Courts and other Consolidation Authorities, after the de-notification in terms of Section 52(1) of the Act to be implemented and given effect to.

14. It was also urged that powers of reference can be exercised only by the DDC, however, such powers cannot be exercised suo motu which is in contrast to the powers of revision conferred on the

DDC in terms of Section 48(1) of the Act. The revisional powers can be exercised by the DDC even suo motu, but the same is not true insofar as the powers of reference is concerned, which necessarily has to originate before the Consolidation Officer (hereinafter referred to as 'CO') or the Settlement Officer of Consolidation (hereinafter referred to as 'SOC').

15. It was, thus, urged that where the power of reference emanates at the core level i.e. before the CO and the SOC and in terms of Section 52(1) of the Act, when the village is de-notified and the CO and SOC loose their jurisdiction, it cannot be gainfully urged or contended that the same CO or SOC can retain their jurisdiction for the purpose of making a reference to the DDC under Section 48(3) of the Act, as this would be an incongruous proposition.

16. It was further submitted that the manner in which Section 48(3) of the Act has been worded, would indicate that invocation of power of reference is bifurcated in two parts. First, when a matter comes before the CO or the SOC as the case may be, in course of discharge of their respective duties and he finds that certain issues or some matter requires attention and otherwise the matter or issue has already crossed a certain stage of the consolidation operations and it is not within their domain to look into it, then they can refer such issue or matter by reference to the DDC. However, prior to making such a reference, the CO and the SOC are required to afford an opportunity of hearing to the parties concerned. Second, the other part of that Section provides that once the DDC takes note of such a reference then he too is obliged to decide the same after affording an opportunity of hearing to the parties concerned.

17. Sub-section (2) of Section 48 of the Act further states that while deciding a reference, the DDC could exercise all the power provided in sub-section (1) of Section 48 of the Act, which necessarily is the power of revision. Therefore, it was urged that in terms of Section 52(1) of the Act, upon de-notification, if the CO, SOC and DDC lose their jurisdiction then there can be no occasion for empowering the authorities to retain any jurisdiction through the window of reference and if it was so envisaged then it could have very well been incorporated in the Act itself, which has not been done explicitly.

18. It was urged that detailed procedure is prescribed for conducting the consolidation operations, as shall be evident from a perusal of the Act and the Rules. Moreover, there are certain executive instructions issued from time to time which have been complied and are known as the U.P. Consolidation Manual. It is from these three sources that the entire consolidation operations are carried out.

19. The Scheme of the Act envisages that once the consolidation operations are complete only then the recommendation is made for issuing a notification under Section 52 (1) of the Act. Accordingly, when by and large, the consolidation operations have achieved their objective only then the notification under Section 52(1) of the Act is issued and its consequence is that the Consolidation Authorities are denuded of their jurisdiction as the village stands de-notified.

20. If such is the consequence of de-notification then there can be no reason to leave some residuary powers with the CO/SOC/DDC as the case may be, in the garb of reference proceedings as that would

run counter to the Act as then no proceedings would attain finality and it would also create a source of manipulation as whichever matter, though otherwise had attained finality, could be reopened by taking recourse to the powers of reference, which cannot be the intention of the Act.

21. It was also submitted that Section 27 of the Act clearly provides that after the new records are prepared in terms of the Act, the same attain presumptive value and after the de-notification, if at all, there is any discrepancy or any right is claimed contrary to the said entries, then such claims can be adjudicated and if required the entries can be rectified by the revenue authorities, but not by the consolidation authorities.

22. It was also urged, illustratively, that there may be a situation where some proceedings may have been decided (prior to the notification under Section 52(1) of the Act). However, the Consolidation Authorities while preparing the records discover some discrepancy, then in such circumstances, the CO and the SOC, if find that any order has attained finality and by giving effect to the said order, some right of another person is affected, or some discrepancy is discovered which may not fall within the ambit of Section 42-A of the Act then in such circumstances, the CO or the SOC can make a reference to the DDC, who may adjudicate, after putting the parties to notice and after hearing them. Any proceeding of this nature which is in aid of proper conduct of consolidation operations, maintenance of the records and entries contained in such consolidation record, has a sanctity attached and is binding on parties.

23. Submission was that in such circumstances, the powers of reference can be exercised and by subscribing to such a

view, the provisions of the Act can be harmoniously construed. Nevertheless, it cannot be gainfully proposed that this power can be exercised post the notification under Section 52(1) of the Act as such proceedings cannot be termed to be saved in terms of Section 52(2) of the Act. The proceedings which are saved in terms of Section 52(2) of the Act are the ones which remain pending either before the Consolidation Officer, the Appellate or the Revisional authorities under the Act or pending before the Constitutional Courts, at the time of issuance of notification under Section 52(1) of the Act.

24. It was thus submitted that the powers under Section 48(3) of the Act are adjudicatory but such adjudication has to take place prior to the notification under Section 52(1) of the Act and it cannot be initiated after the de-notification nor such a reference is saved in terms of Section 52(2) of the Act.

25. Dr. Pandey, learned Senior Counsel while assisting the Court on the questions before it, specifically urged that the provisions of the Act and the Rules must be seen in context with certain provisions contained in the U.P. Consolidation Manual and he has specifically referred to Regulation 201(Ga), 236(Ga) and 240(Ga) contained in Chapter-X under the Heading 'Correction of Records'. He urged that Regulations 602(4) and 606 in Chapter XII of the U.P. Consolidation Manual indicate that such powers of correction can be exercised only prior to notification under Section 52(1) of the Act.

26. It was urged that the basic object of the Act is to allot compact area in lieu of scattered plots to the tenure holders to

facilitate large scale cultivation. The Act does not deal with the substantive rights, which are primarily governed by the U.P. Zamindari Abolition and Land Reforms Act, 1950 and now after it has been repealed, by the U.P. Revenue Code, 2006. The U.P. Consolidation of Holdings Act, 1953 in that context is only a procedural Act and it lays special emphasis on the consolidation of plots for the tenure holders for giving encouragement to agriculture.

27. According to Dr. Pandey there are clear indications in the Act that the powers of reference in terms of Section 48(3) of the Act can only be exercised for the purposes of ensuring that the orders passed during the consolidation operations prior to notification issued under Section 52(1) of the Act are given effect to and while doing so or while preparing the records if any discrepancy is noticed and by correcting such record, the right of some tenure holder is affected or in order to give effect to an order passed in favour of one tenure holder some other tenure holder is affected then in such circumstances, the CO or SOC may find it difficult to settle such a matter and to avoid any overlapping of jurisdiction or to avoid any error of exercise of jurisdiction, which may vitiate the proceedings, hence, in such circumstances, a reference can be made and the DDC has been conferred with the powers to decide the same after affording an opportunity of hearing to the parties in terms of Section 48(1) of the Act with the ultimate object that the final records be prepared, error free, so that upon de-notification of the village under Section 52(1) of the Act, the final records can be handed over to the revenue authorities and necessarily such powers can be exercised only prior to de-notification of the village.

28. It was submitted that in the Act, against an order passed under Section 9-A

of the Act, an appeal is provided before the SOC prescribing a limitation of 21 days. However, there is no limitation for filing a revision under Section 48(1) or 48(3) of the Act. Thus, where timelines have been prescribed and there is no timeline prescribed in terms of Section 48(3) of the Act even then some reasonable timeline has to be read into it. What would be a reasonable period can be seen on the basis of the scheme and objects of the Act but it cannot be left without any control as that would lead to an anomaly, leaving a window open for manipulation and it may result in doing more mischief than what the Act in the first place tries to curtail. Actually, this very concern was voiced in the DO dated 6th November, 2023 issued by the Consolidation Commissioner, as noticed in the reference order.

29. Moreover, in certain circumstances where a party has any grievance and some discrepancy is noticed after the notification under Section 52(1) of the Act and if he is permitted to get such right or discrepancy rectified through adjudication by Consolidation Authorities then it will have the impact of diluting the bar of Section 11-C of the Act and it will also rob the orders and records prepared of its sanctity and finality.

30. Learned counsel for the petitioners Shri U.S. Sahai and Dr. Pandey, learned Senior Counsel while canvassing the above noted propositions and in support of their contentions have referred to the decisions of this Court in Ghafoor (supra); Raja Ram (supra); Hari Ram (supra); Nanhki (supra); Ram Narain (supra); Smt. Malti Devi (supra) and Smt. Jagrani @ Ram Jiayai (supra).

31. Reliance has also been placed on a decision of the Apex Court in **Babu Verghese**

and others v. Bar Council of Kerala and others, (1999) 3 SCC 422 and a decision of this Court in **Krishna v. State of U.P., 2014 (123) LCD 754 (DB)** to contend that if the Act prescribes something to do in a particular manner then it should be done in that manner alone and not otherwise. Decision of this Court in **Mohd. Kallu v. D.D.C. and others, 2002 (93) RD 206** and **Ram Pujan and others v. D.D.C., Gazipur and others, 2000 (91) RD 433** has been referred to indicate the scope of powers conferred on the DDC.

IV SUBMISSIONS ON BEHALF OF STATE AND RESPONDENTS: -

32. Shri Pritish Kumar, learned Additional Advocate Government for the State of U.P., leading the submissions on behalf of the State and the private respondents has structured his submissions to proffer that the powers of reference in terms of Section 48(3) of the Act is in the nature of inherent power which is available with the DDC to do complete justice between the parties but is to be exercised in extraordinary cases where manifest injustice has been occasioned.

33. It was further urged that the powers to initiate a reference is necessarily vested with an authority subordinate to the DDC that is by a CO or the SOC but the inbuilt mechanism is such that before a reference is actually made to the DDC, first it must pass the scrutiny of referring authority, that is the CO or the SOC, who is obliged to confer a right of hearing to the parties concerned and only if it finds that the matter requires the attention of the highest authority, that is the DDC, only then it would make such a reference.

34. When the reference reaches the DDC, he examines the reference and the

DDC is also obliged to afford an opportunity of hearing to the parties concerned. If he comes to the conclusion that it requires some indulgence then the DDC would pass the necessary orders. Section 48(2) of the Act clearly provides that the DDC while exercising its powers of reference would be entitled to exercise all such powers as are vested in him in terms of Section 48(1) of the Act. Needless to say, such powers are very wide and this goes on to indicate that such powers would be used to ensure that any gross injustice or any patent illegality, if occurred, may not be perpetuated.

35. Since, the powers under Section 48(3) of the Act are deep and pervasive and akin to inherent powers, hence they are to be exercised with caution, but at the same time, it also must be noticed that the powers under Section 48(3) are not circumscribed by any condition or limitation, giving a clear indication that such powers have been conferred to meet any unexpected contingency.

36. Elaborating his submissions, the learned Additional Advocate General submitted that certain errors which may not be clerical or arithmetical so as to fall within the ambit of Section 42-A of the Act but if required to be corrected, can be done in terms of Section 48(3) of the Act. It was also urged that certain matters which may be pending before the consolidation authorities at any stage, that is to say before the CO or SOC in appeal or before the DDC in revision and then orders are passed subsequent to the notification under Section 52(1) of the Act, then to carry out or implement such orders, the power of reference can be utilized. Even in cases, where the consolidation authorities for some reason have failed to incorporate an

order passed during the consolidation operations which was necessary to be done, hence, to meet such situation, the powers of reference can be invoked.

37. Learned Additional Advocate General further urged that the manner in which the aforesaid Section 48 of the Act came to be amended in the year 1962 and power of reference was conferred along with the power of revision, indicates that while exercising the power of reference, the DDC could use its revisional powers, this is a clear indicator that in matters where certain discrepancies may have occurred during consolidation operations and requires correction then even post de-notification, in order to meet such contingencies the powers of reference can be used to correct, adjudicate and also re-examine any finding, either of law or of fact which may have been recorded either by the CO or the SOC, in order to do the complete justice between the parties.

38. This power is so conferred and can be exercised without any fetter of even Section 52(1) of the Act as it is born out of necessity, otherwise if an error which may have occurred while the consolidation operations were in progress and it was not discovered or rectified during the consolidation operations, then post de-notification such errors would continue to be reflected in the records and it may not be amenable for rectification/correction/adjudication as then the bar of Section 49 of the Act would operate and the Civil and the Revenue Courts would not be in a position to undo the wrong. It is for the aforesaid reason that the power under Section 48(3) is saved and can be exercised by the authority post the de-notification under Section 52(1) of the Act.

39. It has further been urged that departmental order dated 06.11.2023 mentioned in the reference order passed by the learned Single Judge in Kaushal Kishore (supra), is merely advisory and it cannot be said to have an overbearing effect on the statutory provisions. In support of his submissions, learned Additional Advocate General has referred to the decisions of this Court in **Sidh Narain v. D.D.C.: 2008 (1) AWC 219** and another decision of **Parag Memorial Education Institution v. Gram Panchayat Sarehri and others: 2024:AHC-LKO:21919**.

40. The crux of the entire submissions on behalf of the respondents State and some other Members of the Bar namely, Shri Saurabh Yadav, Shri Arun Kumar and Shri Ishan Kumar Gupta, who adopted the line of reasoning proposed by the learned Additional Advocate General, is that the power under Section 48(3) of the Act is adjudicatory and is not merely corrective as the DDC has wide powers which are akin to inherent powers and can be exercised to do complete justice between the parties or to meet any unexpected contingency and such powers can be invoked even after the notification under Section 52(1) of the Act. Since the powers are extraordinary, hence they are to be used sparingly and no straight-jacket formula for universal applicability can be laid down, rather exercise of powers under Section 48(3) of the Act will have to be tested on case to case basis.

V BIRDS EYE VIEW OF THE ACT:-

41. At the outset, it will be appropriate to consider the entire scheme and nature of the Act to ascertain the nature of the powers exercised by the Authorities and for a better

understanding of the Act. For this the Court would delve into the Act of 1953, Rules of 1954 and certain Forms which are appended to the Act and are prepared by the Consolidation Authorities which are of significance and also refer to certain provisions contained in the U.P. Consolidation Manual for a comprehensive understanding.

42. The Act of 1953 was enacted primarily to consolidate the agricultural holdings in the State of Uttar Pradesh with the larger object of giving impetus and development to agriculture. It will be worthwhile to keep in mind that soon after independence, major steps were taken to boost agriculture and to achieve the aforesaid, a very important piece of legislation was introduced in the State of Uttar Pradesh namely the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act of 1950). The Act of 1950 abolished the complicated and numerous categories of tenure holders, both proprietary and cultivatory and also introduced several provisions for securing the rights of the tenure holders and this apart, the Act of 1950 introduced reforms for the benefit of landless persons and persons belonging to marginalized sections.

43. Having secured that, the State took the next step to consolidate the land holdings so that all the land held by a tenure-holder could be in a Block which was beneficial for promoting large scale agricultural activities making it more viable and productive, apart from the fact that it would result in substantially reducing the boundary disputes and would also make it feasible for irrigation, help in controlling pests and insects, insulating the crops, thereby increasing the yields.

44. This led to the advent of the U.P. C.H. Act of 1953 and it repealed the earlier

C.H. Act of 1939. The Apex Court in **Attar Singh v. State of U.P. and others :1959 RD 149 (SC)**, considered the scope and object of the Act and the relevant portion reads as under: -

“3. Before we take these points seriatim, it is useful to refer to the background of this legislation. As far back as 1939, the U.P. Consolidation of Holdings Act 8 of 1939, was passed. It was, however, of little effect, because it could only be applied when more than one-third of the proprietors of the cultivated area of a village applied for an order of consolidation of the village. It was, therefore, felt that some kind of compulsion would be necessary in order to achieve consolidation of holdings in villages. That consolidation would result in improving agricultural production goes without saying and it was with the object of encouraging the development of agriculture that consolidation schemes with a compulsory character were taken up in various States, after the recommendation of The Famine Inquiry Commission 1944, in its Final Report; (See p. 263). The State Bombay was the first to pass an Act called the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, (Bom 62 of 1947). This was followed by the impugned Act in Uttar Pradesh. The object of the Act is to allot a compact area in lieu of scattered plots to tenure-holders so that large scale cultivation may be possible with all its attendant advantages. Thus, by the reduction of boundary-lines saving of land takes place and the number of boundary-disputes is reduced. There is saving of time in the management of fields inasmuch as the farmer is saved from travelling from field to field, which may be at considerable distances from each other. Proper barriers such as fences, hedges and ditches can be

erected around a compact area to prevent trespassing and thieving. It would further be easier to control irrigation and drainage and disputes over water would be reduced considerably where compact areas are allotted to tenure-holders. Lastly, the control of pests, insects and plant-disease is made easier where farmers have compact areas under cultivation. These advantages resulting from consolidation of holdings are intended to encourage the development of agriculture and larger production of food grains, which is the necessity of the day.

4. With these objects in mind, the Act was passed by the U.P. Legislature in 1953 and received the assent of the President on March 4, 1954. It was published in the gazette on March 8, 1954, and declarations under Section 4 were made for the major part of the State of Uttar Pradesh, including the petitioners' village, in July, 1954.

5. The scheme of the Act is as follows:-

When consolidation of a village is taken up, the first thing that is done is to correct the revenue records, and Sections 7 to 12 deal with that. Then comes the second stage of preparing what are called statements of principles; (see Sections 14 to 18). Objections to these principles are entertained and decided and thereafter the principles are confirmed under Section 18. Then comes the third stage (vide Sections 19 to 23), which deals with the preparation of the statement of proposals. Objections to this are also invited and disposed of, and then proposals are confirmed under Section 23. After the proposals have been confirmed, we come to the last stage in which the confirmed proposals are enforced; (see Sections 24 onwards). It will be clear therefore from the objects of the Act and the advantages that accrue from its implementation that it is a piece of

legislation, which should be a boon to the tenure-holders in a village and should also lead to the development of agriculture and increase of food production. ...”

45. This Court in **Moolchand v. DDC and others; 2007 (103) RD 469** considered the scope and the object of the Act in paragraphs 10, 11 and 12 and the same reads as under: -

“10. The U.P.C.H. Act does not deal with the grant of substantive rights to be given to the tenure holders. Therefore, it is clear that substantive rights are to be governed by the provisions contained in the U.P. Act, No. 1 of 1951. The U.P.C.H. Act is only procedural with regard to the consolidation of holdings.

11. After start of consolidation proceedings the Revenue Court or the Civil Court cannot decide claims to land and such pending proceedings are to abate in view of section 5 of the U.P.C.H. Act. The abatement is only for adjudication of rights by the Consolidation Courts with regard to pending cases. Further bar is only that fresh institution of cases may be made before the Consolidation Courts under section 9/12 of the U.P.C.H. Act. The Revenue Court and Civil Court may not entertain such matters during consolidation period. The U.P.C.H. Act does not provide for devolution, restriction on transfer, extinction of rights, conferment of rights, classes of tenure, etc.

12. The effect upon notification under section 4 or 4-A of the U.P.C.H. Act is given in section 5 of the U.P.C.H. Act. From a reading of these sections in particular section 5 it is clear that the effect of notification is only for maintenance of records, permission from Settlement Officer Consolidation for change of use of the holding, pending proceedings with regard to declaration of rights or interest in

any land or for adjudication of rights in regard to which proceedings can or ought to be taken under the U.P.C.H. Act, shall abate. No other effect of the start of consolidation operations is given.”

46. Now having had an idea of the object and purpose of the Act, it would be gainful to take a glance through the important provisions and ascertain how the Act unfolds.

47. The U.P.C.H. Act of 1953 is divided in 5 Chapters. Though, Chapter I comprises of 3 Sections which inter-alia primarily contains the definitions of various terms used in the Act.

Chapter II commences with Section 4 up to Section 12-D and relates to revision and correction of maps and records. Chapter III relates to preparation of consolidation Scheme, while Chapter IV deals with the enforcement of scheme and Chapter V is titled as miscellaneous.

48. Under the scheme of the Act, Consolidation operations commence with declaration and notification issued by the State Government under Section 4(2) of the Act in respect of an area to which the consolidation operations pertain. The effect of the notification issued under Section 4 is contained in Section 5. Relevant Sections 4 and 5 of the Act are reproduced hereinafter:-

“4. Declaration and notification regarding consolidation.- (1) (a) The State Government may where it is of opinion that a district or part thereof may be brought under consolidation operations, make a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be

empowered in this behalf by the District Deputy Director of Consolidation-

(i) to enter upon and survey, in connection with Rectangulation or otherwise and to take levels of any land in such area ;

(ii) to fix pillars in connection with Rectangulation ; and

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under clause (a) to be given at convenient places in the said district or part thereof.

(2) (a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under subsection (2) or in any other area, it may issue a notification to this effect.

(b) Every such notification shall be published in the Gazette and in a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such manner as may be considered appropriate.

“5. Effect of notification under section 4(2)- (1) Upon the publication of the notification [under sub-section (2) of section 4] in the official Gazette, the consequences as hereinafter set forth, shall subject to the provisions of this Act, from the date specified thereunder till the publication of notification under section 52 or subsection (1) of section 6, as the case may be, ensue in the area to which the [notification under sub-section (2) of section 4] relates, namely:-

(a) the district or part thereof, as the case may be, shall be deemed to be under consolidation operations and the duty of maintain the record-of-rights and preparing the village map. The field book

and the annual register of each village shall be performed by the District Deputy Director of Consolidation, who shall maintain or prepare them, as the case may be, in the manner prescribed ;

(b) [* * *]

(c) notwithstanding anything contained in the U. P. Zamindari Abolition and Land Reforms Act, 1950, no tenureholder except with the permission in writing of the Settlement Officer, Consolidation, previously obtained shall-

(i) use his holding or any part thereof for purposes not connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming ;or

(ii) [****]

Provided that a tenure holder may continue to use his holding, or any part thereof, for any purpose for which it was in used prior to the date specified in the notification issued [under sub-section (2) of section 4.

(2) Upon the said publication of the notification under subsection (2) of section 4 the following further consequences shall ensue in the area to which the notification relates, namely:-

(a) every proceeding for the correction of records and every suit and preceeding in respect of declaration of rights or interest in any land lying in the, area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated :

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and

after giving them an opportunity of being heard ;

Provided further that on the issue of the notification under subsection (1) of section 6, in respect of the said area or part thereof every such order in relation to the land lying in such area or part, as the case may be, shall stand vacated ;

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder.

Explanation-For the purposes of sub-section (2), a proceeding under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 or an uncontested proceeding under sections 134 to 137 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, shall not be deemed to be a proceeding in respect of declaration of rights or interest in any land."

49. A perusal of Section 5(2) above would reveal that any proceedings pending before any Civil or Revenue Court would stand abated and it is the Consolidation Courts which would have primacy and would be competent to decide the matters before it.

50. Sections 7 and 8 deal with revision of village maps, field book and current annual registers. Thereafter, the statement of principles is prepared in terms of Section 8-A. Section 8 and Section 8-A are being reproduced hereinafter: -

"8. Revision of the field-book and the current annual register, determination of valuations and shares in joint holdings- (1) Upon the revision of

maps under section 7, the District Deputy Director of Consolidation shall subject to the provisions hereinafter contained, and in such manner as may be prescribed, cause to be-

(i) revised, the field-book of the unit after field to field partial and the current annual register after its test and verification ;

(ii) determined, in consultation with the Consolidation Committee, the valuation of- (a) each plots after taking into consolidation its productivity location and availability of irrigation facilities, if any ; and

(b) all trees, wells and other improvements existing in the plots for the purpose of calculating compensation therefor ;

(iii) ascertained the share of each owner, if there be more owners than one, out of the valuation determined under subclause (b) of clause (ii) ;and

(iv) determined the shares of individual tenure-holders in joint holdings for the purpose of effecting partition to ensure proper consolidation.

(2) The District Deputy Director of Consolidation shall cause to be prepared a khasra chakbandi in the form prescribed, in respect of all the plots falling in the unit as also a statement showing the mistakes [undisputed cases of succession] undisputed cases of succession and disputes discovered during the test and verification of the annual register in the course of the field-to field partial.]"

"8-A Preparation of Statement of Principles- (1) The Assistant Consolidation Officer shall, in consultation with Consolidation Committee, prepare, in respect of each unit under consolidation operations, a statement in the prescribed form (hereinafter called the Statement of Principles) setting forth the principles to be

followed in carrying out the consolidation operations in the unit.

(2) The Statement of Principles shall also contain-

(a) details of areas, as far as they can be determined at this stage, to be earmarked for extension of abadi including areas for abadi site for Harijans and landless persons in the unit and for such other public purposes as may be prescribed

(b) the basis on which the tenure-holders will contribute land for extension of abadi and for other public purposes ; and

(c) details of land to be earmarked for public purposes out of land vested in a Gaon Sabha or a Local Authority under section 117 or section 117-A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

(d) the standard plots for each unit.

(3) The standard plots referred to in clause (d) of sub-section (2) shall be determined by the Assistant Consolidation Officer after ascertaining from the members of the Consolidation Committee and the tenure-holders of the units the best plot or plots of the unit, regard being had to productivity, location and the existing soil class of the plot or plots."

51. Importantly, Section 9, Section 9-A, Section 9-B, Section 9-C and Section 10 deal with the adjudicatory powers which are conferred on the consolidation officer who is the court of first instance in the hierarchy of adjudicating authorities under Act. Section 9, 9-A, 9-B, 9-C are being reproduced hereinafter: -

"9. Issue of extracts from record and statements and publication of the records mentioned in sections 8 and 8-A and the issue of notices for inviting objections-

(1) Upon the preparation of the records and the statements mentioned in sections 8 and 8-A the Assistant Consolidation Officer, shall-

(a) correct the clerical mistakes, if any, and send or cause to be sent to the tenure-holder concerned and other persons interested, notices containing relevant extracts from the current annual register and such other record as may be prescribed showing-

(i) their rights in and liabilities in relation to the land;

(ii) mistakes [undisputed cases of succession] and disputes discovered under section 8 in respect thereof ;

(iii) specific shares of individual tenure-holder in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation ;

(iv) valuations of the plots ; and

(v) valuation of trees, wells and other improvements for calculating compensation there or and its Apportionment amongst owners, if there be more owners than one ;

(b) publish in the unit the current khasra and the current annual register, the khasra Chakbandi, the Statement of Principles prepared under section 8-A and any other records that may be prescribed to show, inter alia, the particulars referred to in clause (a).

(2) Any person to whom a notice under sub section (1) has been sent, or any other person interested, may, within twenty-one days of the receipt of notice, or of the publication under sub-section (1), as the case may be, file before the Assistant Consolidation Officer objections in Respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom, or in the Statement of Principles, or the need for partition.]

9-A. Disposal of cases relating to claims to land and partition of joint holdings- (1) The Assistant Consolidation Officer shall

(i) where objection in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned ; and

(ii) where no objections are filed, after making such enquiry as he may deem necessary, settle the disputes correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation :

Provided that where the Assistant Consolidation Officer, after making such enquiry as he may deem necessary, is satisfied that a case of succession is undisputed, he shall dispose of the case on the basis of such enquiry.

(2) All cases which are not disposed of by the Assistant Consolidation Officer under sub-section (1), all cases relating to valuation of plots and all cases relating to valuation of trees, wells or other improvements for calculating compensation therefor, and its appointment amongst, co-owners, if there be more owners than one, shall be forwarded by the Assistant Consolidation Officer to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

(3) The Assistant Consolidation Officer, while acting under subsection (1) and the Consolidation Officer, while acting under sub-section (2), shall be deemed to be a court of competent jurisdiction anything to the contrary contained any other law for the time being in force notwithstanding.

9-B. Disposal of objections on the Statement of Principles- (1) Where objections have been filed against the Statement of Principles under section 9, the Assistant Consolidation Officer shall after affording opportunity of being heard to the parties

concerned and after taking into consideration the views of the Consolidation Committee, submit his report to the Consolidaiton Officer who shall dispose of the objections in the manner prescribed.

(2) Where no objections have been filed against the Statement of Principles within the time provided therefor under section 9, the Consolidation Officer shall, with a view to examining the correctness, make local inspection of the unit, after giving due notice to the Consolidation Committee and may thereafter make such modification or alterations in the Statement of Principles as he may consider necessary.

(3) Any person aggrieved by an order of the Consolidation Officer under sub-section (1), or sub-section (2), may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation whose decision except as otherwise provided by or under this Act, shall be final.

(4) The Consolidation Officer and the Settlement Officer, Consolidation shall before deciding an objection or an appeal make local inspection of the unit after giving due notice to the parties concerned and the Consolidation Committee.

9-C. Partition of joint holdings- (1) The Assistant Consolidaiton Officer or the Consolidation Officer may partition joint holdings under section 9-A notwithstanding anything to the contrary contained in 178 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or any other law, and may also partition the same suo moto.

(2) The partition of joint holdings shall be affected on the basis of shares, provided that there the tenure-holders concerned agree, it may be affected on the basis of specific plots.

52. Any tenure holder who may face issues relating to claims regarding the land,

partition of joint holdings, may file objections against the statement of principles at this stage.

53. Any adjudication made by the Consolidation Officer in terms of Section 9-A, 9-B or 9-C, is appealable in terms of Section 11 within the period of limitation i.e. 21 days from the date of the order, before the Settlement Officer, Consolidation (SOC). Section 11 reads as under: -

“11. Appeals- (1) Any party to the proceedings under section 9-A aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer under that section, may within 21 days of the date of the order, file an appeal before the Settlement Officer, Consolidation, who shall after affording opportunity of being heard to the parties concerned give his decision thereon which except as otherwise provided by or order under this Act, shall be final and not be questioned in any court of law.

(2) The Settlement Officer, Consolidation, hearing an appeal under sub-section (1) shall be deemed to be a court of competent jurisdiction, anything to the contrary contained in any law for the time being in force notwithstanding.”

54. However, Section 11-A creates a bar which is akin to the plea of res-judicata/constructive res-judicata. Section 11-A reads as under: -

“11-A. Bar on objections-No question in respect of-

(i) claims to land,
(ii) partition of joint-holdings, and
(iii) valuation of plots, trees, wells and other improvement where the question is sought to be raised by a tenure-holder of the plot or the owner of the tree, well or other improvements recorded in the annual register under section 10, relating to the consolidation area which has been raised under section 9 or

which might or ought to have been raised under that section,] but has not been so raised shall be raised or heard at any subsequent stage of the Consolidation proceedings.”

55. Section 11-A bars all objections in respect of claim to land, partition of joint holdings and valuation of lands amongst others relating to the consolidation area which had been raised under Section 9 or which might or ought to have been raised under the said Section but were not raised. By virtue of Section 11-A, such objections cannot be raised or be heard at any subsequent stage of the consolidation proceedings.

56. At this stage, it will also be relevant to notice that Section 11-C grants leverage or a reprieve to certain lands which vest in the State or Gaon Sabha or with any Authority, and to extent the bar of Section 11-A does not apply to such lands. Section 11-C reads as under:-

“[11-C. In course of hearing of an objection under section 9-A or an appeal under section 11 or in proceedings under section 48, the Consolidation Officer, the Settlement Officer (Consolidation) or the Director of Consolidation, as the case may be, may direct that any land which vests in the State Government or the Gaon Sabha or any other local body or authority may be recorded in its name, even though no objection, appeal or revision has been filed by such Government, Gaon Sabha, body or authority.]”

57. Thus, it would be seen that the tenure holders have been conferred with a right of raising objections regarding the statement of principles, claim to land, partition of their joint holdings, valuation regarding plots, trees and other improvements including wells, to be raised at the appropriate level and time before the Consolidation Officer. Any order of the Consolidation Officer can be assailed in an

appeal as per Section 11 before the SOC within the period of 21 days as prescribed. This is indicative of the fact that the proceedings are intended to be taken to its logical conclusion as quickly as possible and consolidation proceedings are not intended to go on forever.

58. The applicability of bar of Section 11-A is also indicative of the fact that a person contesting the consolidation proceedings must do so with all earnestness and responsibility as it may have a grave consequence, if not raised at the correct time and stage.

59. Section 12 relates to changes which occur during consolidation operations and which may affect the rights or interests of a tenure-holder which may have been recorded in the revised records. Sub-section (2) of Section 12 clearly provides that the provisions of Section 7 to 11 apply to the decisions made under Section 12(1) of the Act clearly indicating that the aforesaid provisions are not summary in nature rather has the import of regular proceedings which is akin to proceedings held under Section 9-A of the Act.

60. At this stage, it will also be relevant to notice that the Act envisages preparation of consolidation documents/forms which contain valid information and are integral part of the scheme of the Act. The entries and information contained in such forms which are prepared at different stages of consolidation operations, is indicative of rights, disputes, spot positions amongst many other information which can lead to finality, unless challenged and corrected, as per the Scheme of the Act.

61. In this regard, Form CH-2-A which appended to the Act and is relatable to Rules 18 to 23 of the U.P.C.H. Rules, 1954, inter alia is one of the first forms which is issued upon commencement of consolidation operations and

it is being noticed for clarity and better understanding:-

C.H. FORM 2-A¹ (Revised)
C.H. FORM 2-A¹
[See Rule 21]
Khasra Chakbandi

Village.....Pargana.....Tahsil.....District.....

Plot No.	Area	No. of shares thousand of the base year	No. of shares thousand of the base year of the tenant or of the tenant's representative	No. of shares thousand of the base year of the tenant or of the tenant's representative	No. of shares thousand of the base year of the tenant or of the tenant's representative	No. of shares thousand of the base year of the tenant or of the tenant's representative	No. of shares thousand of the base year of the tenant or of the tenant's representative	No. of shares thousand of the base year of the tenant or of the tenant's representative
1	2	3	4	5	6	7	8	9

Details of dispute or proceedings	Details of improvements, if any, made or not, and whether the same are or have been or are to be made	Details of the dispute or proceedings	Details of the dispute or proceedings	Details of the dispute or proceedings	Details of the dispute or proceedings	Details of the dispute or proceedings	Details of the dispute or proceedings
10	11	12	13	14	15	16	17

C.H. FORM 2-A (contd.)

Details of consolidated area	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities
18	19	20	21	22	23	24	25	26

Details of consolidated area	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities	Details of irregularities
27	28	29	30	31	32	33	34	35

62. Similarly, The statement of principles is prepared in terms of Section 8-A and also evidenced in terms of C.H.

Form-5. For ready reference CH Form-5 is being shown below: -

CH FORM 5
[See Rule 25(9)]

Notice with extract from current Annual Register showing also the shares of co-tenure-holder in joint holdings, valuation of plots, trees, wells and other improvements existing in plots and details of mistakes and disputes, if any.

Sri....., son of..... resident of.....
An extract from the Khatauni for the year 13..... Pashi of village..... pargana..... tahsil..... district..... in respect of all your departments/holdings is given below. Column 19 contains the details of mistakes and disputes discovered during a check-up of the records. Shares as alleged of various co-tenure-holders in joint holding, for effecting partition are shown in Column I against the name of the tenure-holder concerned. Valuation of plots, trees, wells and other improvements is also shown below. Please take notice that it is proposed to decide, after hearing the parties concerned, all disputes and objection, if any, regarding—

(a) rights in and liabilities in respect of land, and specification of shares of individual tenure-holders in joint holding and other cognate matters relating to proposed partition; and
(b) valuation of plots, trees, wells and other improvements.

If you have any objection to make against the signature or correctness of any entry in this extract, or against the need for partition, it should be filed separately for each of the two categories specified above within twenty-one days from the receipt of this notice. In case no objection is received within the time prescribed it shall be presumed that you have no objection to make against any of the entries and orders shall be passed according to law.

Given under my hand and the seal of my office this..... day of..... 19.....

Seal of the office..... Assistant Consolidation Officer, Circle.....

Extract—

No. of Khata of the current Annual Register	Name of tenure-holder with percentage and residence and his share, in case of joint holding	Class of tenure	Year of commencement of tenure	Plot No.	Total	Area	Exchange value in Rs.	Valuation in area	Remarks
1	2	3	4	5	6	7	8	9	10

Details of improvements, if any, the well, tubewell, etc., existing in the plot or trees other than those appearing in the plot or on its boundaries				Land revenue payable by the tenure-holder	Details of disputes, if any		Remarks
Discrepancy	Improvements and age	Estimated value	Name of the owner, his address and share in the property	Name with percentage and residence	Year of commencement of tenure	Plot payable	Details of mistakes and disputes discovered, and share recorded in C.R. Form of Part II
11	12	13	14	15	16	17	18

Consolidator/Landpal..... Consolidator - Assistant Consolidation Officer, Circle.....

63. A glance at these Forms would indicate the meticulous manner in which extensive details have to be incorporated in the various Forms prepared at various stages of the consolidation operations and all such forms are for the consumption of the people of the village and tenure holders.

64. Now moving forward to Chapter III of the Act, primarily, Section 19 and

Section 20 of the Act, 1953 are important and those read as under: -

“19. Consolidation to be fulfilled by a consolidation scheme-(1) A Consolidation scheme shall fulfill the following conditions namely-

(a) the rights and liabilities of a tenure-holder, as recorded in the annual register prepared under section 10, are subject to the deductions, if any, made on account of contributions to public purposes under this Act, secured in the lands allotted to him ;

(b) the valuation of plots allotted to a tenure-holder subject to deductions, if any, made on account of contributions to public purposes under this Act, is equal to the valuation of plots originally held by him :

Provided that, except with the permission of the Director of Consolidation, the area of the holding or holdings allotted to a tenure-holder shall not differ from the area of his original holding or holdings by more than twenty five per cent of the latter ;

(c) the compensation determined under the provisions of this Act, or the rules framed thereunder, is awarded-

(1) to the tenure-holder-

(i) for trees, wells other improvements, originally held by him and allotted to another tenure-holder; and

(ii) for land contributed by him for public purposes ;

(2) to the Gaon Sabha, or any other local authority as the case may be, for development, if any, effected by it in or over land belonging to it and allotted to a tenure-holder ;

(d) the principles laid down in the Statement of Principles are followed;

(e) every tenure-holder is, as far as possible, allotted a compact area at the

place there he holds the largest part of his holding :

Provided that no tenure-holder may be allotted more chaks than three except with the approval in writing of the Deputy Director of Consolidation :

Provided further that no Consolidation made shall be invalid for the reason merely that the number of chaks allotted to a tenure-holder exceeds three ;

(f) every tenure-holder is, as far as possible, allotted the plot on which exists his private source of irrigation or any other improvement, together with an area in the vicinity equal to the valuation of the plots originally held by him there ; and

(g) every tenure-holder is, as far as possible, allotted chaks in conformity with the process of rectangulation in rectangulation units.

(2) A consolidation scheme before it is made final under section 23, shall be provisionally drawn up in accordance with the provisions of section 19-A.”

“20. Publication of the provisional consolidation scheme and receipt of objection thereon- (1) Upon the preparation of the provisional Consolidation scheme, the Assistant Consolidation Officer shall send or cause to be sent, to the tenure-holder concerned and persons interested, notices containing relevant extracts therefrom the provisional consolidation scheme shall thereafter, be published in the unit.

(2) Subject to the provisions contained in section 11-A any person to whom notice has been sent under sub-section (1), and any other person affected by the provisional consolidation

scheme disputing the propriety or correctness of the entries in the provisional Consolidation scheme, or in the extracts furnished therefrom, may within fifteen days of the receipt of the notice or of the date of the publication of the consolidation scheme, as the case may be, file an objection before the Assistant Consolidation Officer or the Consolidation Officer.

(3) Any person affected or any person having any interest or right in addition to the right of public highway in or over any public land or having other interest or right which is substantially prejudiced by the declaration made under sub-section (2) of section 19-A may within fifteen days after the publication of the provisional consolidation scheme, file an objection before the Assistant Consolidation Officer or the Consolidation Officer stating the nature of such interest or right.”

65. Any person aggrieved by the provisional Scheme of Consolidation, is required to file objections in terms of Section 20(2) and (3) of the Act within 15 days of such publication, which have to be decided and disposed of in terms of Section 21. Once, the objections are so decided, the Provisional Consolidation Scheme is confirmed and thereafter the stage commences for enforcing the said scheme.

66. At this stage CH Form-21 and CH Form-23 appended to the Act assume importance and these documents reveal vital informations relating to the village containing statistical and topographical details. These CH Form-21 and CH Form-23 are prepared in parts and for ease of understanding, those are being shown hereunder: -

C.H. FORM 21¹
 [See Rule 24-A]
Statement of Principal
 Village/Villages.....Pargana.....Tahsil.....District.....

PART I

(Section containing statistical and topographical details)

1. Total area of the unit in bighas/acres.
2. Total holding area of unit in bighas/acres.
3. Total area proposed to be included in the Consolidation Scheme.
4. Total valuation in terms of annas.
5. Total area already in use for public purposes.
6. Total number of tenure-holders (shown in C.H. Form 10-A)
7. Total area/valuation in annas earmarked for various public purposes :
 - (a) Out of holding area;
 - (b) Out of other area;
 - (c) Percentage of deductions from holding's area.
8. Irrigation facilities available—
 - (a) Number of Government Tube-wells.....Area irrigated.
 - (b) Number of Private Tube-wells.....Ditto.
 - (c) Number of *pucca* and earthen wells of durable nature.....Ditto.
 - (d) Area irrigated by canal
 - (e) Area irrigated by other sources
9. (a) Total population of the village
 - (b) Name of hamlet.....Population of Harijan and landless labourers.....others.....Total
 - (c) Number of Pahi-Kasht tenure-holders
10. Topographical details of the suit.

PART II

(Section Containing Principles)

- A—(Unit planning section)
 B—(Unit consolidation section)

PART III

Details of plot Nos. and their areas proposed to be earmarked for various public purposes on the basis of principles contained in Part II

Serial No.	Purpose for all or some land	Plot No.	Area reserved for		Location in terms of areas for anna. Remarks shown in Column 4	
			Holding area	Non-holding area		
1	2	3	4	5	6	7

Assistant Consolidation Officer

C.H. FORM 23 (PART I)
 (Rule 46)
 Provisional Consolidation Scheme (Khatwani Chakbandi)
 Village/Villages.....Pargana.....Tahsil.....District.....

Serial Number	Name and percentage of tenure holders with residence	Class of tenure	Year of commencement of the tenure	Kinds of crops of the tenure	Plot number	Total	Original holding				Contribution in terms of anna-valuation for public purposes retained in the suit of the suit shown in the statement of people (Total of Col. 11 of the holding percentage of contribution)
							Area	Exchange rate of the plot or to part to be consolidated	Area-valuation of the plot or to part to be consolidated	Land revenue of holding	
							Excluded from consolidation	Included in consolidation			
1	2	3	4	5	6	7	8	9	10	11	12

Contribution to public Land revenue in terms of anna-valuation for public purposes retained in the suit of the suit shown in the statement of people (Total of Col. 11 of the holding percentage of contribution)	Land revenue of holding	Area-valuation of the plot or to part to be consolidated	Exchange rate of the plot or to part to be consolidated	Plot number	Class of tenure	Total	Proposed holding				Remarks
							Area	Exchange rate	Area-valuation	Land revenue payable after reduction, if any, due to contribution of land to public purposes (Col. 12-Col. 11)	
14	15	16	17	18	19	20	21	22	23	24	

Consolidation Leftover.....Consolidator.....Assistant Consolidation Officer,
 Circle.....

C.H. FORM 23 (PART II)
 [See Rule 46]
 Provisional Consolidation Scheme (Khatwani Chakbandi)
 Village/Villages.....Pargana.....Tahsil.....District.....

Serial No. of C.H. Form 23 (Part I)	Number and kind of trees, wells and other improvements	Plot number of which trees, etc. exist	Compensation payable to tenant as a part of the compensation payable to the tenant-holder as shown in Column 10 of C.H. Form 23 (Part I)	Area and percentage of area with residence	Plot number	Area	Valuation	Rent payable	Rent payable
1	2	3	4	5	6	7	8	9	10

Serial No. of C.H. Form 23 (Part I)	Reduction in area, if any, on account of contribution of land by tenant-holder for public purposes shown in Col. 14 of C.H. Form 23 (Part I)	Particulars in suit of the tenant on account of contribution of land for public purposes (Col. 11 of C.H. Form 23 (Part I))	Compensation payable to tenant as a part of the compensation payable to the tenant-holder as shown in Column 10 of C.H. Form 23 (Part I)	Proposed holding of the tenant	Escrowments attached to the proposed holding in part, land, other than	Remarks
12	13	14	15	16	17	18

Consolidation Leftover.....Consolidator.....Assistant Consolidation Officer.

C.H. FORM 23 (PART III)
 [See Rule 46]
 Provisional Consolidation Scheme (Khatwani Chakbandi)
 Statement of Proposals
 Village/Villages.....Pargana.....Tahsil.....District.....

S. No.	Areas earmarked for public purposes						Details of other land belonging to the same holder				Remarks	
	From holding area			From non-holding area								
	Purpose	Plot No.	Area	Purpose	Plot No.	Area	Plot No.	Area	Plot No.	Area		
1	2	3	4	5	6	7	8	9	10	11		

Consolidation Leftover.....Consolidator.....Assistant Consolidation Officer.

67. The extensive exercise undertaken during consolidation operations is with the objective to compact the land holdings and as far as the records are concerned, they are to be updated, corrected and prepared with the idea to maximize the detailed inputs so that the ultimate records prepared are error free and such records prepared can be handed over to the Revenue Authorities in terms of Section 27 of the Act.

68. At this stage, it will be relevant to notice Section 27 of the Act which reads as under: -

“27. New revenue records- [(1)

As soon as may be, after the final consolidation scheme has come into force, the District Deputy Director of Consolidation shall cause to be prepared for each village a new map filed-book and record-of rights in respect of the Consolidation area, on the basis of the entries in the map, as corrected under section 7, the Khasra Chakbandi, the annual register prepared under section 10 and the allotment orders as finally made and issued in accordance with the provisions of this Act. The provisions of the U. P. Land Revenue Act, 1901 shall subject to such modification as may be prescribed, be followed in the preparation of the map and records.

(2) All entries in the record-of rights prepared in accordance with the provision of sub-section (1) shall be presumed to be true until the contrary is proved.

(3) After the issue of notification under section 52, the Collector shall, instead of the map, field-book and record-of-rights previously maintained by him maintain the map, field-book and record-of rights prepared in accordance with the provisions of sub-section (1) [and the provisions of the U. P. Land Revenue Act,

1901, relating to the maintenance and correction of such map, field book and record-of-rights shall mutatis mutandis apply.”

69. The aforesaid provision makes it clear that all entries to the records of rights prepared during consolidation operations shall be presumed to be true until the contrary is proved. Sub-section 3 mandates that after the issue of notification under Section 52, the Collector instead of the map, field book and record of rights previously maintained by him, shall henceforth maintain the map, field book and record of rights prepared in terms of Section 27(1) of the U.P.C.H. Act of 1953 and the provisions of Section 28 and 33 of the U.P. Land Revenue Act, 1901 would be applicable for maintenance of such records and the provisions in this regard relating to maintenance and correction as provided in the U.P. Land Revenue Act, 1901 would be squarely applicable.

70. Section 27 is followed by Section 28 which relates to delivery of possession and thereafter Sections 29, 29-A, 29-AA, 29-B, 29-C and Section 30 relate to grant of compensation which may affect a tenure holder whose standing crop is also delivered alongwith the delivery of possession. How such compensation is to be recovered and other incidental matters relating to the reduction of land revenue where a tenure holder has contributed some land for public purpose and how compensation is to be granted for the land contributed by tenure holders and the impact and consequences which ensues upon such exchange and delivery of possession, has been considered in these provisions.

71. The entire scheme of consolidation and how it is implemented is provided

alongwith complete hierarchy of courts who are the adjudicating authority, their appellate authority coupled with the fact that the orders passed during adjudication by the consolidation courts including the revisional authority, are final between the parties and unless set aside, they have binding impact and would also operate as res-judicata in subsequent proceedings attaching finality to it. This is in context with disputes which may be inter-se the tenure-holders and individuals.

72. In continuation, Chapter-V of the Act relates to miscellaneous aspects and the few important provisions to be considered to answer the questions under consideration herein would include Section 42-A, which contains the power of correction. The power of revision and reference is contained in Section 48 and then Section 49 which bars the jurisdiction of civil and revenue courts and finally Section 52 relates to close of consolidation operations.

73. In the aforesaid legislative backdrop, apart from the substantive provisions as noticed above, which are integral to the scheme of the Act and in order to give a complete robust functionality to the Act, the legislature framed Rules known as the U.P. Consolidation of Holdings Rules 1954. Mention may be made of Rules 18 to 23, Rule 25, Rule 26, Rule 46, Rule 48-B, Rule 49, Rule 50, Rule 54-A, Rule 71, Rule 82 to 86, Rule 90, Rule 93, Rule 97 to 100 and Rule 101-A, Rule 104, Rule 109 and 109-A to understand the working and execution of the consolidation operations.

74. However, for the purpose of this reference, Rules 90, 97, 98, 99, 100 and 100-A and CH Form 41 and 45 are being reproduced hereinafter: -

"90. *Section 27.* - (1) The Consolidator shall thereafter cause a final map to be prepared showing only the new numbers, their boundaries and, where necessary, conventional signs. It shall be checked by the Consolidator, Assistant Consolidation Officer and the Consolidation Officer before it is signed by the Settlement Officer. Consolidation whose designation shall be mentioned below his signature. The final map, thus prepared shall after copies thereof have been traced out as laid down in sub-rule (2), be sent to the press for reproduction where such reproduction is necessary in view of the provisions of Rule 101. On being received back from the press, the final map shall be placed in the Consolidation Volume meant for the Collector's Record Room.

(2) Two copies of the final map shall be traced out. In these copies the boundaries of the old plots existing within a new plot shall be indicated by dotted lines without the serial numbers of the old plots being shown there in the existing soil classes shall also be marked within thick red lines on these maps, the different soil classes being described by the suitable abbreviations written boldly in red ink over each kind of soil. The copies thus traced out shall be checked by the Consolidator, the Assistant Consolidation Officer and the Consolidation Officer before these are checked and signed by the Settlement Officer, Consolidation. A copy of this map shall be placed in each of the two Consolidation Volumes mentioned in Rule 100-A.

97. *Section 27.* - The Consolidation *Lekhpal* shall, with help of the *Khasra Mutabiqat* and other relevant records mentioned in sub-section (1) of Section 27, prepare the Khatauni in C.H. Form 45 in duplicate.

98. The Khasra Mutabiqat and the Khatauni in C.H. Form 45 prepared by the Consolidation, *Lekhpal* shall be checked cent per cent by the Consolidator. 25 per cent of the entries of these records shall be checked by the Assistant Consolidation Officer and five per cent by the Consolidation Officer. The Khatauni in C.H. Form 45 shall then be published in the village.

99. Section 27. - After the *khatauni* has been prepared new khata numbers shall be entered in Column 5 of *Khasra Mutabiqat*.

100. All cuttings and overwritings in the *Khasra Mutabiqat* and the *Khatauni* shall be signed and dated by the person responsible for such cuttings and overwritings and also by the Assistant Consolidation Officer. There shall be no erasures anywhere. An Errata List in respect of each of the record mentioned above shall be prepared by the Consolidation *Lekhpal* in C.H. Form 6-B and shall be attested by the Consolidator. It shall also be signed by the Assistant Consolidation Officer. Such a list after being signed by the Settlement Officer, Consolidation shall be attached to each copy of the record when it is bound.

100A. The *Khasra Mutabiqat* along with the final village map and the *Khatauni* in C.H. Form 41 shall constitute the Consolidation Volume. Two such volumes shall be prepared. One of it shall be consigned to the Collector's Record Room and the other shall be delivered to the *Tahsildar* for being made over to the *Lekhpal*. Thereafter the Director of Consolidation shall take steps to notify the village under Section 52."

75. For ease of reference, Form-41 and Form-45 are being reproduced hereinafter:

-

C.H. FORM 41
[See Rule 93]
Khasra Mutabiqat

Village..... Pargana..... Tahsil..... District.....

Serial number	Area	Old Number	Area	New Khata Number	Old date of last settlement	Source of irrigation	Remarks
1	2	3	4	5	6	7	8

Signature of Consolidation *Lekhpal* _____ Signature of Consolidator _____ Signature of Assistant Consolidation Officer _____

N.B.—Column 5 will be filled when the new *khatauni* is ready.

C.H. FORM 45
[See Rule 97]
Khatauni prepared under Section 27 of the Act

Village..... Pargana..... Tahsil..... District.....

Serial number of the Volume Chain	Name of tenant holder with pedigree and residence	Year of commencement of tenure	New plot No.	Area	Land revenue or rent payable by the tenant holder	Remarks
1	2	3	4	5	6	7

76. The purpose of referring to the aforesaid Scheme is not only to help comprehend how the Act operates given the legislative scheme but also, how it achieves its object and purpose. The Act, as unfolded above, would reveal that it is a Code in itself. The endeavour is that the provisions of the Act be construed in a harmonious manner to carry forward the legislative intend rather than to stultify any provision or the scheme of the Act.

VI CONFLICTING DECISIONS: -

77. Now, it will be appropriate to consider the conflicting decisions of this Court which has led to this reference:-

78. Let us notice the reasoning expressed by different Benches of this Court to hold that the Consolidation

Authorities do not lose jurisdiction simplicitor but retain powers to correct the records: -

(i) In **Ram Bahadur v. DDC and others: 1974 RD 53 (DB)** the Division Bench of this Court has held as under: -

“2. The issuance of the Notification does not, however affect the orders passed by the High Court the Supreme Court under the provisions of the Constitution of India or in cases or proceedings pending under this Act on the date of issue of notification under subsection (1) and orders passed will have to be given effect to notwithstanding anything contained in the Notification. In Dilawar Singh's case, 1972 All WR (HC) 557 AIR 1973 Allahabad 411 the Division Bench observed that the term “proceedings” in Section 52 (2) has been used in the comprehensive sense of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal Court. It was held that an appeal does not initiate a fresh proceeding. On the institution of the appeal the proceedings, which had become dormant on the decision of the trial Court revive and remain pending, the only difference being that they are now pending in a different Court, namely, the Court of appeal. It was also held that the notification under Section 52 (1) does not have the effect of destroying vested rights of the litigants. For instance, if a litigant has a right of appeal against a particular order he can exercise it notwithstanding the publication of the notification under Section 52 (1) and the moment an appeal is filed the effect in law is that the original proceedings stand revived.

* * *

4. We have seen the decision of the learned Single Judge in Mohd. Saddiq v. Deputy Director, (1967 All WR (HC) 228). In that decision no reasons have been given for the view that an application for setting aside the ex parte decree does not fall within the purview of Section 52 (2) as a proceeding which involves or affects a revival of the original proceedings and from that point of view making the original proceeding pending within the meaning of Section 52 (2). In our opinion, this decision does not lay down the law correctly.”

(ii) In **Brij Bir Singh and Another v. DDC, Meerut Camp of Muzaffarnagar and others: 1987 RD 66** the Court has held as under: -

“5. The first point which requires determination is as to, whether the effect of the order dated 8-7-64 passed by the Deputy Director of Consolidation which became final between the parties in all respects during the pendency of the consolidation proceedings, before the issuance of notification under Section 52(1) of the Act, can be sought to be given effect to by the successful party after the notification under Section 52(1) has been issued. The reply to this argument is not too far to seek. The relevant provisions of the Act coupled with the intention of the legislature in enacting the U.P. Consolidation of Holdings Act has to be ascertained. Under the U.P. Consolidation of Holdings Act, unlike the provisions of U.P.Z.A and LR Act, when any order has been passed in favour of any party, its effect has to be given in the relevant revenue papers and in the relevant C.H. Forms by the consolidation authorities themselves. No application to give effect to

that order is required-In other words, there is no provision Under the Act for the execution of any order under the Act, unlike in a suit filed under Section 9 of the Code of Civil Procedure or under the Specific Relief Act or under Section 202 or 203 of U.P.Z.A and L.R.Act.

* * *

12. it is, thus, clear that the intention of the Legislature was that if an order has to be passed by a particular consolidation authority, it has to be given effect to in revenue papers and if the same has not been given effect to by either side, in that event the successful party should not suffer. There is a maxim 'Actus Curae Neminem Gravabit', which means that an act of the Court shall prejudice no man. It is, thus, clear that once an order was passed by the Deputy Director of Consolidation in favour of the contesting Respondents, which became final and if the consolidation authorities failed to carry out that order or to give effect in the revenue papers, it is not for the contesting Respondents to suffer. Further that order could have been given effect to during the consolidation operations by making an application for correction of papers and even after the close of the consolidation operation. The application for correction of papers, even if moved by the contesting Respondents, for which there was no limitation provided, it could not be said that application became time barred. In case the Petitioners have any grievance they could have challenged the order dated 8-7-64. But they did not do so. Now there no justification on their part to object to the application for correction of papers moved on behalf of the successful party. In case there would have been any limitation provided for application for correction of papers, the Petitioners would

have been justified in raising the objection. But as there was no limitation provided for that application, it can be moved either during the consolidation operations or after the close of consolidation operation. Even during the consolidation operation the Legislature did not require the successful party to make an application for execution for seeking effect to a particular order. It was for the consolidation authorities to carry out the effect of the order passed in favour of a party.

13. The scope for reference has not been defined under Section 48(3). It has been left to the discretion of the Court. There is no denying the fact that where grounds have not been stated in the text the task of a court becomes heavier. In this connection it is better to quote an observation in C.K. Allen's Law. In the Making, (6th Edn.) at page 1292 as follows:

“The Judge himself addresses his task in much the same way as a counsel. His decision is given in the form of a structure of logic, in which he may use any material which he considers ad rem. Even purely unofficial practice may be prayed in aid as precedent to interpret documents (or statute). If the matter is governed by the clear and unambiguous prevision of a statute, his task is simplified. In a great many cases, no statute is applicable and even if it is applicable it is frequently the reverse of clear and unambiguous. The Judge must then proceed as Bacon laid down long ago either by parity of reasoning or by use of examples or by rules of natural reason and discretion.”

14. There is no limitation provided for making application for a reference nor there is any condition laid down under Section 48(3) beyond which the reference cannot be preferred by any subordinate consolidation authorities. The

only requirement of Section 48(3) of the Act was that after hearing the parties concerned a reference can be made to the Deputy Director of Consolidation regarding any order under Section 48(1) i.e. to ascertain the correctness, legality or propriety of an order. In the instant case I don't think there could be any better case for "propriety of an order" Where an order between the parties has become final and the same was not given effect to in the revenue papers, then the intention of the Legislature Legis was that such order passed in favour of any party to be given effect to by the consolidation authorities and has there was no necessity for making any appl application for execution of that order. Under these circumstances, even if after the close of consolidation operation an application for correction of papers was moved seeking effect of the order which became final, the prayer in that application could be granted only by making a reference, particularly when the consolidation authorities were actually functioning in the area as provided under Rule 109-A. In case the Deputy Director of Consolidation was not functioning in the area or in the District, his power would then be exercised by the Assistant Collector or some other appropriate revenue authority. But as in the instant case the Settlement Officer (Consolidation) directed the Consolidation Officer to submit a reference purporting to be a reference under Section 48(3) of the Act, I don't find that there Was any mistake or error in that order The Deputy Director of Consolidation was justified in rejecting the revision against that order preferred by the present Petitioners.

15. As regards the case of Raja Ram v. D.D.C., 1982 All LJ 871 (supra), relied upon by the learned Counsel for the Petitioners, suffice it to say that in that case

a suit for partition was pending between the parties at the time of application under Section 109-A was filed and in that circumstances this Court took the view that the parties can press their claim in the partition suit and Section 49 of the Act would not apply. In the instant case the application for correction of papers was correctly moved by the contesting Respondents seeking effect of the order dated 8- 7-1964 which had become final and it was the duty of consolidation authorities to have given effect to that order when the e consolidation operation was not closed in the area by issuing a notification under Section 52(1) of the Act. But as the application was made by the contesting Respondents, I am of the view that the ends of justice requires that that application should be allowed by making a reference under Section 48(3) of the Act. Further the aforesaid case of Raja Ram v. D.D.C. (supra), appears to be based on particular facts of that case and with profound regards have to say that that case law is not the whole law, but is governed by the facts of a particular case. In this connection I am reminded of an observation made by Lord Macmillan, who was a distinguished Judge of his time, in Berch v. Brown, (1931) A.C. page 631, to the effect that "precedent should be stepping stones and not halting places".

(iii) In **Mukhtar v. DDC, Azamgarh and others: 1993 RD 457 (DB)** the Court has held as under: -

11. From the entire scheme of the Act and the Rules framed there- under it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The

Scheme of the Act is not like the scheme which has been provided under the Code of Civil Procedure in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13-5-1974 was not finally implemented by the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The consolidation Authorities having not done so, the proceedings in respect thereof can not be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the order dated 13-5-1974 would necessarily be taken to be pending on the date of the notification issued under Section 52(1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13-5-1974 under the Act even though a notification under Section 52(1) of the Act had taken place. In our opinion, the view by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law.”

(iv) In **Ram Pati v. DDC, Banda and others: 1999 RJ 926** the Court has held as under: -

“5. From the entire scheme of the Act and the Rules framed there- under it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the Code of Civil Procedure in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13-5-1974 was not finally implemented by the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The consolidation Authorities having not done so, the proceedings in respect thereof can not be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the order dated 13-5-1974 would necessarily be taken to be pending on the date of the notification

issued under Section 52(1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13-5-1974 under the Act even though a notification under Section 52(1) of the Act had taken place. In our opinion, the view by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law."

(v) In **Abdul Sami and Others v. DDC and others: 2015 (1) ADJ 214**, the Court has held as under: -

"8. Upon hearing learned counsel for the parties and upon a perusal of the record, especially the decision cited on behalf of respondents, which holds as follows: -

"From the entire scheme of the Act and the Rules framed thereunder it thus becomes clear that the duty for revising the revenue records is cast on the Consolidation Authorities and it is for the Consolidation Authorities to implement the orders which are passed under the Act. The Scheme of the Act is not like the scheme which has been provided under the Code of Civil procedure in the sense that after obtaining a judgment and decree in his favour a party has to apply for execution within a certain period of limitation prescribed to get the fruits of the decree. Here under the Act the duty is enjoined on the Consolidation Authorities themselves to implement the orders which have been passed under the Act and no duty is cast on the person in whose favour the decision has been given to make an application to the authorities under the Act for implementation of that order within any prescribed period of limitation. In our opinion, till the order passed by the Consolidation authorities on 13.5.1974 was not finally implemented by

the Consolidation Authorities as contemplated under the Rules, the proceedings under the Act would be deemed to be pending. The order which has been passed in favour of the contesting respondents was to be incorporated by the Consolidation Authorities in the revenue records. The Consolidation Authorities having not done so, the proceedings in respect thereof can not be said to have been concluded before de-notification of the village. The proceedings for correcting the revenue records in pursuance of the order dated 13.5.1974 would necessarily be taken to be pending on the date of the notification issued under section 52 (1) of the Act. The Consolidation Authorities were thus bound to implement the directions contained in the final order dated 13.5.1974 under the Act even though a notification under section 52 (1) of the Act had taken place. In our opinion, the view taken by learned Single Judge in the case of Raja Ram (supra) does not lay down the correct law"

(vi) In **Shiv Shankar and Another v. State of U.P. and others: 2018 RD (138) 297**, the Court has held as under: -

"8. Rule 109-A of the Rules framed under U.P. Consolidation of Holdings Act casts a duty upon the consolidation authorities to give effect to the orders passed. No specific application is required for such implementation and, therefore, the question of application being barred by limitation does not arise. In *Mukhtar v. Dy. Director of Consolidation, Azamgarh and others: 1993 RD 457*, a Division Bench of this court has taken a view that the U.P. Consolidation of Holdings Act casts a duty on consolidation authorities to implement the orders which are passed under the Act. The Division Bench held that since duty is cast upon the

consolidation authorities to implement the order passed under the Act, the proceeding to implement the order, if not already implemented, would be deemed pending on the date of notification under Section 52 of the U.P. Consolidation of Holdings Act and as such the proceedings can continue even after notification under Section 52 of the Act. This Court is therefore of the view that the objection taken by the learned counsel for the petitioner that application under Rule 109-A was not maintainable because consolidation operations had come to a close pursuant to a notification under Section 52 of the Act, is worthy of rejection and is, accordingly, rejected"

79. In short, the aforesaid decisions are based on the premise that record-keeping is the work of the Authorities and thus a person cannot be punished for the inaction of the State Authorities and the power of reference is primarily considered to be corrective in nature, contextually.

80. Now this Court deems appropriate to notice the decisions which hold that after the notification issued under Section 52(1) of the Act of 1953, the Consolidation Authorities lose their jurisdiction to adjudicate.

(i) In the case of the **Ghafoor v. Additional Commissioner: 1979 (RD) 76 (DB)**, a Division Bench of this Court has held as under: -

"1. After publication of the notification under Section 52 of the U.P. Consolidation of Holdings Act the Petitioner moved an application before the Sub-Divisional Officer praying for correction of map prepared by the consolidation authorities on the ground that there was some discrepancy in the map as

well as in C.H. Form 45. The application filed by the Petitioner was rejected by the Sub-Divisional Officer on the ground that because Consolidation operations were over in the village, as such the map cannot be on. The corrected under Section 28 of the Land Revenue Act or under any other section. Petitioner filed an appeal before the Commissioner, Lucknow Division and the Additional Commissioner relying on *Ganga Glass Works (Private) Ltd., Balawali v. State of U.P. 1973 AWR 620* held that the map prepared by the consolidation authorities was final and the revenue authorities were incompetent to make any correction. In that case the learned Single Judge after taking into consideration the provisions of Sections 42A and 27(1) of the U.P. Consolidation of Holdings Act held that Section 42A of the Consolidation of Holdings Act does enable the authorities to correct the size and shape of plots in the map prepared under Section 27(1) by referring to the record of rights. and Section 27(1) of the U.P. Consolidation of Holdings Act is only for the purpose of specifying the procedure for preparation of the map and record. As such the Consolidation authorities alone were competent to make any alteration in the map prepared by the consolidation authorities. From the facts of the said case it is not clear when the cause of action arose and whether the village was still under consolidation and whether notification under Section 52 of the U.P. Consolidation of Holdings Act had been published. There is yet another Section 27 of the U.P. Consolidation of Holdings Act and a perusal of Section 27(2) shows that the entries which were made earlier were final and conclusive and a presumption of correctness was attached to them meaning thereby that the said presumption could be rebutted. Section 27(3) of the U.P.

Consolidation of Holdings Act provides that after the issue of notification under Section 52, the Collector shall, instead of the map, field-book and record-of-rights previously maintained by him, maintain the map, field-book and record-of rights prepared in accordance with the provisions of the U.P. Land Revenue Act 1901 relating to the maintenance and correction of such map, field-book and record of rights shall *mutatis mutandis* apply.

2. Thus after consolidation operations are over and the notification under Section 52 of the U.P. Consolidation of Holdings Act is published shed it is the Collector who is to maintain the map, field-book etc., and such a map and field-book can be corrected under the Land Revenue Act and under such circumstances the U.P. Consolidation of Holdings Act does not go to the extent of rendering the provisions of the U.P. Land Revenue Act nugatory, so far as correction of map prepared during consolidation operations is concerned.

3. Our attention has been drawn to another case *Mohammad Raza v. Board of Revenue* 1973 AWR 621 in which it was held that a map prepared by the consolidation authorities is not necessarily final and conclusive and a map incorrectly drawn up cannot be treated as final and conclusive and can be corrected under Section 28 of the Land Revenue Act.

4. Looking to the provisions of the U.P. Consolidation of Holdings Act and the Land Revenue Act, we are in agreement with the view expressed in *Mohammad Raza v Board of Revenue* (supra) and we hold that if a map is subsequently found incorrect and it is not in conformity with the document prepared by the consolidation authorities, the same can in suitable cases be e corrected subsequent under Section 52 of the U.P. Consolidation of to the publication of the notification Holdings Act

by the Collector in exercise of power under Section 28 of the Land Revenue Act. Thus we are of the view that law laid down in *Ganga Glass Works (Private) Ltd., Balawali v. State of U.P.* (supra) is not a good law.

5. Thus the powers of the Collector under Section 28 of the U.P. Land Revenue Act for correcting the map in suitable cases are intact notwithstanding the map has been prepared by the consolidation authorities who have adjudicated the rights and title of the parties. In case there is any discrepancy in the map and final document has been prepared by the consolidation authorities, the same can be corrected in proceedings under Section 28 of the Land Revenue Act provided the right, interest and title of the party which have been finally adjudicated or have become final are not involved.

6. In the present case after notification under Section 52 of the U.P. Consolidation of Holdings Act was published, an application was moved by the Petitioner for correction of the map and the Petitioner tendered evidence that the map was not in conformity with the entries which were made in C.H. Form 45. It was obligatory on the authorities to correct the map in case they were satisfied that there was some discrepancy between the map and the entries in C.H. Form 45 and it is on a mistaken view of law that they have refused to grant this relief to the Petitioner."

(ii) In **Raja Ram and Others v. DDC, Lucknow: 1982 (RD) 387 (DB)**, the Court has held as under: -

"8. In accordance with R. 109A read with Section 52 (2) of the U. P. Consolidation of Holdings Act the contesting opposite parties could not

approach the consolidation authorities for getting requisite entry as no case was pending on the date of denotification under Section 52 (1) of the U. P. Consolidation of Holdings Act. The proceeding giving rise to the present writ petition is wholly without jurisdiction and deserves to be quashed. The ruling reported in 1981 Rev Dec 307: (1981 UPLT NOC 207), is inapplicable to the facts and circumstances of the present case. In that case no question of applicability of R. 109A was involved, hence that case does not throw any light upon the question under my consideration in the present writ petition. The revisional Court through the impugned judgment dated 29-10-1974 has tried to give effect to the order dated 23-7-1965. I think it has exceeded its jurisdiction in passing the impugned order dated 29-10-1974. without considering the question whether the contesting opposite parties could move any application under R. 109A under the U. P. Consolidation of Holdings Act in the present case. In my opinion the contesting opposite parties could not invoke the jurisdiction of the consolidation authorities under R. 109A under the Act after denotification under Section 52 of the U. P. Consolidation of Holdings Act on the facts and circumstances involved in the present"

(iii) In **Hari Ram v. DDC, Azamgarh and others: 1989 (RD) 281 (DB)**, the Division Bench of this Court has held as under: -

"2. We find that on 29th October, 1987 an objection was preferred by the petitioner before the Deputy Director of Consolidation. The position of law is well settled. The Deputy Director of Consolidation has no jurisdiction to exercise power under Section 48 (3) of the Act if a de notification has already taken

place under Section 52 of the Act. The Deputy Director of Consolidation, therefore, will first record a finding as to whether a Notification under Section of the Act had, in fact, been issued on 13th February 1982. If he finds that such a notification exists and if he also finds that the land which is the subject matter of dispute is covered by the said Notification, he shall desist from exercising any power under Section 48 (3) of the Act. With his direction the petition is disposed of finally."

(iv) In **Nanhki v. DDC, Pratapgarh and others: 1995 (13) LCD 1**, the Division Bench of this Court has held as under: -

"3. The order of the Deputy Director of Consolidation has been challenged only on the ground of dictum. According to learned Counsel for the petitioner, after the village where the land in dispute is situate was de notified under Section 52 (1) of the Act vide notification dated 8th March, 1979, published in the gazette on 5th May, 1979, the application for correction of records and of the age map village on any ground whatsoever cannot be entertained by the Consolidation Authorities nor they are left with the power to pass orders on the same and, therefore, impugned order passed by the Deputy Director of Consolidation is illegal and liable to be quashed by the writ of certiorari.

4. Learned Counsel for the petitioner has placed reliance on two judgments of this Court. The first judgment is of a Division Bench of this Court reported in **Hari Ram v. DDC, Azamgarh and others, 1989 RD 281**. This Court was approached by means of a writ petition for issue of the writ of prohibition by one Hari Ram who happened to be opposite party in a case which was pending before the

Deputy Director of Consolidation under Section 48 (3) of the Act. In the writ position it was alleged by him that although consolidation proceedings in the village where the land was situate has come to an end by issue of Notification under Section 52 (1) of the Act. Deputy Director of Consolidation wrongly proceeded with the reference under Section 48 (3) of The Act. It was argued on his behalf that if a notification under Section 52 (1) of the Act has been issued, the village goes out of the consolidation and the Consolidation Authorities cease to have jurisdiction to either entertain any application or pass orders for correction of papers or whatever purpose. The Division Bench of this Court while finally disposing of this writ petition at the admission stage passed the order directing the Deputy Director of Consolidation, Azamgarh to find record a finding as to whether Notification under Section 52 (1) of the Act had been issued in respect of the land in dispute and to determine as to whether the village where land in dispute is situate, has been denotified. The direction further was that in case it was found that the land has ceased to be the subject matter of the consolidation proceedings, the Deputy Director of Consolidation shall not proceed with the application and shall not pass any order thereon in as much as in such situation he lacks jurisdiction to entertain and decide the Application.

5. The second judgment on which reliance has been placed by learned Counsel for the petitioner, is a single Bench judgment in the case of *Raja Ram v. Deputy Director of Consolidation, U.P., Lucknow and others*, 1982 RD 387. In this case, an application for Correction of papers was made under Section 42-A of the Act for the purposes of carrying out of Consolidation orders passed by the

Consolidation Authorities and the Deputy Director of the basis of that application exercising powers under Section 48 of the Act passed orders for the correction of papers. The Court held that when the village has been de-notified under Section 52 (1) of the Act, the Deputy Director of Consolidation loses jurisdiction to entertain the application and pass orders under Section 42-A of the Act either in the garb of making notification or for execution of the orders earlier passed by the Consolidation Authorities.

x x x

7. The contention of learned counsel for the petitioner in that case was that since the village had been denotified, the application for correction of papers was not maintainable. This contention of the petitioner made in that case was rejected by the learned Single Judge holding that for purpose of carrying out the orders earlier passed by Consolidation Authorities application was maintainable and the Consolidation Authorities were competent to pass orders thereon. This view of the learned Single Judge is in direct conflict with the view taken by another learned Single Judge in the case of *Raja Ram* (supra) as well as with the view taken by Division Bench in the case of *Hari Ram* (supra). Since the view taken by the Single Judge in the case of *Raja Ram* is fully supported and endorsed by the view taken by the Division Bench in the case of *Hari Ram* (supra), in my opinion, the view taken by the learned Single Judge in the case of *Brij Bir Singh* cannot prevail and it cannot be said to be a correct view. In the normal course where the Court is faced with two conflicting views taken by coordinate benches, the case is to be referred to a larger bench. In this case, this course is not

required to be adopted as the view taken by this Court in the case of Raja Ram (supra) has fully been endorsed by the Division Bench of this Court which will be deemed to have overruled the view taken by the learned single Judge in the case of Brij Bir Singh (supra).

8. Learned Counsel for the respondents has further cited another case reported in Kamta Prasad v. Board of Revenue, U.P., Lucknow and others, 1986 RD 206. This too is a case of correction of papers for carrying out orders passed by Consolidation Authorities. Here, the learned Single Judge held that for carrying out the orders of the Consolidation Authorities after denotification of the village under Section 52 (1) of the Act, Revenue Authorities will have Jurisdiction to make necessary corrections. This judgment also supports the view taken in case of Raja Ram and the view taken by the Division Bench in Hon Ram's case. I am, therefore, of the opinion that Consolidation Authorities will have no power to entertain any application for is de-notified by issue of Notification under Section 52 (1) correction of papers after the village of the Act as thereafter land is no more subject matter of consolidation proceedings."

(v) In **Ram Narain and others v. DDC, Barabanki: 2020 (147) RD 185**, the Court has held as under: -

"13. This Court has perused the judgment and order dated 07.08.2015 passed in the case of Pateshwan Dutt Pandey (supra). In the said case, a Co-ordinate Bench of this Court considered the scope of application under Section 42-A of the Consolidation of Holdings Act after notification under Section 52 of the Act had already been issued. This Court relied upon the Division Bench judgement rendered in

Gafoor v. Addl. Commissioner, Lucknow and others: 1979 RD 76 (DB). Hari Ram v. D.D.C. Azamgarh; 1989 RD 281, Ghamari v. Deputy Director of Consolidation, Ballia and others; 2003 94 RD 90 and Sant Lal and Ors. v. Deputy Director of Consolidation, Allahabad and Ors.; 2015 (1) JCLR 310, where this Court had considered the limitation of jurisdiction of consolidation authorities after section 52 notification was issued closing the consolidation operations.

14. The Co-ordinate Bench pointed out the exceptions that have been carved out by the judicial precedents for entertaining the application under Section 42-A of the Act. There were only two exceptions carved out. Firstly, the cases which are pending under Article 226 of the Constitution of India at the time of notification and were decided after de-notification, and secondly, the cases which were pending before the consolidation authorities at the time of de-notification and judgments were rendered thereafter. In all other cases, the remedy for the Tenure holder is to approach the Collector, where the records had been sent by the Consolidation Authorities after Section 52 notification is issued for correction of map to be carried out in conformity with the confirmed map prepared by the consolidation authorities and as per area of plot/chak mentioned in C.H. Form 41 and C.H. Form 45.

15. This Court has also considered the judgments rendered by Co-ordinate Bench in Pooran Singh v. Deputy Director of Consolidation, Meerut and others; 2008 (105) RD 469 and Dr. Sukhbeer Singh v. Commissioner, Meerut and others, 2014 (32) LCD 1912, and held that the aforesaid two judgments were given in the peculiar facts and circumstances of the cases as mentioned in

the said judgments, and cannot help in advancement of petitioner's case that even after Section 52 notification has been issued, application under Section 42-A of the Act can be entertained."

(vi) In **Smt. Malti Devi v. State of U.P. and others: 2021 (151) RD 3**, the Court relied upon the earlier judgment in **One of the judgments cited before this Court, passed in Sripal and two others v. D.D.C. Raebareli & two others: 2017 (137) RD 189** wherein this Court considered the law settled by earlier Benches of this Court as well as the Board of Revenue and held that "After Notification under section 52 the only consolidation operations which continue are those referred under sub-section (2) of section 52 and any order referred therein can be given effect under Rule 109-A of the U.P. Consolidation of Holdings Rules 1954. The exercise of power under section 42-A is not referred in sub-section (2) of section 52."

(vii) In **Sri Pal & Others v. DDC, Raebareli and others: 2017 (137) RD 189**, the Court has held as under: -

18. On a conjoint reading of section 52 and 27(3) it is evident that during consolidation 1 operations and prior to its ceasing in terms of section 52, it is the Consolidation Authorities who are empowered to correct the records. The opening line of sub-section (3) of section 27 makes is amply clear that after closure of Consolidation Operations on issuance of Notification under section 52 it is the Collector who shall maintain the map, field-book and record of rights prepared in accordance with the provisions of sub-section (1) of section 27 of the Act 1953 i.e. during consolidation operations, and the

provisions of the U.P. Land Revenue Act 1901 relating to the maintenance and correction of such map, field-book and record of rights shall mutatis-mutandis apply in respect thereof.

x x x

33. In view of the above discussion, even though no limitation is prescribed for correction under section 42-A, the Revisional Court cannot be faulted for having arrived at the conclusion, inter alia, that the proceedings under section 42-A after de-notification under section 52 were not maintainable, and the remedy, if any, was under section 28 or 33/39 of the Land Revenue Act 1901, however, in this regard the Court would like to add a caveat, as Maiku had Initiated a regular suit under section 229-B, therefore, it would have to be seen as to what was the decision rendered therein and its effect on the maintainability of subsequent proceedings under section 28 or 33/39. Subject to this condition, if the contention of the petitioner is correct i.e. without there being any order of any Consolidation Authority in favour of Jalpa or Ram Avtar for recording of their names in respect of Basic Year Khata No. 26, an entry was made in their favour in respect of the sald Khata in C.H. Form 11 which continued in C.H. Form 23, 41 and 45 then it was certainly a fundamental error which would go to the root of the matter as has also been observed by the Revisional Court and in such a situation the records would be liable to correction so as to ensure substantial justice, as, in such a factual scenario the entry would be without any basis i.e. fake entry, and in such a situation injustice cannot be allowed to be perpetrated. In such a case remedy would be under section 33/39 of the Act 1901 before the Collector who also happens to be

the District Deputy Director, Consolidation in view of the above discussion and the deficiency in the material before it, especially the absence of order dated 19.12.1970 and the judgment in the suit under section 229-B as also its plaint, this Court under Article 226 of the Constitution of India is unable to consider the pleas raised herein or Interfere with the order of the revisional Court, which it finds to be just and proper, subject of course to the above observations, therefore, the writ petition is dismissed.”

(viii) In **Raj Karan Singh v. Chief Revenue Officer; MANU/UP/3069/2019**, the Court has held as under: -

“4. Whatever be the merits of the controversy involved, one feature is striking i.e. once notification under section 52 of the Act, 1953 had been published on 10.4.1982 then there was no way that any reference could have been prepared under section 48(3) of the Act, 1953. It is settled legal position that any correction thereafter could either be under Rule 109 i.e. in the event the claimant is able to satisfy that there was a valid order passed under any provision of the Act, 1953 during consolidation operations which was not given effect in the records prepared during consolidation or thereafter, or under section 33/39 of the U.P. Land Revenue Act, 1901 (corresponding provision of section 38 of the U.P. Revenue Code, 2006) by virtue of section 27 of the Act, 1953 under which after closure of consolidation operations the records are remitted to the Collector who is the custodian obliged to maintain and correct the same.”

(ix) In **Smt. Jagrani @ Ram Jiyayi v. DDC, Shrawasti and others; 2024 (164) RD 238**, this Court has held as under: -

“20. It is now to well settled to be disputed that in terms of U.P. Consolidation of Holdings Act, 1953, the consolidation operations commenced with the notification issued under Section 4 of U.P. Consolidation of Holdings Act, 1953.....

21. Similarly, Section 52 of the Act of 1953 clearly provides that upon the denotification of the village under Section 52 of the Consolidation operation come to end and thereafter no Consolidation Authorities have been conferred with the powers to entertain or deal with the matter unless as provided in Section 52 itself

22. In light of the aforesaid and considering the facts which are before this Court which are apparently not disputed, are that, villages in question were denotified on 31.03.2008, accordingly no Consolidation Authorities could have entertained any application under the Act after the date of the denotification.

23. Another fact which is not disputed is that Raja Ram made his application under Section 12 of the Act on 14.07.2015 as evident from annexure no.2, hence the said application having been moved after the date of denotification was per se not maintainable and the Consolidation Officer was denuded of all jurisdictions to have passed any order thereon. Thus, the order passed by the Consolidation Officer dated 08.11.2016 was per se inherently without jurisdiction and void ab initio. Though the said order was assailed by Smt. Jagrani in an appeal before the Settlement Officer of Consolidation who allowed the appeal on 28.09.2017 but the fact remains that once the order of the Consolidation Officer after denotification were void ab initio for the same reason, the Settlement Officer of Consolidation was also denuded of jurisdiction to have passed the order. It was

actually a fit case for Smt. Jagrani to have assailed the order of Consolidation Officer straight away by filing writ petition before this Court but nevertheless the said course was not adopted.

x x x

30. In light of the aforesaid, this Court is of the clear view that the proceedings after denotification as initiated by Raja Ram were wholly without jurisdiction and all the orders passed by the Consolidation Officer dated 08.11.2016, the order passed by the Settlement Officer of Consolidation dated 28.09.2017 and the order impugned dated 09.05.2019 passed by the Deputy Director of Consolidation are all without jurisdiction and void ab initio.

31. Attempt of Shyam Lal to seek a substitution on the basis of Will in proceedings under Article 226 where the impugned orders are per se without jurisdiction, hence this Court does not permit Sham Lal to be impleaded. For the aforesaid reason this Court finds that the entire proceedings initiated at the behest of Raja Ram by filing an application under Section 12 of the U.P. Consolidation Holdings Act, 1953 to be without jurisdiction and are quashed and all impugned orders i.e. 08.11.2016 passed by the Consolidation Officer, 28.09.2017 passed by the Settlement Officer of Consolidation and 09.05.2019 passed by the Deputy Director of Consolidation shall also stand quashed. The parties shall be at liberty of getting their rights adjudicated before the competent revenue court who shall consider and decide the title to the estate of Bachowa on the basis of contested plea by the respective parties and for the said purpose all plea are left open for the

parties to be raised and decided by the Revenue Courts.

That the aforesaid decisions which primarily state that after the notification under Section 52(1) of the Act, the Consolidation Authorities lose their jurisdiction. Even they have been sited on the basic premise based on the postulate contained in Section 52(1) of the Act and there has been no indepth analysis of the Scheme and the Provisions of the Act relating to the power of reference, hence, the aforesaid decision also do not come to the aid to hold determinitatively whether the Consolidation Authorities lose their jurisdiction after the notification under Section 52 (1) of the Act."

81. After considering the aforesaid decisions, this Court at the outset notices that a Division Bench of **Ram Bahadur (Supra)** was the first case in point of time where it was held that the Consolidation Authorities would have jurisdiction after the notification is made under Section 52(1) of the Act of 1953 on the premise that Section 52 of the Act of 1953 does not destroy the rights of the parties.

82. The observations made in the said case was in a different context. It was held that if an appeal or revision is filed with an application under Section 5 of the Limitation Act and the delay is condoned, then the appeal or revision is to be heard on merits and so it was held that in such a situation the proceedings are revived.

83. It is further relevant to notice that thereafter came the other Division Bench decision of this Court in case of **Ghafoor (Supra)** wherein it was held that the Consolidation Authorities lose their jurisdiction upon notification made under Section 52 (1) of the Act of 1953. The

Division Bench in **Ghafoor (Supra)** did not consider the decision of the earlier Division Bench in case of **Ram Bahadur (Supra)**.

84. At the same time, it would be noticed that another Division Bench in **Hari Ram (Supra)** held that the Consolidation Authorities do not have jurisdiction after the notification issued under Section 52 (1) of the Act of 1953. However, even the Division Bench in case of **Hari Ram (Supra)** did not notice the earlier Division Bench decision of **Ram Bahadur (Supra)**. Even the later Division Bench decision of **Mukhtar (supra)** which held that the Consolidation Authorities do have jurisdiction, did not notice the earlier Division Bench decision of **Hari Ram (Supra)**.

85. Thus, it would be seen that though there are two Division Bench decisions, namely **Ram Bahadur (Supra)** and **Mukhtar (Supra)**, which hold that the Consolidation Authorities do not lose their jurisdiction after Section 52(1) Notification, however, there are two other Division Bench cases of **Ghafoor (Supra)** and **Hari Ram (Supra)** which hold that the Consolidation Authorities lose jurisdiction upon notification made under Section 52(1) of the Act of 1953 and in the same vein, there are several decisions of learned Single Judges who have also taken contrary views which are not in conformity with each other.

86. With due respect to the aforesaid decisions which have been given on their particular facts, many provisions have not been noticed in those judgments and thus they do not constitute binding precedents before this Larger Bench, which is examining the questions threadbare.

VII ANALYSIS AND DISCUSSIONS OF QUESTION NO.1

87. Now the stage is set to analyze the questions referred and for the sake of expediency, question no.(1) as aforesaid is being reproduced hereinafter:-

“What is the true scope of powers vested with Deputy Director of Consolidation in terms of Section 48(3) of the Act of 1953 that is to say whether it is corrective in nature or adjudicatory.”

88. At the outset, it will be trite to state that the scope of reference has not been defined in the Act. It has been left to the discretion of the Court. There is no denying the fact that where grounds have not been stated in the text, the task of a court becomes arduous. In this regard it will be apt to quote an observation of Sir Carleton Kemp Allen made in his classic work of jurisprudence, ‘Law In the Making’, (6th Edn.) at page 1292 as follows: -

“The Judge himself addresses his task in much the same way as a counsel. His decision is given in the form of a structure of logic, in which he may use any material which he considers ad rem. Even purely unofficial practice may be prayed in aid as precedent to interpret documents (or statute). If the matter is governed by the clear and unambiguous provision of a statute, his task is simplified. In a great many cases, no statute is applicable and even if it is applicable it is frequently the reverse of clear and unambiguous. The Judge must then proceed as Bacon laid down long ago either by parity of reasoning or by use of examples or by rules of natural reason and discretion.”

89. It will also be relevant to recollect a latin Maxim, ‘Contemporanea exposito

est optima et fortissinia in lega i.e' the best way to interpret a document or statute is to see how it was understood at the time it was made.

90. Keeping the observations of C.K. Allen and the maxim as a guiding beacon, this Court proceeds and at the outset notes that power of reference as provided in Section 48(3) was not a part of the original Act of 1953. This was introduced by an amendment in the Act vide the Uttar Pradesh Jot Chakbandi (Sanshodhan) Adhiniyam 1962 (U.P. Act No.VIII of 1963) which came into effect on 08.03.1963. By this amending Act large number of amendments were incorporated in the principal Act.

91. Thus, for the said reason, it will also be relevant to notice the statement, objects and reasons for introducing the said amendments. They are being reproduced hereinafter for ready reference: -

“उत्तर प्रदेश जोत चकबन्दी अधिनियम, 1953 जब पिछली बार उ०प्र० अधिनियम संख्या 38, 1958 द्वारा संशोधित किया गया था, तब से यह आवश्यक समझा गया है कि चकबन्दी की प्रक्रिया को और परिष्कृत किया जाय ताकि प्रति एकड़ चकबन्दी की लागत को, जो अन्य राज्यों के अपेक्षाकृत अधिक है, कम करने के उद्देश्य से चकबन्दी क्रियाओं की अवधि में कमी की जाय। चकबन्दी क्रियाओं में अड़चने आने और देरी होने का एक सब से बड़ा कारण यह रहा है कि विभिन्न चकबन्दी प्राधिकारियों के पास वाद-कार्य जमा हो गया है। यह प्रस्ताव है कि विभिन्न प्रक्रियाओं को दो वर्गों में मिला दिया जाय

जिससे आपत्तियां, अपील आदि प्रस्तुत करने के प्रक्रम कम हो जायेंगे और इस प्रकार खातेदारों को होने वाली बहुत की असुविधायें दूर हो जायेंगी तथा चकबन्दी क्रियाओं की लागत में कमी हो जायेगी। यह भी प्रस्ताव है कि 1958 के संशोधन अधिनियम द्वारा प्रचलित की गयी द्वितीय अपीलों की व्यवस्था समाप्त कर दी जाय क्योंकि उनसे कार्यवाहियां तो अनावश्यक रूप से बढ़ जाती हैं, लेकिन खातेदारों को कोई विशेष लाभ नहीं होता। खातेदार द्वारा सार्वजनिक प्रयोजनों के लिए अपनी जोत से अंशदान करने के परिणामस्वरूप उसकी मूल जोत में कमी हो जाने से उसके द्वारा देय मालगुजारी की धनराशि के समायोजन के सम्बन्ध में इस समय अधिनियम में कोई विशेष उपबन्ध नहीं है। चूंकि खातेदारों को इस मामले में कुछ कठिनाई हुई है इसलिये ऐसे मामलों में मालगुजारी कम करने के संबंध में उचित उपबन्ध सम्मिलित करने का प्रस्ताव है। चकबन्दी क्रियाओं की लागत को वसूल करने से संबंधित उपबन्धों को संशोधित करना आवश्यक है क्योंकि लाभार्थियों के एक वर्ग से लागत वसूल करने में कठिनाई हुई है। कुछ कठिनाई रिट के उन मुकदमों में उच्च न्यायालय की आज्ञाओं को कार्यान्वित करने में भी हुई है जो ऐसे क्षेत्रों के बारे में थे जिनके संबंध में उक्त अधिनियम की धारा 52 के अधीन औपचारिक रूप से चकबन्दी क्रियायें बन्द करने की विज्ञप्तियां जारी की जा चुकी थीं, और परिणामतः चकबन्दी अधिकारियों से उन क्षेत्रों के क्षेत्राधिकार ले लिये गये थे। उक्त विषयों के

संबंध में उचित उपबन्ध बनाने तथा अन्य छोटी-मोटी त्रुटियां दूर करने के उद्देश्य से यह विधेयक पुरःस्थापित किया जाता है।

हुकुम सिंह विसेन
राजस्व मंत्री।"

92. It will be worthwhile to mention that Section 39 of the Amending Act VIII of 1963 amended Section 48 of the Principal Act, of 1953 by which the power of reference was introduced.

93. It will be apposite to notice both the unamended Section 48 and how it fared after the amendment made in 1963.

Unamended Section 48: -

"48. Power of Director of Consolidation to call for records and to revise orders:- The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercise a jurisdiction so vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it think fit."

Section 48 after it was amended vide amending Act VIII of 1962, reads as under:
-

"48. Revisions and reference-(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the

proceedings ; or as to the correctness legality or propriety of any order 5[other than an interlocutory order] passed by such authority in the case or proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Power under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidaiton may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

Explanation [(1)-For the purposes of this section, Settlement Officer, Consolidation, Consolidation Officer, Assistant Consolidation Officer, Consolidators and Consolidaiton Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2)- For the purpose of this section the expression 'interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceedings or collateral thereto as does not have the effect of finally disposing of such case or proceeding.

* * *

This Section 48 of the Act was further amended in the year 2002 and Explanation (3) was inserted, which is being reproduced hereinbelow : -

"Explanation (3) - The power under this section to examine the correctness, legality or propriety of any

order includes the power to Examine any finding, whether of fact or law recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence."

94. The impact of amendment in Section 48(1) was further enlarged by introducing the Explanation (3). This amendment of 2002 was given retrospective effect and post amendment, huge powers of revision with the Deputy Director of Consolidation got enhanced with a flavor which generally is akin to appellate powers.

95. Prior to the Amendment of 2002, the consistent view emerging from the judicial trend was that if while exercising the powers under Section 48(1) of the Act 1953, the Director of Consolidation came to a conclusion that the finding of the Consolidation Officer or the Settlement Officer of Consolidation, as case may be, was not in accordance with law, then being the revising authority the Director of Consolidation could only set aside the findings and remit the matter to the court below for reconsideration but could not supplement its own view, which was the role of a revising authority in the classic sense.

96. While enacting the Amending Act 2002, the legislature clearly noticed that Section 48 was being amended to clarify that the revising authority had the right to examine the correctness, legality or propriety of any order, including the power to examine any finding whether of fact or law and it also included the power to re-appreciate any oral or documentary evidence. Thus, it would indicate that post 2002 amendment, all powers were conferred with the Director of

Consolidation who being the highest adjudicating Authority under the Act, could examine all issues, both of law and fact and its power of revision was made more akin to the power exercised by an Appellate Authority, though the nomenclature continued to refer to such powers as revision.

97. The idea being, that the Consolidation Act which envisages to achieve the goal of compacting the land holdings for the benefit of tenure holders, to encourage large scale farming and agricultural activities, reduce boundary disputes and making it more viable for agriculture, hence all issues that arise during consolidation operations may be decided within the ambit of the Act by the adjudicating authorities empowered under the Act itself, so that once the consolidation operations draw to an end, then all loose ends are taken care of. Once the new records are prepared during consolidation operation and are handed over to the revenue authorities, then they must continue to be maintained by the Collector. Such records have presumptive value and sanctity is attached to the records so prepared, making it final and binding in light of Section 27 and its effect on the tenure holders as per Section 49 of the Act and unless the contrary is proved in accordance with law.

98. In this given backdrop, the question still arises what was the purpose and scope of introducing the power of reference by the Amending Act of 1962.

99. In the U. P. Consolidation of Holdings Act, 1953, the word 'reference' has not been defined. Even in the contemporaneous Act i.e. U.P. Z.A. & L.R. Act, 1950, the word 'reference' has not

been defined. However, The word 'reference' finds mention in Section 113 of the Code of Civil Procedure 1908 and it reads as under:-

“113. Reference to High Court.-

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.

Explanation.-In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State."

100. A perusal of the aforesaid provision would reveal that the object of Section 113 appears to enable a subordinate authority to obtain the opinion of the highest authority in a non-appealable case, on a question which has created a reasonable doubt, to avoid committing an error which may not be remedied later. Accordingly, the subordinate authority may seek the opinion of the higher authority.

101. The aforesaid power of reference as per Section 113 C.P.C. is purely discretionary and it is an enabling provision to help a subordinate authority where it may come to a cross road relating to a question of law and to avoid any error, the opinion of the superior/the highest authority may be sought. Considering, the way reference has been worded in C.P.C., it would reveal that the power of reference is apparently consultative in nature and not adjudicatory.

102. However, the power of reference in context of the Act of 1953 is somewhat different. It does not appear to be consultative in nature. Moreover, the learned Additional Advocate General has sought to urge that power of reference is akin to inherent powers.

103. Examining this proposition first, it will be relevant to ascertain how and who can exercise inherent powers. The inherent powers generally are conferred on the courts of law which are classically constituted under the Constitution whether it be the High Court and the Supreme Court who are also courts of record. The courts of original civil jurisdiction exercise inherent powers, which has been recognized by Section 151 C.P.C. Significantly, Section 151 does not confer powers, rather it recognizes the inherent powers vested with the Civil Courts

104. A judicial authority constituted under a special statute cannot be presumed to have inherent powers unless it is specifically so conferred on it by the Statute under which it is constituted.

105. This can be seen in context with the fact that the Code of Civil Procedure envisages the conferment/recognition of

inherent powers under Section 151 C.P.C. and simultaneously, it may also be noticed that the power of substantive review is also conferred by the Statute and it finds place in Section 114 read with Order 47 C.P.C.

106. In contrast, the U.P.C.H. Act, 1953 is a special Statute which is a Code in itself, but it does not import the provisions of the C.P.C. as a whole. Neither there is any indication that the Courts/Adjudicatory Authorities constituted under the U.P.C.H. Act of 1953 have inherent powers nor they have been conferred with the power of review

107. This aspect was noticed by a Full Bench of this Court in **Smt. Anar Kali v. Deputy Director of Consolidation: 1997 (15) LCD 921 (FB)**, wherein the question before the Full Bench was: -

“Whether it is open for the Consolidation authorities to review/recall their final orders exercising inherent powers even though the U.P. Consolidation of Holdings Act, 1953 does not vest them any review jurisdiction?”

108. The Full Bench answered the aforesaid question in the following words: -

“23. On the authoritative pronouncements made by the Supreme Court in the aforementioned decisions, the legal position which is manifest is that the Deputy Director of Consolidation while exercising the power of revision vested in him under the Consolidation Act exercises quasi judicial powers and in the absence of any provision in the Consolidation Act, which expressly or by necessary implication vests in him the power of review, he cannot exercise such power. It follows that the Deputy Director of

Consolidation is not competent to revive a revision proceeding disposed of by him by a final order on a review application filed by one of the parties.

24. The question that remains to be considered is whether the Deputy Director of Consolidation as a Court or Tribunal has an inherent power of review and in exercise of such power he can reconsider the previous order passed by him? A further question that arises ancillary in this connection is whether the Deputy Director of Consolidation is a Court and, therefore, has inherent power of review? In the case of Associated Coment Company Ltd. v. P.N.Sharma and another (AIR 1965 SC 1895) the Supreme Court, construing the meaning of 'Tribunal' for the purposes of Articles 136 (1) and 227 of the Constitution, held that judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on consideration of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between par-ties. The Court further observed that it is really not possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts and features which are distinct and separate; that the basic and fundamental feature which is common to both the Courts and the Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vests in a sovereign State. In considering the question about the status of any body or authority as a Tribunal under Article 136 (1) the main test to be applied is whether the body or

authority has been constituted by the State and has been clothed with the State's inherent judicial power to deal with disputes between parties and determining them on the merits fairly and objectively. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under section 10A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within meaning of Article 136. It matters little that such a body or authority is vested with the trappings of a Court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under section 10A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals. The Supreme Court further held that the word 'tribunal' in Article 227 of the Constitution also has the same meaning as in Article 136.

25. In the case of Sri Dadu Dayal Mahasabha v. Sukhdev Arya and another (1989 (15) ALR 871), a two Judges Bench of the Supreme Court held that the position is well established that a court has inherent power to correct its own proceeding when it is satisfied that in passing a particular order it was misled by one of the parties. Referring to a decision of the Patna High Court in Sadho Saran Rai and others v. Anant Rai and others (AIR 1923 Patna 483) with approval the Court held that the principle was correctly discussed in the judgment pointing out the distinction between case of fraud practised upon the court and fraud practised upon a party. The Supreme Court held that the same principle applies where a suit is permitted to be

withdrawn on the basis of prayer purported to have been made on behalf of the plaintiff. The decision was rendered by the Supreme Court in a civil appeal arising from a suit (Suit No. 116 of 1974) which was disposed of by the Additional District Judge, Jaipur. The Supreme Court considered the case in the light of section 151 of the Code of Civil Procedure.

* * *

34. Coming to the provisions of the U.P. Consolidation of Holdings Act, it is our considered view that the consolidation authorities, particularly the Deputy Director of Consolidation while deciding a revision petition exercises judicial or quasi judicial power and, therefore, his order is final subject to any power of appeal or revision vested in superior authority under the Act. The consolidation authorities, particularly the Deputy director of Consolidation, is not vested with any power of review of his order and, therefore, cannot reopen any proceeding and cannot review or revise his earlier order. However, as a judicial or quasi judicial authority he has the power to correct any clerical mistake/arithmetical error, manifest error in his order in exercise of his inherent power as a tribunal.

* * *

36. The question that remains to be considered relates to vesting of power of review in the Deputy Director of Consolidation by application of Section 220 of the U.P. Land Revenue Act, 1901. Sri Radhey Shyam, learned counsel for the contesting respondents, strenuously urged that in view of the provisions of Section 41 of the Consolidation Act and Section 220 of the U.P. Land Revenue Act it should be

held that power of review is vested in the Deputy Director of Consolidation who is the final revisional authority under the Consolidation Act. No doubt, Section 41 of the Consolidation Act makes provisions of Chapters IX and X of the U.P. Land Revenue Act applicable to all proceedings, including appeals and applications under the former Act. Section 220, which is a part of Chapter X, vests power of review in the Board of Revenue subject to certain conditions/restrictions specified in the Section. The question is, in the absence of any specific provision of review in the Consolidation Act, can it be said that the power of review vested in the Board of Revenue can be exercised by the consolidation authorities, particularly the Deputy Director of Consolidation? In our considered view, the question has to be answered in the negative. There is no provision in Section 41 or in any other Section of the Consolidation Act which empowers modification of any provision of the Land Revenue Act for the purposes of application to consolidation proceedings. Further Section 41, as we read it, merely provides that the procedures prescribed under Chapters IX and X of the Land Revenue Act will be applicable to all proceedings including appeals and applications under the Consolidation Act. Substantive provisions in the aforementioned Chapters of the Land Revenue Act, which have no pari material provisions in the Consolidation Act, cannot have any application to proceedings under the said Act. If a proceeding cannot be initiated under the Consolidation Act, the question of application of the provisions of Chapters IX and X of the Land Revenue Act to such a proceeding does not arise. In the absence of any specific provision vesting power of review in the authorities under the Consolidation Act, such a

proceeding cannot be initiated at all. Therefore, Section 220 of the Land Revenue Act is of no assistance for the purposes of the proceedings under the Consolidation Act. Alternatively, assuming that Section 220 applies to consolidation proceedings and an analogy is drawn between the proceedings under the two Acts, it is the Director of Consolidation, being the highest authority under the Consolidation Act, who can inferentially be said to have a power of review as provided in Section 220 of the Land Revenue Act and not the Deputy Director of Consolidation, who is one of the revisional authorities under the Consolidation Act. This question was considered by a Division Bench of this Court in the case of Qadam Singh and another v. Ganga Saran and Ram Saran (1960 (58) ALJ 836) in which this Court, construing Section 41 of the Consolidation Act, made the following observation: -

“Chapter X of the Land Revenue Act includes Section 220 which confers upon the Board of Revenue the power to review its own orders in certain circumstances, and it is contended that in applying this Section to proceedings under the U.P. Consolidation of Holdings Act a power of review must be deemed to be conferred upon the Deputy Director of Consolidation who corresponds to the Board of Revenue in so far as he is the final court of Revision. In our opinion this argument is not well founded, for section 41 makes no provision for the modification, alteration or adaptation of any of the Sections in Chapters IX and X of the Land Revenue Act in their application to proceedings under the U.P. Consolidation of Holdings Act. Section 220 specifically confers the power to review its own decision on the Board of Revenue and on no other authority, and it is not possible for this Court to hold that under that Section

read with Section 41 of the U.P. Consolidation of Holdings Act a power to review its own decision is conferred upon all Deputy Directors of Consolidation."

109. Having noticed the dictum in **Smt. Anar Kali (supra)** and now taking note of Sections 38, 39, 41 of the Act, it appears that the Act does not import the provisions of C.P.C. and, therefore, the principles of 'legislation by reference' and 'legislation by incorporation' cannot be applied to the U.P.C.H. Act of 1953 to broaden the scope of the Act so as to read in the inherent powers or the power of substantive review, in proceedings governed by the U.P.C.H. Act of 1953. Moreover, this Court does not doubt the correctness of the reasoning of another Bench of co-equal strength in **Smt. Anar Kali (supra)** rather this Court is in agreement with it.

110. It will be pertinent to put forward that Courts do not legislate but only interpret and this does not permit the Court to read something which is not present in the Act, unless it is a case of casus omissus, which it is not. The Apex Court in **State of Jharkhand v. Govind Singh, (2005) 10 SCC 437** in Para 16 to 22 held as under: -

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd. v. Sirs* [(1980) 1 All ER 529 : (1980) 1 WLR 142] (All ER at p. 542c-d):

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges,

under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest."

17. Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. [See *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests* [1990 Supp SCC 785 : AIR 1990 SC 1747] (AIR at p. 1752), *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678 : (1966) 3 SCR 466] (AIR at p. 1682) and *A.R. Antulay v. Ramdas Srinivas Nayak* [(1984) 2 SCC 500 : 1984 SCC (Cri) 277] (SCC at pp. 518, 519).] Indeed, the court cannot reframe the legislation as it has no power to legislate. [See *State of Kerala v. Mathai Verghese* [(1986) 4 SCC 746 : 1987 SCC (Cri) 3] (SCC at p. 749) and *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] (AIR at p. 101).]

18. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage* [218 FR 547].) The view was reiterated in *Union*

of India v. Filip Tiago De Gama of Vedem Vasco De Gama [(1990) 1 SCC 277 : AIR 1990 SC 981] (SCC p. 284, para 16).

19. In D.R. Venkatachalam v. Dy. Transport Commr. [(1977) 2 SCC 273 : AIR 1977 SC 842] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

20. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co. [(2000) 5 SCC 511 : AIR 2000 SC 1578]) The legislative casus omissus cannot be supplied by judicial interpretative process.

21. Two principles of construction - one relating to casus omissus and the other in regard to reading the statute as a whole - appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended

by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 (All ER p. 664 I) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges."]

22. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accident". "But", on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom". (See Fenton v. Hampton [(1858) 11 Moo PC 347 : 6 WR 341] .) A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit praetereunt leges, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - casus omissus

et oblivioni datus dispositioni communis juris relinquatur; "a casus omissus", observed Buller, J. in Jones v. Smart [ITR 44 : 99 ER 963] (TR at p. 52 : ER at p. 967), "can in no case be supplied by a court of law, for that would be to make laws"

111. Again, the Apex Court in **Lifestyle Equities C.V. v. Amazon Technologies Inc., 2025 SCC OnLine SC 2153** held as under: -

"56. The well-settled principles required to be followed by a court while interpreting a provision of a statute is that the intention of the legislature is primarily to be gathered from the language used, and consequently, a construction which results in rejection of words as meaningless, has to be avoided. It is not a sound principle of construction to brush aside words or phrase in a statute as being inapposite surplusage if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In interpretation of statutes, the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words, or to say anything in vain. [See: Mithilesh Singh v. Union of India, (2003) 3 SCC 309].

57. Similarly, in the case of Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC 533, it was held that two principles of construction - one relating to casus omissus, and the other in regard to reading the statute as a whole appear to be well-settled. Under the first principle, the rule of casus omissus cannot be supplied by the court except in the case of clear necessity. The rule of casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be

construed together and every clause of a section should be construed with reference to the context of the statute and other clauses thereof, so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so, if literal construction of a particular clause leads to manifestly absurd or anomalous results, which could not have been intended by the legislature. Therefore, if the language is plain, there is no necessity of taking aid of external aid for gathering the real intention of the legislature.

58. Over and above, we should bear in mind the following well-known rule of interpretation of the statute reiterated by this Court in the case of Union of India v. Deoki Nandan Agarwal, 1992 Supp (1) SCC 323:

"It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the Constitutional harmony and comity of instrumentalities."

(Emphasis supplied by the Supreme Court)

112. Thus, keeping the aforesaid principles in mind, this Court finds that the submission of the learned Additional Advocate General for the State and respondents regarding the power of reference being in the nature of the inherent powers does not find favour with this Court, as it does not align with the scheme of the Act. Even otherwise, if at all, such powers were to be conferred, then while exhaustive amendments were introduced in the year 1962 instead of incorporating a power of reference which in a sense is a limited discretionary power and if the legislature wanted to confer inherent powers, the same could have been done by explicit language but it has not been done.

113. Moreover, if the legislature wanted to confer inherent powers and was of the view that it should be titled as 'reference', then there was no need to provide in Section 48(2) that the Deputy Director of Consolidation would exercise powers under Section 48(1) while dealing with a revision. As noticed above, the Full Bench of this Court in **Smt. Anar Kali (supra)** has clearly held that the Director of Consolidation cannot exercise inherent powers to review in exercise of its power under Section 48(1) of the Act. Thus for all the aforesaid reasons, it clearly reflects the intention of the legislature that it did not intend to confer inherent powers by introducing the power of reference.

114. Now if the power of reference is not akin to inherent powers and the word 'reference' has not been defined under the Act, it makes the task of this Court more arduous to interpret the scope of reference. If sub-section (3) of Section 48 of the U.P.C.H. Act is examined, it would

indicate clearly that the power to refer a matter in reference to the Deputy Director of Consolidation can only emanate and is vested with an authority subordinate to the Deputy Director of Consolidation and authority subordinate to the Deputy Director of Consolidation are the Settlement Officer of Consolidation or Consolidation Officer or Assistant Consolidation Officer.

115. It would also be pertinent to notice that there is a clear distinction between the exercise of powers by an authority in revision and in appeal, and these powers are in contrast to the power of reference.

116. The power of reference cannot be confused nor it can be treated as a mechanism to allow the subordinate authority to reopen or review its own decision, which power has not been conferred by the Act. Thus, what cannot be done directly cannot be done indirectly either.

117. The Full Bench of this Court in **Smt. Anar Kali (supra)** categorically held that the consolidation authorities do not have any inherent power to review or recall their own final orders on merits. In contradistinction, the Act provides the powers of correction in Section 42-A which on a plain reading of the said provision is referable to the Consolidation Officer and Settlement Officer of Consolidation, who may correct a clerical or arithmetical error apparent on the face of the record in any document prepared under any provision of this Act.

118. It is conspicuous to note that Section 42-A does not refer to the Deputy Director of Consolidation and it only refers to the Consolidation Officer and the

Settlement Officer of Consolidation. However, noticing Section 44-A of the Act, it would reveal that any power which can be exercised by a subordinate authority can also be exercised by the superior authority. Thus, by necessary implication even if any such clerical or arithmetical error which falls within the domain of Section 42-A, which otherwise can be exercised only by the Consolidation Officer and the Settlement Officer of Consolidation, can also be exercised by the Director of Consolidation by referring to Section 44-A, as has been held by the Full Bench of this Court in **Smt. Anar Kali (supra)**.

119. It is too well settled to be disputed that what cannot be done directly cannot be done indirectly also. This proposition has been laid down in **Taylor v. Taylor: (1876) 1 ChD 426** and it has been followed and accepted as an undisputed postulate till today. The Apex Court in **Dharani Sugars & Chemicals Ltd. v. Union of India: (2019) 5 SCC 480** in Para 54 and 55 has held as under: -

“54. The corollary of this is that prior to the enactment of Section 35-AA, it may have been possible to say that when it comes to RBI issuing directions to a banking company to initiate insolvency resolution process under the Insolvency Code, it could have issued such directions under Sections 21 and 35-A. But after Section 35-AA, it may do so only within the four corners of Section 35-AA.

55. The matter can be looked at from a slightly different angle. If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed. This is the well-known rule in *Taylor v. Taylor*

[*Taylor v. Taylor*, (1875) LR 1 Ch D 426], which has been repeatedly followed by this Court. Thus, in *State of U.P. v. Singhara Singh* [*State of U.P. v. Singhara Singh*, (1964) 4 SCR 485 : AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] , this Court held: (*Singhara Singh case* [*State of U.P. v. Singhara Singh*, (1964) 4 SCR 485 : AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] , SCR pp. 490-91 : AIR p. 361, para 8)

“8. The rule adopted in *Taylor v. Taylor* [*Taylor v. Taylor*, (1875) LR 1 Ch D 426] , Ch D at p. 431 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record statements or confessions, by necessary implication, prohibited a magistrate from giving oral evidence of the statements or confessions made to him.” ...

120. Thus, if any of the subordinate authorities i.e. the Consolidation Officer or the Settlement Officer of Consolidation, after allowing the parties concerned an

opportunity of being heard, can refer the record of any case or proceedings to the Deputy Director of Consolidation, then it necessarily implies that the records of 'any case' or 'proceedings' as referred to the Deputy Director of Consolidation for action under sub-section (1) would relate to proceedings which are live, in the sense that it relates to such issues which occur when the consolidation operations are in currency.

121. It may also be extremely pertinent to note that none of the adjudicating authorities under the U.P.C.H. Act 1953 have been granted the power to review its orders. Thus, in light of the above discussions, it is clear that by resorting to reference, the authorities cannot exercise inherent power or the power of review to achieve something indirectly, which they are prohibited to do directly.

122. Now it is to be seen as to whether the power of reference is corrective or adjudicatory and what can be circumstance in which such power of reference may be exercised.

123. Taking the matter forward, it would reveal that during the currency of the consolidation operations in the village as noticed in the earlier part of the judgment, in order to compact the land holding and while preparing a provisional scheme of consolidation, the consolidation authorities are required to fulfill conditions enumerated in Section 19 of the Act. Moreover, Rules 46 to 54-A of the Rules of 1954 detail the manner in which the consolidation scheme is prepared. Further details in this regard and its step by step working has been supplemented by executive instructions which have been

compiled and consolidated in the U. P. Consolidation Manual.

124. The provisional consolidation scheme is subject to the disposal of objections and is confirmed under section 23 of the Act. It is from this point onwards that the enforcement of the scheme commences, which is part of Chapter IV of the Act i.e. from Section 24 till Section 33.

125. It will be of extreme importance to note certain significant instances as illustration where a reference can be made to understand the scope of reference. While the provisional scheme of consolidation is prepared the authorities have the right to determine the valuation of plots, including the right to make deductions for contribution made for public purposes, compensation to be determined for trees, wells and other improvements which are held by one but are allotted to other tenure holder. This exercise may not be directly pitted against two individuals but it can cause grievances for the tenure holders against the authorities.

126. There can be cases giving rise to grievances, when provisions are made for Chak Roads and Chak Guls and matters relating to mutual exchange of Chak between tenure holders.

127. There can be cases arising out of preparation of records and entries made therein. These are sensitive matters, as they are the basis of the rights and value relating to the holdings of the tenure holders. Incorrect entries can have repercussions. Needless to say that these entries are all made by the Authorities, which if not made correctly, then it may affect a tenure holder seriously, as during consolidation operations, the original plot numbers also

change including the area and in this regard CH Form 41 and CH Form 45 assumes importance.

128. Moreover, the consolidation proceedings involve compacting the land holdings which may necessarily entail re-location of tenure holder and this also has an impact over the agricultural yields. Though the Act envisages that land holder is re-located at a place having the value of land which the land holder originally possessed but it may necessarily not appease all of the tenure holders.

129. There can be cases, where while dealing with a dispute between two land holders relating to value of land holdings etc., a view is taken by an Authority at some stage. However, later in respect of different land holders, some additional issues crop up before the Authorities and they may wish to revisit this earlier decision and of course in absence of any power to re-visit, such Consolidation Authorities can only seek the guidance of the highest authority and in order to do so, prepare a reference and forward the same to the DDC who then can resolve the dispute, after hearing the parties.

130. In another scenario, even when while preparing C.H. Forms with the ultimate object of preparing the final records, if any authority i.e. Consolidation Officer or the Settlement Officer of Consolidation, comes across any discrepancy or error which may not fall within the sense of clerical or arithmetical error as envisaged in Section 42-A, then in such circumstances the Consolidation Officer and the Settlement Officer of Consolidation considering the gravity and the extent of the error or discrepancy which may impact surrounding tenure holders,

after hearing the affected parties concerned, can refer the matter to the Deputy Director of Consolidation in terms of Section 48(3).

131. It will also be relevant to observe that the disputes between individuals which fall in category of disputes under Sections 9, 9-A, 9-B and 9-C of the Act are decided and prior to the final Scheme of consolidation, if disputes arise or there are grievances, they too are to be decided, but all of this is done before the final records are prepared.

132. Knowing that the Consolidation Officers and the Settlement Officers of Consolidations do not have the power to review, while preparing several documents and C.H. Form which form part of record prepared under the Consolidation operations, they may come across orders passed on the judicial side, which may require to be reconciled and it may impact more than one tenure holder. In such a case it is not within the jurisdiction of the Consolidation Officer or the Settlement Officer of Consolidation to either adjudicate or review its order but in order to give a complete and a comprehensive meaning to the scheme of consolidation and to iron out creases, including giving affect to orders passed on judicial side and to avoid any interpolation and manipulation, it may require the indulgence of the Deputy Director of Consolidation, who may receive the reference and then again after affording full opportunity of hearing to the parties concerned, decide the reference and while deciding such a reference, it can exercise all the powers as envisaged in sub section (1) of Section 48 of the Act. These are few instances which have been noticed illustrations and they by no means are exhaustive.

133. Thus, when the scheme of consolidation is prepared, it should as far as

possible, be error free and accommodate as far as possible all tenure holders keeping the principles of section 19 of the Act in mind which in turn leads to preparation of the final records which have sanctity and finality subject to the extent as provided in Section 27 of the Act.

134. This Court is of the opinion that the need for reference, as provided in the Act of 1953, emerges from the need to ensure minimal discrepancy and error free preparation of records, keeping in mind the large scale of operations, the dynamics involved in preparing a consolidation scheme which has the impact of displacing tenure holder, compacting their tenure holdings and making provisions for public utility lands, amongst others, which go a long way in aligning the village area towards future developments. Such large scale exercise culminates in preparation of new records, in consonance with the scheme of Consolidation.

135. Thus, at any stage where any discrepancy is discovered or some right is affected, after the adjudicating stage relating to an aggrieved party or it is noticed by the authority, while discharging their duties and to ensure that this correction or discrepancy does not become a tool in the hands of any party or authority to oppress any tenure holder, hence this power of reference and can be exercised. While doing so, the power of the Consolidation Officer and the Settlement Officer of Consolidation is curtailed, only to refer the same to the highest authority i.e. Deputy Director of Consolidation, who after hearing the parties, can do complete justice by invoking its power as in Section 48(1) of the Act.

136. In light of the aforesaid discussions, the scope of reference can be understood as under:-

(i) Disputes between parties which fall in categories mentioned in Sections 9-A, 9-B and 9-C, Section 12 and 21 of the Act have a clear trajectory i.e. they are filed before the CO and decided after affording an opportunity to lead evidence and hearing by the CO, akin to an adversarial litigation. This order of CO is appealable before the SOC in terms of Section 11 and if still dissatisfied, the aggrieved party can further invoke the provision of Revision before the DDC in terms of Section 48(1) of the Act. The orders passed under the aforesaid sections cannot be ordinarily varied, modified or changed by taking recourse to a reference.

(ii) However, there may still be disputes, which may not clearly be within the parameters of Sections 9-A, 9-B or 9-C or Sections 12 and 21 of the Act, but they may arise while attempting to give effect to the Scheme of Consolidation. These disputes may be on account of any error in preparation of records or anomalies, difficulties and disputes which may occur on the ground level while implementing the Scheme on the spot. Such disputes come to the notice of the CO and SOC, who being the first responders in terms of the Act, take note, hear the parties and where some genuine grievance occurs or surfaces, they are required to refer the same to the highest authority i.e. the DDC.

(iii) Since, the CO and SOC are not empowered to take notice and decide any matter (as in dispute) other than as mentioned in the Act in terms of Sections 9-A, 9-B, 9-C and Sections 12 and 21 of the Act, hence, while executing or implementing or correcting the records or considering the scheme of consolidation, in case any dispute, discrepancy or anomaly or difficulty arises, it can be referred to the DDC under the powers of reference and while deciding a reference, the DDC may

invoke all such powers as are envisaged in Section 48(1) of the Act to do complete justice and ensure that the Scheme is implemented in terms of the principles mentioned in Section 19 of the Act and this would also go a long way in preparation of the final and new records, including the village maps, which as far as possible be error free so that they become the final records to be handed over to the Collector in terms of Section 27 of the Act.

(iv) Thus, the reference though may arise out of the corrective and executory jurisdiction but it partakes the nature of adjudication as the Section 48(3) of the Act itself provides for a two tiered hearing, before two authorities, at two different stages. Moreover, the instances noticed hereinabove are only illustrative and not exhaustive.

137. Thus, the power of reference as discussed above may be born out of corrective jurisdiction but it is not merely and only corrective (as seen in contra distinction to corrections which are envisaged in Section 42-A) in nature but it matures through a decision making process which makes it adjudicatory in nature and it has the effect of binding the parties and also makes it subject to challenge like any order of the DDC passed in its revisional jurisdiction.

138. Thus, the question no.1 is answered as above.

VIII ANALYSIS AND DISCUSSIONS OF QUESTIONS NO. 2 AND 3:-

139. To recapitulate the terms of questions no.2 and 3 and to put its analysis in a proper perspective, it will be

appropriate to reproduce the said questions here.

(ii) Whether the power of reference can be exercised by the Deputy Director of Consolidation after the notification is made in terms of Section 52 (1) of the Act;

(iii) Whether the reference proceedings can be said to be saved in terms of Section 52 (2) of the Act.”

140. The answer to the aforesaid two questions primarily depends on the interpretation given to sub Section 1 and 2 of Section 52 of the Act. For clarity, Section 52 of the Act is being reproduced hereinafter: -

“52. Close of consolidation operations. - (1) As soon as may be, after fresh maps and records have been prepared under sub-section (1) of Section 27, the State Government shall issue a notification in the Official Gazette that the consolidation operations have been closed in the [unit and the village or villages forming a part of the unit] shall then cease to be under consolidation operations :

Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix, distribute and record the cost of operations under this Act.

(1-A) The notification issued under sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper.

(2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the

date of issue of the notification under sub-section (1), shall be given effect to by such authorities, as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have not been closed.

(3) Where the allotment or lease of any land made before the Consolidation Scheme becomes final under Section 23, is cancelled by an order under sub-section (4) of Section 198 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) and such order becomes final, then notwithstanding anything contained in the provisions of this Act, such order shall be given effect to by such authorities, as may be prescribed, in the following manner, and the consolidation operation shall, for that purpose, be deemed to have not closed, namely –

(a) the value of the land which was the subject-matter of such allotment or lease shall first be ascertained in the manner prescribed;

(b) the value referred to in clause (a) shall be deducted from the total value of land allotted to the tenure-holder concerned during consolidation proceedings;

(c) the tenure-holder shall be entitled, during consolidation proceeding, to land equivalent in valuation to the said land.”

141. It is apparent from a bare reading of Section 52, that it is the State Government which issues a notification in the official gazette that the consolidation operations are closed in a unit and the village or the villages forming a part of the unit.

142. It is also imperative to note that sub-section (1) of Section 52 of the Act mentions that as soon as may be, after fresh

maps and records have been prepared under sub-section (1) of Section 27 of the Act, thereafter the State Government would issue a notification.

143. It will also be relevant to notice that the words incorporated in sub-section (1) of Section 27 of the Act, more specifically, ‘under Sub Section 1 of Section 27’, were introduced by the amending Act No. 55 of 1976 which was enforced w.e.f. 18.11.1976.

144. Section 52 (2) of the Act starts with a non-obstante clause and provides that notwithstanding anything contained in Sub Section 1, any order passed by a court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India or in cases or proceedings pending under this Act on the date of the issue of notification under sub-section (1) shall be given effect to by such Authorities as may be prescribed and the consolidation operations shall for that purpose be deemed to have not been closed.

145. It appears from a bare perusal of the aforesaid sub-section (2), that it has 3 components and in order to understand the same clearly, it has been split as under: -

(i) It has a non-obstante clause and therefore it is independent of sub-section (1) of Section 52 and it creates an exception to the general rule as provided in Sub Section (1);

(ii) The aforesaid exception carved out by this sub-section (2) is intended to have an over-riding effect on sub-section (1) and is relatable to (a) cases which are pending before the Constitutional Courts, which obviously refers to the High Court and the Supreme Court and (b) cases

or proceedings which are pending before the Consolidation Authorities and

(iii) By introducing a deeming provision, it will be assumed that despite the notification having been made in terms of sub-section (1), which otherwise clearly indicates that the consolidation operations have come to an end, yet because of the said legal fiction, it would be taken that the consolidation operations have not been closed.

146. A perusal of sub-section (1) of Section 52 of the Act indicates the stage when it would be found expedient for the State Government to issue a notification is when the fresh maps and records have been prepared in terms of Section 27 (1) of the Act.

147. Before proceeding further, it will also be relevant to notice Section 49 of the Act, in order to see the interplay of the provisions, hence Section 49 of the Act is also being reproduced hereinafter for ready reference: -

“49. Bar to Civil Court jurisdiction. - Notwithstanding anything contained in any other law Courts for the time being in force, the declaration and adjudication of rights of tenure-holder in respect of land, lying in an area, for which a notification has been issued under sub-section (2) of Section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a

proceeding could or ought to have been taken under this Act :

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the U. P. Zamindari Abolition and Land Reforms Act, 1950(U.P. Act No. 1 of 1951) in respect of any land, possession over which has been delivered or deemed to be delivered to a Gram Sabha under or in accordance with the provisions of this Act.”

148. It will be relevant to state that during consolidation operations, the power of Revenue Courts or other Courts where any matter is pending is suspended. After de-notification, the Revenue and other Courts regain their jurisdiction. Thus, it can safely be stated that during the consolidation operations, there is an eclipse over the jurisdiction of the Revenue and the Civil Courts and the moment the village is de-notified, the eclipse vanishes. The Apex Court in **Prashant Singh v. Meena: (2024) 6 SCC 818** has held as under: -

10. On a plain reading, we find that Section 49 of the 1953 Act contemplates bar to the jurisdiction of the civil or Revenue Court for the grant of declaration or adjudication of rights of tenure-holders in respect of land lying in an area for which consolidation proceedings have commenced. Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of civil or Revenue Court only during the period when consolidation proceedings are pending. Notably, such suspension of jurisdiction of these Courts through the non obstante provision is only with respect to the declaration and adjudication of rights of tenure-holders. In other words, unless a person is a pre-

existing tenure-holder, Section 49 does not come into operation.”

149. Certain postulates which can admit of no two views in law may be considered: -

(a) The land revenue records are maintained under the U.P. Land Revenue Act, 1901. The substantive rights of the tenure holders are governed by the U.P.Z.A. & L.R. Act, 1950 and with the advent of the U.P. Revenue Code, 2006 both the aforesaid Acts have been repealed, however, from the date of enforcement of the U.P. Revenue Code, 2006 i.e. from 11.02.2016, the rights henceforth whether they relate to record keeping or the substantive right are governed by the Code of 2006.

(b) The Collector of the District is the interface of the Government and he is the nominated officer of the Government responsible for preparation and maintenance of all revenue records.

(c) Section 14 of the U.P. Land Revenue Act, 1901 provides that the State Government shall appoint in each District an Officer who shall be the Collector of the District and who shall throughout his district exercises all the powers and discharge all the duties conferred and imposed on a Collector by this Act or for any law for the time being in force.

(d) In continuation, Section 28 of the Act of 1901 specifically confers a power on the Collector to maintain the map and field book of each village in his district and he is also to record any changes in the boundaries of each village and correct any errors which are shown to have been made in such map or field book.

(e) Similarly, the Collector in terms of Section 31 of the Act of 1901 is to prepare and maintain in the prescribed form

a list of all villages and to show there in the prescribed manner the areas (i) liable to fluvial action, (ii) having precarious cultivation and (iii) the revenue whereof either wholly or in part being released, compounded, redeemed or assigned. Such registers are to be revised every five years in accordance with the rules.

(f) Section 33 of the Act of 1901 relates to the Annual Register and it confers a duty on the Collector to maintain the record of rights. Apart from the above, Section 29(3) empowers the Collector to erect proper boundary marks on such village or fields or to repair or renew such boundary marks as prescribed, to be lawfully erected.

(g) The Collector apart from above also exercises quasi-judicial functions in deciding matters relating to mutation arising out of succession or transfer which are disputed or is in contravention of the provisions of the U.P.Z.A. & L.R. Act, 1950.

150. There are various other duties of the Collector but the point which is being noticed is that the Collector is the single most important officer responsible for preparation of record of rights, field book and annual registers and he is also the custodian of the said records.

151. At this stage, it will be worth while to notice the definitions of Director of Consolidation, Deputy Director of Consolidation and District Deputy Director of Consolidation, as mentioned in Section 3(4), 3(4-A) and 3(4-B) of the Act, which are being reproduced hereinafter: -

3(4) “Director of Consolidation” means the person appointed as such by the State Government to exercise the powers and perform the

duties of the Director of Consolidation under this Act or the rules made thereunder and shall include and Additional Director of Consolidation and a Joint Director of Consolidation;

(4-A) “Deputy Director of Consolidation” means a person appointed as such by the State Government to exercise such powers and perform such duties of the Director of Consolidation as may be delegated to him by the State Government and shall include a District Deputy Director of Consolidation and Assistant Director of Consolidation;

(4-B) “District Deputy Director of Consolidation” means a person who is for the time being the Collector of the District;”

152. Upon a bare reading of the aforesaid definition, it would be trite to state that prior to commencement of the consolidation operations, the Collector of the District exercises powers under the U.P. Land Revenue Act, 1901 (and after the advent of the U.P. Revenue Code, 2006, under the Code of 2006), as the case may be.

153. However, when a notification is issued by the State Government under Section 4 of the Act then it becomes lawful for any officer or Authority, who may be empowered in this behalf by the District Deputy Director of Consolidation, to enter upon and survey, in connection with rectangulation or otherwise, and to take levels of any land in such area, to fix pillars in connection with rectangulation and also to do all acts necessary to ascertain the suitability of the area for consolidation operations. This officer can be the District Deputy Director of Consolidation [who is the Collector as per Section 3 (4-B)], or his delegate.

154. It is in this context that upon the commencement of consolidation operations, the powers of the Collector cease in respect of the villages or units which are placed under consolidation in terms of Section 4 notification and it comes within the ambit of the District Deputy Director of Consolidation and the Deputy Director of Consolidation.

155. Now in this regard, a reading of Section 27 of the Act reveals that in terms of Section 27(1) of the Act as soon as the final consolidation scheme comes into force and the District Deputy Director of Consolidation (which in terms of the definition is the Collector) causes to be prepared for each village, a new map, field book and record of rights in respect of the consolidation area (these are the same records which under the U.P. Land Revenue Act, 1901 and after its repeal in terms of the U.P. Revenue Code, 2006 was maintained by the Collector).

156. Once, this stage is reached in terms of Section 52(1), it is conveyed by the District Deputy Director of Consolidation to the State Government that the village is ready to be de-notified and after receiving such input and being satisfied, the State Government issues the notification which has the effect of closing the consolidation operations.

157. Before proceeding any further, it will also be pertinent to notice that Section 52 of the Act was quite differently worded in the original Act of 1953 and post amendment Section 52 has undergone a major change.

158. In order to appreciate, it will be worth while to refer to the original Section 27 as it was incorporated in the Act of 1953

prior to amendment and the same reads as under: -

Unamended Section 27: -

“27. New Revenue Records. -

(1) As soon as may be after the consolidation Scheme has come into force the State Government shall issue a notification under Section 48 of the U.P. Land Revenue Act, 1901 in the official Gazette for preparation of a new village map, Khasra and record of rights, in respect of each village included in the consolidation operations and thereupon fresh records shall be prepared in accordance with the provisions of the U.P. Land Revenue Act, 1901.

(2) All entries in the records of rights prepared in accordance with the provisions of sub-section (1) shall be final and conclusive.”

Now Amended Section 27:-

27. New revenue records□ (1) As soon as may be, after the final consolidation scheme has come into force, the District Deputy Director of Consolidation shall cause to be prepared for each village a new map filed-book and record-of rights in respect of the Consolidaiton area, on the basis of the entries in the map, as corrected under section 7, the Khasra Chakbandi, the annual register prepared under section 10 and the allotment orders as finally made and issued in accordance with the provisions of this Act. The provisions of the U. P. Land Revenue Act, 1901 shall subject to such modification as may be prescribed, be followed in the preparation of the map and records.

(2) All entries in the record-of rights prepared in accordance with the provision of sub-section (1) shall be

presumed to be true until the contrary is proved.

(3) After the issue of notification under section 52, the Collector shall, instead of the map, field-book and record-of-rights previously maintained by him maintain the map, field-book and record-of rights prepared in accordance with the provisions of sub-section (1) and the provisions of the U. P. Land Revenue Act, 1901, relating to the maintenance and correction of such map, field book and record-of-rights shall mutatis mutandis apply.”

159. Taking a view of Section 27 as incorporated in the original Act of 1953 would indicate that sub-section (2) clearly states that all entries in the record of rights prepared under sub-section (1) shall be final and conclusive whereas after amendment brought in by the U.P. Act No. 8 of 1963 all entries in the records of right prepared in accordance with the provisions of sub-section (1) have been made presumptive and are presumed to be true until the contrary is proved. Moreover, by the same amending Act 8 of 1963, sub-section (3) has been introduced in Section 27 which was not present in the original Act of 1953.

160. The impact of Section 52 of the Act prior to the amendment in 1963, was that once the consolidation operations were completed in the sense that new records had been prepared, then the entries made therein had a seal of finality i.e., they were final without any exception.

161. In such circumstances, if at all, any error occurred then it was not open for any Authority to examine the same and it could be only the Consolidation Authorities alone who could undo the error.

Illustratively, if this situation subsisted i.e. to say the finality given in the unamended original Act persisted then perhaps there could be a situation where even after closure of consolidation operations, the powers could be held to have been retained by the Consolidation Authorities to undo a wrong for an error which occurred as no other Authority would have had the right to correct or undo a wrong. Moreover, in view of the unamended provision it would operate as a complete bar for any Authority to examine or re-open the said issue i.e. whether it be the Revenue Court or the Civil Courts and Section 49 of the Act would come into operation.

162. However after Section 27 was amended by the U.P. Act 8 of 1963 and it is this very same amending Act by which inter alia Sections 48, 52 of the Act were also amended.

163. Now, upon considering the impact of the amended provisions as noticed above it would lean towards the reasoning that the new records prepared in terms of Section 27 would be taken to be correct and true having a presumptive value unless the contrary is proved. As noticed above, sub-section (3) has been appended to Section 27 by the amendment No. 8 of 1963 and the legislature has consciously used the words as “After the issue of notification under Section 52, the Collector shall, instead of the map, field-book and record of rights previously maintained by him, maintain the map, field-book and record of rights prepared in accordance with the provisions of Sub-section (1) and the provisions of Sections 28 and 33 of the U.P. Land Revenue Act, 1901 shall apply to the maintenance of such map, field book and record of rights, as the case may be.” meaning thereby that once the notification

of closure of consolidation has been made in terms of Section 52 and the Collector, who otherwise till such time the consolidation operations were in force is known as the District Deputy Director of Consolidation, would still retain the right to examine the records, but now in terms of the U.P. Land Revenue Act, 1901 (After its repeal in terms of the U.P. Revenue Code, 2006) as Collector of the District.

164. The position as obtained in law would be that prior to the amendment introduced in the year 1963, the entries in the new revenue records prepared under Section 27 of the Act would attain finality without any exception and, therefore, there could have been some consideration for the submission that the consolidation authorities may have some residuary right to correct or rectify its records even though the notification under Section 52(1) may have been issued.

165. However, after the amendment, the position is clearly amplified, that the entries in the new revenue records are now made presumptive unless the contrary is proved and, moreover, after the notification under Section 52, the Collector would continue to have the right to examine and maintain the records, i.e. to say being the Collector, he continues to discharge his functions and duties primarily of keeping the revenue records error free and in case of any error discovered, the Collector would still have the right to correct the same in terms of the U.P. Land Revenue Act, 1901 and after its repeal in terms of the U.P. Revenue Code, 2006.

166. It is for this very same reason and by the amending Act No. 8 of 1963 that Sections 217, 48 and 52(1) also came to be amended. Thus, when the new records are

prepared in terms of Section 27(1), the stage arrive, for advising the State Government to issue a notification under Section 52(1) for closure of the consolidation proceedings.

167. Moving further and in accordance with the Scheme of the Act, it would indicate that the exception which is saved in terms of sub-section (2) of Section 52 are those proceedings which on the date of the notification made under sub-section (1) of Section 52 are either engaging attention of the Constitutional Courts i.e. the High Court and the Hon^{ble} Supreme Court or those proceedings which on the date of the said notification are pending before any of the adjudicating authorities under the U.P. C.H. Act i.e. Consolidation Officer, Settlement Officer of Consolidation or the Deputy Director of Consolidation, as the case may be.

168. Section 52 (2) does not only contain a non-obstante clause but it also has a deeming effect and thus it is to be given a strict meaning, as deeming provision cannot be liberally construed and it does not permit the Court to read something into the provision which is not envisaged as that would not only violate the provision but would also run contrary to the scheme of the Act and rob it of its finality.

169. The scope of a deeming provision has been considered by the Apex Court in **State of Punjab v. Davinder Singh (2025) 1 SCC 1**, Para-115 to 117 read as under: -

“(b) Scope of deeming fiction

115. The use of the phrase “deemed to be” is not conclusive of a legal fiction. [See Consolidated Coffee Ltd. v. Coffee Board, (1980) 3 SCC 358, paras 11,

12; Bhuwarka Steel Industries Ltd. v. Union of India, (2017) 5 SCC 598, paras 36, 37, 43, 44] The word deemed is used for many purposes, such as for the artificial construction of a word and to clarify uncertain constructions, or plainly just to mean “regarded as being”. [St. Aubyn v. Attorney General, 1952 AC 15 at p. 53 (HL) (Lord Radcliffe)] **A legal fiction is essentially a presumption that certain facts which do not exist in fact, will be treated as real and existing for the purpose of law. Courts have evolved two principles on the operation of legal fictions. The first principle is that a legal fiction must be confined to its “legitimate field”, for the specific purpose for which it was created.** [Industrial Supplies (P) Ltd. v. Union of India, (1980) 4 SCC 341, para 25; K. Prabhakaran v. P. Jayarajan, (2005) 1 SCC 754, para 39 : 2005 SCC (Cri) 451; See Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 6 STC 446 : 1955 SCC OnLine SC 2] In Bengal Immunity Co. Ltd. v. State of Bihar (1955) 6 STC 446, **a seven-Judge Bench of this Court held that legal fictions are created only for a certain purpose and they must be confined only to that “legitimate field”.** In its decision in that case, this Court held that the deeming fiction in the Explanation to Article 286(1)(a), before the Constitution (Sixth Amendment) Act, 1956, (by which a sale was deemed to have taken place in the State where the goods were delivered because of the direct sale) only applied to Article 286(1)(a) and not to Article 286(2). This Court held that the scope of Article 286(1)(a) which barred a State from imposing tax on sales outside the State, was different from the scope of Article 286(2) which stated that unless otherwise provided by law, State laws could not tax a sale or purchase which took place in the course of inter-State trade or commerce. [Bengal

Immunity Co. Ltd. v. State of Bihar, (1955) 6 STC 446 : 1955 SCC OnLine SC 2: "... A **legal fiction pre-supposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. But due regard must be had in this behalf to the purpose for which the legal fiction has been created.** If the purpose of this legal fiction contained in the Explanation to Article 286(1)(a) is solely for the purpose of sub-clause (a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be. The legal fiction which was created here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision. It would be an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one. This type of conversion could not have been in the contemplation of the Constitution-makers and is contrary to the express purpose for which the legal fiction was created as set out in the Explanation to Article 286(1)(a)." (emphasis supplied)

116. **The second principle is that the scope of the legal fiction must be extended to the consequences which "logically" flow from its creation.** The opinion of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 (HL)] is the leading case for this proposition. The Law Lord observed that the effect of a legal fiction must not be limited to treating facts that do not exist as

real but must be expanded to understand the effects and consequences that flow from the legal fiction. [*East End Dwellings case*, 1952 AC 109 at pp. 132-33 (HL): "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs." However, a law creating a deeming fiction cannot create presumptions in favour of a legal consequence but only presumptions about facts from which certain legal consequences may follow.

117. In *Delhi Cloth & General Mills Co. Ltd. v. CTO* [Delhi Cloth & General Mills Co. Ltd. v. CTO, (1976) 3 SCC 443], the constitutional validity of the Kota Municipal Limits (Continued Existence) Validating Act, 1975 was challenged. The Municipalities Act prescribed a mandatory procedure for delimitation of municipalities including a public notice inviting objections. This mandatory procedure was flouted in the inclusion and exclusion of certain villages to and from the Kota municipality in the State. The Validating Act provided that notwithstanding the mandatory provisions of the Municipalities Act, those villages would be deemed to have always continued to exist as they do within the limits of Kota municipality. The Court held that the Validating Act required the deeming of a legal position rather than the deeming of a fact from which such legal consequence would follow. The Bench found that this was not a permissible creation of a fiction.

Article 341 must be interpreted based on the above principles.”

170. In the given circumstance and situations as considered by this Court while answering the question no. (i), if a reference is pending on the date of the notification made under Section 52(1) then such a reference proceeding would stand saved in terms of Section 52(2) of the Act. However, if no such reference was pending on that given date then apparently the same cannot be initiated after the date of the notification under sub-section (1) of Section 52 of the Act as the necessary implication of the said notification is that all the Consolidation Authorities lose their right and any proceeding initiated by them after the date of notification would be rendered without jurisdiction and non-est.

171. Section 48(3) i.e. power of reference may be a different and an independent power but it cannot rise above the power conferred in terms of Section 48 (1) of the Act and for the said reason, if the DDC cannot suo-moto exercise its revisional powers under Section 48 (1) upon de-notification, on the same premise it cannot be held to exercise the power of reference after the de-notification.

172. However, after the de-notification, if any eventuality arises to correct an error and as explained in the preceding paragraphs then the Collector can, upon any discrepancy or error in the new records prepared under the consolidation proceedings being brought to its notice, correct it. This intent is clear as for this very purpose sub-section (2) of Section 27 has been rephrased by the amendment and new sub-section (3) was added to Section 27 by the amending Act of 1963.

173. Thus, any Consolidation Authority, may it be the Consolidation Officer, the Settlement Officer of Consolidation or the Deputy Director of Consolidation, upon the issuance of notification under Section 52(1) lose his jurisdiction, then he cannot be permitted to indirectly exercise the power to take a fresh look at any document or order by taking recourse to a proceeding under the garb of a reference.

174. It will also be relevant to notice that the executive instructions which have been issued by the State Government which have been compiled and forms a part of the Consolidation Manual, if seen, especially Chapter X, it relates to rectification of records. Regulation 200-Ga, Regulation 241-ka and the Explanation appended thereto and moreover considering Chapter XXI which relates to the notification made under Section 52, Regulation 598, 601, 602, 605 and 606, it would clearly indicate the intent of the State is to the fact that the Consolidation Authorities were never intended to be permitted to entertain or initiate any reference proceedings after the notification under Section 52(1) of the Act was issued.

175. This Court for clarity and ease of reference is reproducing Regulations 598, 601, 602, 605 and 606 which forms part of the Chapter XII under the head Notification under Section 52 and is part of the U.P. Consolidation Manual as under: -

५९८ - (१) क्योंकि जोत चकबन्दी अधिनियम, १९५३ की धारा ५२ के अन्तर्गत विज्ञप्ति जारी होने पर चकबन्दी प्राधिकारी सम्बन्धित ग्रामों में अधिनियम द्वारा प्रदत्त अधिकारों का प्रयोग नहीं कर सकते, अतः यह

नितांत आवश्यक है कि विज्ञप्ति जारी होने की संस्तुति केवल उन्हीं ग्रामों के सम्बन्ध में की जाये जिनमें कोई कार्य या वाद अवशेष नहीं है, प्रत्येक सहायक चकबन्दी अधिकारी, चकबन्दी अधिकारी तथा बन्दोबस्त अधिकारी चकबन्दी स्तर पर निम्न प्रकार विवरण ग्राम-वार उसी समय से रखा जायेगा जब ग्राम नये माल अभिलेखों की तैयारी के स्तर पर आ जाये :-

तहसील-जिला-ब०अ० च० इकाई

क्र म सं ०	ग्रा म का ना म	च० अ० क्षेत्र	अवशेष वादों की संख्या								वि शेष विवरण
			आपत्तियां			अपी लें		निग रानी			
			च क	स्व त्व	धा रा	च क	स्व त्व	च क	स्व त्व		
१	२	३	४	५	६	७	८	९	१०	११	

(२) इस सूची की समय-समय पर संशोधित किया जाये। बन्दोबस्त अधिकारी, चकबन्दी इसके लिए सहायक चकबन्दी अधिकारी तथा चकबन्दी अधिकारी की सूची मंगवाकर अपनी सूची से मिलान करते रहें। यदि वाद अवशेष रहते हुये किसी ग्राम का प्रकाशन हो जायेगा, तो सम्बन्धित चकबन्दी

अधिकारी बन्दोबस्त, अधिकारी, चकबन्दी स्वयं उत्तरदायी होंगे।

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६०१- यह आवश्यक है कि जिलाधिकारी सुनिश्चित कर लें कि विज्ञप्ति जारी होने के समय कार्य की कोई मद पूरा करने के लिए न रह जाय। इसके पश्चात, जोत चकबन्दी अधिनियम की धारा ५२ (१) के अन्तर्गत विज्ञप्ति जारी करने की संस्तुति जिलाधीश के हस्ताक्षरों से निदेशालय को भेजी जानी चाहिए।

६०२- धारा ५२ (१) के अन्तर्गत प्रकाशन हेतु प्रस्ताव अग्रसारित करते समय, जिलाधिकारी नीचे लिखे सब प्रमाण पत्र भेजेंगे :-

(१) यह कि चकबन्दी उपरान्त प्राप्त सभी समस्याओं का नियमानुसार समाधान कर दिया गया है;

(२) यह कि पेड़ों, कुओं तथा फसलों, यदि कोई हो, से सम्बन्धित प्रतिकर के बारे में सभी सम्बन्धित किसानों को जो०च० आकार पत्र २६ जारी कर दिया गया है;

(३) यह कि सहायक चकबन्दी अधिकारी, चकबन्दी अधिकारी तथा बन्दोबस्त अधिकारी, चकबन्दी के न्यायालय में कोई वाद अथवा अपील अनिर्णित नहीं है, तथा सब मुकदमें तय हो चुके हैं और उनका निफाज अन्तिम अभिलेखों में कर दिया गया है;

(४) यह कि जोत चकबन्दी अधिनियम की धारा ४८ के अन्तर्गत कोई

निगरानी या रेफरेन्स अनिर्णित नहीं है। सभी निगरानियां व रेफरेन्स तय हो चुके हैं तथा उनका निफाज या अमलदरामद अन्तिम अभिलेखों में कर दिया गया है;

(५) यह कि सार्वजनिक कार्यों के लिए जोतों से ली गयी भूमि का प्रतिकर-विवरण पत्र तैयार कर लिया गया है;

(६) यह कि चकबन्दी व्यय की जमाबन्दी बना ली है और तहसीलदार को बसूली के लिए दिनांक----- को भेज दी गयी है।

(७) यह कि अन्तिम अभिलेखों की दोनों जिल्दें तैयार हो गयी हैं तथा नियमानुसार उनकी जांच कर ली गयी है। दोनों जिल्दें एक दूसरे से पूरी तरह मिलती हैं। (tally) करती हैं।

(८) यह कि अन्तिम अभिलेखों की दो जिल्दों में से एक, जोत चकबन्दी नियम १००-क के अनुसार, जिलाधिकारी के अभिलेखागार में दिनांक ----- को दाखिल कर दी है और दूसरी लेखपालों के प्रयोग के लिए सम्बन्धित तहसीलदार को दिनांक ----- को हस्तान्तरित कर दी गयी है;

(९) यह कि धारा ५२ (१) के अन्तर्गत प्रख्यापित होने वाले किसी ग्राम के बारे में, जहां आवश्यकता हो, जोत चकबन्दी नियम ४-क या जोत चकबन्दी अधिनियम की धारा ३ (११-क) के अन्तर्गत कोई प्रख्यापन शेष नहीं है;

(१०) यह कि जमींदारी उन्मूलन तथा भूमि व्यवस्था अधिनियम की धारा ३ (२५) के अन्तर्गत कोई प्रख्यापन शेष नहीं है;

(११) यह कि अन्तिम भूचित्र छपने के लिए दिनांक-----को प्रेस भेज दिए गए हैं;

(१२) यह कि प्रस्तावित ग्राम/ग्रामों के बारे में उच्च न्यायालय के आदेशों द्वारा धारा ५२(१) के प्रख्यापन- प्रकाशन स्थगित नहीं हैं;

(१३) यह कि ग्राम में किए गए चकबन्दी कार्यों के सम्बन्ध में सभी शिकायती पत्रों की समुचित जांच कर ली गयी है तथा पायी गयी गलतियों का नियमानुकूल सुधार कर दिया गया है;

(१४) यह कि शासन से प्राप्त तथा मुख्यालय से भेजे गये शिकायती पत्रों की भी जांच कर ली गयी है, उन पर आख्या भेजकर आवश्यक आदेश प्राप्त कर लिए गए हैं, तथा उन आदेशों के अनुसार सम्पूर्ण कार्यवाही भी पूर्ण हो चुकी है;

(१५) यह कि उप संचालक चकबन्दी (कार्यकारी) ने भी समस्त शिकायती पत्रों का निस्तारण कर दिया है और उनके पास कोई शिकायती पत्र जांच, रिपोर्ट, आज्ञा तथा अनुपालन हेतु शेष नहीं है। इस आशय का एक प्रमाण-पत्र उनसे प्राप्त कर लिया गया है और वह संलग्न किया जाता है; तथा

(१६) यह कि सूची में उन्हीं ग्रामों के नाम दिए गए हैं जिनका धारा ४ (२) में प्रख्यापन किया गया था।

(१७) यह कि मौके पर चकों की सही पैमाइश करके चकबन्दी मैनुअल आकार पत्र ३५-क जारी किया जा चुका है। (आकार पत्र ३५-क जारी करने की तिथि यदि एक से अधिक

तिथियों में वितरित किया गया हो तो अन्तिम तिथि का उल्लेख)

(१८) यह कि जोत आकार पत्र ४५ का उद्धरण खातेदारों को जारी किया जा चुका है तथा उस पर प्राप्त आपत्तियों का निस्तारण करके अन्तिम अभिलेखों में अमलदरामद कर दिया गया है। (उद्धरण जारी किए जाने की तिथि)।

उ०प्र० जो० चकबन्दी नियमावली के नियम ९८ के अन्तर्गत खतौनी (जो० च० आकार पत्र-४५) के प्रकाशन के साथ-साथ उद्धरण भी कृषकों को जारी करने के निर्देश है किन्तु लेखपालों द्वारा खतौनी (जो० च० आकार पत्र-४५) के उद्धरण जारी करने में टालमटोल अथवा विलम्ब किया जाता है। इस हेतु लेखपाल स्तर पर जो० च० आकार पत्र-४५ का उद्धरण जारी करने का लेखा भी चकबन्दी आकार पत्र-३१ में ठीक प्रकार से रखा जाय तथा धारा ५२ के अन्तर्गत प्रकाशन की संस्तुति के पूर्व सहायक चकबन्दी अधिकारी/चकबन्दी अधिकारी उसका निरीक्षण करें तथा उसे ठीक पाने पर ही संस्तुति धारा ५२ हेतु भेजें। इन आदेशों का कड़ाई से पालन सुनिश्चित किया जाय।

(१९) यह कि ग्राम के वास्ते राजस्व अभिलेखागार में दिनांक -----को जमा कर दिए गए हैं।

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६०५- जोत चकबन्दी अधिनियम की धारा ५२ (१) के अन्तर्गत ग्रामों की विज्ञप्ति के लिए प्रस्ताव चकबन्दी आयुक्त को, नियम १०० तक के अन्तर्गत राजस्व अभिलेखागार में

चकबन्दी जिल्द जमा करने के पश्चात्, प्रस्तुत किया जाना चाहिए। अधिनियम की धारा ५२ (१) के अन्तर्गत ग्रामों की विज्ञप्ति की तिथि, विज्ञप्ति जारी हो जाने के पश्चात्, राजस्व अभिलेखागार में भी बाद में चकबन्दी जिल्दों में अंकित की जा सकती है।

६०६- जब तक कब्जा बदलने के बाद नये अभिलेख बनाकर चकबन्दी योजना समाप्ति की घोषणा नहीं की जाती है, तब तक अभिलेख सम्बन्धी कार्य जिले के सामान्य राजस्व प्रशासन को सौंपा नहीं जा सकता। फल यह होता है कि कृषकों का भूमि बेचने, खरीदने तथा अन्य कारण से दाखिल-खारिज करवाने और अभिलेखों के उद्धरण आदि लेने के लिए चकबन्दी के अधिकारियों के पास ही दौड़-धूप करनी पड़ती है। जब चकबन्दी कार्य अभिलेख बनाने के स्तर पर पहुंचता है, तो विभिन्न चकबन्दी अधिकारियों व कर्मचारियों की संख्या कम हो जाती है; उनके पुराने मुख्यालय, जो सम्बन्धित ग्रामों के पास ही हुआ करते थे, तोड़ दिए जाते हैं। नये मुख्यालय अधिकतर न केवल ग्रामों से दूर होते हैं, वरन् कार्य के पुनर्गठन के कारण, जो कई बार करना पड़ता है, मुख्यालयों के स्थान बदले भी जाते हैं, जिससे काश्तकारों को यह पता नहीं चलता कि उन्हें किस अधिकारी के पास और कहाँ जाना है। इस व्यर्थ की परेशानी और व्यय से उनमें असंतोष होना स्वाभाविक है। इसके साथ-साथ अभिलेख बनाने और धारा ५२ (१) के अन्तर्गत प्रकाशन में अनावश्यक विलम्ब का एक और भीषण परिणाम हो सकता है। नये अभिलेख बनाने के

लिए जोत चकबन्दी आकार पत्र, २-क से लेकर जोत-चकबन्दी आकार-पत्र २३ तक के सभी अभिलेख लेखपालों आदि के हाथ में रहते हैं। अधिक समय तक अभिलेख उनके पास रहने से उनमें फर्जी इन्दाजों की सम्भावना उत्पन्न होती है। यही परिस्थिति नये माल अभिलेखों की तैयारी उनकी जांच तथा उन्हें तहसील और जिलाधिकारी के अभिलेखागारों में भेजने में विलम्ब से भी उत्पन्न हो सकती है।

अतः यह आवश्यक है कि नये अभिलेख तैयार करके ग्रामों का धारा ५२ (१) के अधीन प्रकाशन, सम्पूर्ण कार्य की समाप्ति के लिए निर्धारित अवधि की समाप्ति के अधिक से अधिक एक मास के अन्दर अवश्य करा दिया जाये। प्रकाशन में अकारण अधिक विलम्ब कर उत्तरदायित्व बन्दोबस्त अधिकारी, चकबन्दी पर हो होगा। चकबन्दी मैनुअल आकार पत्र ५८ के निर्देश पर विवेचनात्मक टिप्पणी में वे उन सभी ग्रामों की संख्या प्रति मास प्रदिष्ट करेंगे, जिनका प्रकाशन, कब्जा बदलने के एक साल या उससे अधिक समय में, धारा ५२ (१) के अन्तर्गत किसी कारण से नहीं हुआ।

६०६-क चकबन्दी योजना के पुष्टीकरण के पश्चात् अन्तिम अभिलेखों की तैयारी तथा धारा ५२ (१) की विज्ञप्ति में अनावश्यक विलम्ब न हो तथा अभिलेखों में जालसाजी की सम्भावना समाप्त हो सके इसके लिए निम्नलिखित निर्देशों का पालन नितांत आवश्यक है:-

(१) सामान्यतः जी कर्मचारी वर्ग प्रस्तावित चकबन्दी योजना की तैयारी के स्तर

तक कार्य करें उसी स्टाफ से अन्तिम अभिलेखों की तैयारी कराकर धारा ५२ की विज्ञप्ति हेतु प्रस्ताव निर्देशालय प्रस्तुत कराया जाय।

(२) सहायक चक्रबन्दी अधिकारी, चकबन्दी अधिकारी तथा बन्दोबस्त अधिकारी चकबन्दी उत्तर प्रदेश जोत चकबन्दी अधिनियम तथा इसके अन्तर्गत बनी नियमावली व उत्तर प्रदेश चकबन्दी मैनुअल में विभिन्न स्तर पर विभिन्न अभिलेखों की जांच सम्बन्धित अधिकारियों से प्रभावी रूप से तथा अनिवार्य रूप से की जानी चाहिए।

(३) अभिलेखों की तैयारी तथा जांच के सम्बन्ध में प्रशासनिक संयुक्त उप/सहायक संचालक चकबन्दी भी आवश्यकतानुसार जांच करके यह सुनिश्चित करें कि कार्य नियोजित कार्यक्रम के अनुसार, निर्धारित मानक के अनुरूप एवं सही तरीके से किया जा रहा है जो अधिकारी/कर्मचारी कारगुजारी निर्धारित मानक के अनुसार कार्य न करें अथवा जो लक्ष्य पूरा न करें उनके विरुद्ध कड़ी प्रशासनिक कार्यवाही करने अथवा सेवा से पृथक करने पर विचार किया जाना चाहिए तभी कार्य को प्रगति में सुधार सम्भव हो सकेगा। यह सुनिश्चित करना प्रशासनिक अधिकारियों का व्यक्तिगत उत्तरदायित्व होगा।

(४) निर्देशालय पर कार्यरत जोनल अधिकारियों को भी यह आवश्यक है कि वे अपने क्षेत्र के जनपदों में उपरोक्त निदेशों का अनुपालन सुनिश्चित करें और किसी भी कार्य के दोषपूर्ण पाये जाने पर उसे सही करने हेतु समुचित निर्देश एवं मार्ग दर्शन देकर दोषी

अधिकारियों/कर्मचारियों को दण्डित करने हेतु इस आशय का प्रस्ताव प्रस्तुत करें जिससे कि इस प्रकार की गड़बड़ियों को पुनरावृत्ति भविष्य में समाप्त करायी जा सकें।

176. This Court is also conscious of the fact that this U.P. Consolidation Manual may not strictly have the statutory force but nevertheless since they are executive instructions issued by the State-Government, at least they are binding on the State Government and the State Government cannot take a contrary view and to that extent the submission of the learned Additional Advocate General does not find favour with this Court.

177. It is in furtherance of this intent that the State itself had issued a departmental order dated 06th November, 2023 wherein in paragraph 6 and 7 it has stated as under: -

6. धारा-52(1) के प्रख्यापन के पश्चात् जोत चकबन्दी अधिनियम की धारा 42-क के अन्तर्गत चकबन्दी अधिकारी द्वारा अभिलेखों में कोई भी संशोधन न किया जाय। प्रायः इस प्रकार की प्रवृत्ति चकबन्दी अधिकारियों में व्याप्त है और धारा-52 (1) के प्रख्यापन के पश्चात् भी वह बन्दोबस्त में परिवर्तन कर देते हैं। ऐसी प्रवृत्ति पर पूर्ण अंकुश लगाया जाय क्योंकि यह अधिकार सिर्फ चकबन्दी क्रियाओं के गतिमान रहने के दौरान ही चकबन्दी अधिकारीगण को प्राप्त है। चकबन्दी क्रियाएं समाप्त हो जाने के पश्चात् इस अधिकार का दुरुपयोग चकबन्दी अधिकारी द्वारा न किया जाय। ऐसा कृत्य अधिकारातीत है, यदि इस प्रकार का प्रकरण प्रकाश में आएगा तो

सम्बन्धित के विरुद्ध कठोर कार्यवाही की जायेगी।

178. 7-प्रायः यह देखा गया है कि जोत चकबन्दी अधिनियम की धारा-48(3) के अन्तर्गत ऐसे विषयों पर भी सन्दर्भ बनाकर उप संचालक चकबन्दी द्वारा अनुमोदित कर दिया जा रहा है जो उनकी परिधि में नहीं आता है। ऐसे प्रकरण जिनको धारा-52(1) के प्रख्यापन के पश्चात् राजस्व संहिता की धारा-30, 31 व 38 के अन्तर्गत राजस्व प्राधिकारियों को संज्ञान लेकर कार्यवाही करनी चाहिए परन्तु ऐसे प्रकरणों को भी उप संचालक चकबन्दीगण धारा-48 (3) जोत चकबन्दी अधिनियम के अन्तर्गत ग्रहण कर वर्षों पश्चात् सुव्यवस्थित बन्दोबस्त में परिवर्तन कर दे रहे हैं। ऐसा कृत्य अधिकारातीत है, यदि इस प्रकार का प्रकरण प्रकाश में आयेंगे तो सम्बन्धित के विरुद्ध कठोर कार्यवाही की जायेगी।"

179. Another aspect of the matter which can be seen is the fact that all such proceedings which are saved in terms of Section 52 (2) i.e. to say, the proceedings pending before the Constitutional Courts and the proceedings pending before the Consolidation Authorities on the date of the notification and if any orders are passed subsequent to the date of the notification under Section 52(1) and in order to give effect to those orders, the Consolidation Authorities have already been conferred with powers which are recognized in Rule 109-A of the Rules of 1954 which have been framed under the Rule making powers contained in Section 45 (3) of the Act.

180. Thus, this also clearly indicates that any order which is passed in

proceedings which are saved in terms of Section 52 (2) then in order to give effect to those orders, the Consolidation Authorities would have the power but nevertheless such powers are executory in nature and not in the nature of reference. Thus, for the said reason also, it cannot be said that the Consolidation Authorities continue to exercise power of reference after the date of notification made under Section 52(1) of the Act.

181. Another limb of submission made by the learned Additional Advocate General was that in order to undo fraud the powers of reference can be used. It is also a feeble argument for the reason that it is too well settled that fraud nullifies everything. In such a case if the consolidation operations are in currency, the consolidation authorities would definitely have the jurisdiction to consider the issue of fraud if raised appropriately. Even otherwise if this issue of fraud is discovered after the closure of consolidation operations even then as noticed above, the Collector shall have the right to consider this aspect and any finality cannot be attached to an entry or an order which is an outcome of fraud. However, what is fraud and how it affects judicial proceedings was considered by the Apex Court in the case of **Ram Chandra Singh v. Savitri Devi: (2003) 8 SCC 319, Union of India v. Ramesh Gandhi: (2012) 1 SCC 476** and by this Court in the case of **Bhagwan Das Chela Balram Das v. District Magistrate, Ambedkarnagar and others: 2023 (1) ADJ 342 [LB]**.

182. Accordingly, in light of the aforesaid discussions, the submissions and suggestions made by the learned Additional Advocate General and other members of the Bar canvassing the proposition that the

power of reference is akin to inherent powers and can be exercised even after the notification under Section 52(1) is issued, does not fall in line or in sync with the legislative scheme of the Act.

183. The line of decisions as led by **Gafoor (supra)** and other decisions which have followed it are in sync with the Scheme of the Act and though they have been decided on their own facts, the proposition that after de-notification consolidation authorities lose their jurisdiction is held to be good law. All decisions from **Ram Bahadur (supra)** as noted in this judgment and other decisions which hold that consolidation authorities retain the powers of correction of records after a notification is issued under Section 52(1) of the Act, are overruled and held to be not good law.

184. For the purpose of clarity, it is once again reiterated that only those proceedings, including a reference, which are pending either before the Constitutional Courts or before the Consolidation Authorities on the date of notification under Section 52(1) and any order which is passed in such proceedings after the date of the notification in Section 52(1) and its effect is to be carried out and given effect to in terms of Rule 109-A of the Rules of 1954 to that extent, the proceedings and the powers are saved by the Consolidation Authorities and not otherwise.

185. In light of the aforesaid discussions, it is held that the power of reference cannot be exercised by the Deputy Director of Consolidation after the notification is made in terms of Section 52(1) of the Act. Only such reference proceedings i.e. where reference has been made or in such cases where hearing on the

reference is pending before the CO or the SOC as the case may be, can be treated to be pending on the date of notification made under Section 52(1) then such cases can be said to be saved in terms of Section 52(2) of the Act.

186. Questions nos. (ii) and (iii) are answered thus.

IX SEQUITUR:-

187. In light of the detailed discussions recorded hereinabove, the scope of reference under the Act can be succinctly put as under: -

(i) It relates to such disputes which may occur on account of any error in preparation of records or anomalies arising or difficulties created as well as such disputes which may occur on the ground level while implementing the scheme of consolidation in light of the guiding principles mentioned in Section 19 of the Act as well as relatable to preparation of final records. The reference may arise out of corrective and executory jurisdiction but it is adjudicatory in nature, as it has the impact of an order passed by the Deputy Director of Consolidation which is binding and unless challenged, is final between the parties.

(ii) Since the power of reference is some what different than the power of revision, hence, the legislature has provided for a two tiered hearing, one before the Consolidation Officer or the Settlement Officer of Consolidation, as the case may be and the other before the Deputy Director of Consolidation himself. The power of reference is exercised not in an ordinary course, hence, it should be resorted to sparingly with utmost caution and only in expedient circumstances which have been

detailed in the earlier part of this judgment, which have been noted to be illustrative and not exhaustive.

(iii) As explained in this judgment, the power of reference is born out of corrective jurisdiction but it is adjudicatory in nature.

188. Insofar as when the power of reference can be exercised, it is held that the power of reference cannot be exercised after de-notification of the village in terms of Section 52(1) of the Act and the reference proceedings are not saved in terms of Section 52(2) except in those cases where on the date of notification under Section 52(1), the reference is pending either before the Consolidation Officer/Settlement Officer of Consolidation in terms of first tier of hearing and/or pending before the Deputy Director of Consolidation in terms of the second tier hearing.

189. The questions referred to this Full Bench stands answered. Now, the matter may be placed before the Court concerned to decide the matter on its own merits.

(2025) 12 ILRA 579
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.12.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ B No. 15591 of 2016

Ram Gopal & Ors.	...Petitioner
Versus	
Smt. Parvati & Ors.	...Respondent

ISSUE FOR CONSIDERATION

Whether the petitioner/defendant's defence in the partition suit that the Will dated 10.01.1961,

being one granting a life estate to the plaintiff, Parwati, did not entitle her to seek partition, was open to be determined by the Revenue Court, when the said claim was not raised during consolidation proceedings and whether it attracted the bar under Section 49 of the Consolidation of Holdings Act.

HEADNOTE

Constitution of India, Art. 226 – U.P. Zamindari Abolition and Land Reforms Act, 1950, Ss. 169(3), 176 – U.P. Consolidation of Holdings Act, 1953, Ss. 4, 9, 49 & 52 – Registration Act, 1908, Ss. 17 & 40 – Will relating to agricultural land – Requirement of registration – Will dated 10.01.1961 does not require compulsory registration – Requirement of registration came in with effect from 23.08.2004 – A bhumidhar with transferable rights could devise a life estate in favour of his wife with reversion to his blood relatives – Validity of bequest of limited/life estate – Dispute of pure title – Defendant's defence based on Will never raised during consolidation proceedings – Bar under S. 49 of the U.P. Consolidation of Holdings Act attracted – Suit for partition by a co-sharer not barred by S. 49 – Revenue Court's jurisdiction to investigate the nature and extent of the plaintiff's right and title based on the Will barred – Final consolidation records showing parties recorded as bhumidhar to the extent of a half share each – Board of Revenue committed no error in restoring the Trial Court's decree.

HELD:

Ram Narain on 10.01.1961 executed a Will granting a life estate to his wife, Smt. Parwati, with reversion to his blood relatives. During consolidation, Smt. Parwati and Ramgopal were recorded as co-bhumidhars to the extent of half share each in the joint khata. No objection u/s 9 of the U.P. Consolidation of Holdings Act, 1953 was filed by Ramgopal disputing the nature or extent of Smt. Parwati's title. In 1992, Smt. Parwati instituted a suit for partition. Ramgopal filed a written statement disputing Smt. Parwati's status as the lawfully wedded wife and contending that Smt. Parwati had only a life estate and no right to seek partition. The Trial Court passed a preliminary decree for partition in favour of Smt. Parwati for her half share. Ramgopal's appeal was allowed and the suit for partition was dismissed. The Board of Revenue

restored the preliminary decree dated 28.02.1994 passed by the Trial Court.

Held: A dispute relating to title about tenure land covered by the ZA & LR Act, if not raised after the issue of a notification under Section 4(1) of the CH Act, cannot, afterwards, be raised. Section 49 of the CH Act envisages a constructive bar to the adjudication of rights by a Civil or Revenue Court, not limited to rights arising out of consolidation proceedings, but the declaration and adjudication of the rights of tenure holders in respect of land falling in an area, for which, a notification under Section 4(2) of the CH Act has been issued. Court held that under the unamended Section 169(3) of the ZA & LR Act, a Will relating to agricultural land executed prior to 23.08.2004 did not require compulsory registration. The Will dated 10.01.1961, therefore, was not invalid merely because it was unregistered. It was held that a bhumidhar with transferable rights can bequeath a limited estate or life interest in favour of a legatee, and such a bequest was legally permissible under the ZA & LR Act. The Court noted that during consolidation proceedings, Smt. Parwati and Ramgopal were recorded as co-bhumidhars to the extent of half share each in the khata. It was held that the defendant, who propounds the Will to establish a life estate for the plaintiff, could and ought to have raised the plea that the plaintiff had only a life estate under the Will during consolidation proceedings, as it raised a dispute as to the nature and extent of title. Having failed to do so, the defendant was barred by Section 49 of the CH Act from raising such a title dispute in subsequent partition proceedings. The suit for partition of the parties' shares in accordance with the determination made by the Consolidation Authorities can proceed and a final decree too can be passed in accordance with the preliminary decree. The Court held that the Board of Revenue committed no error in restoring the preliminary decree of the Trial Court granting partition on the basis of the shares determined during consolidation. The High Court dismissed the writ petition. (Paras 19, 24, 28 & 34) (E-5)

CASE LAW CITED

Sobhnath Dube; In the Matter of the Goods of Late Kashinath Dube, 2015 SCC OnLine All 7548 : 2015 (128) RD 507;

Jahan Singh v. State of U.P., AIR 2017 All 247;
 Pramila Tiwari v. Anil Kumar Mishra, AIR 2024 All 227;
 Jagan Singh (Dead) through LRs v. Dhanwanti, (2012) 2 SCC 628;
 Ram Briksha v. Dy. Director of Consolidation, 2017 SCC OnLine All 4417 : 2017 (6) ALJ 610;
 Rishal Singh v. Board of Revenue, 1969 SCC OnLine All 394 : 1970 RD 413;
 Rakesh Kumar Minor u/g Smt. Shanti Devi v. Board of Revenue, 1972 SCC OnLine All 81 : 1972 RD 326;
 Shri Ram v. Deputy Director of Consolidation, 2011 SCC OnLine All 417 : (2011) 112 RD 734;
 Madan Mohan Mishra v. Chandrika Pandey (Dead) by Lrs., (2009) 3 SCC 720;

List of Acts

Constitution of India;
 U.P. Zamindari Abolition and Land Reforms Act, 1950;
 U.P. Consolidation of Holdings Act, 1953;
 Registration Act, 1908.

List of Keyword

Partition; Will; Registration of Will; Agricultural land; Section 169(3) U.P. Zamindari Abolition and Land Reforms Act, 1950; Life estate; Bhumidhar with transferable rights; Consolidation proceedings; Section 49 U.P. Consolidation of Holdings Act, 1953; Bar of jurisdiction; Question of title; Defence based on Will; Co-sharer; Moiety; Final consolidation records; Restoration of Trial Court decree.

CASE ARISING FROM

Challenge to the judgment passed by the Board of Revenue, U.P., allowing the second appeal, setting aside the appellate decree of the Additional Commissioner and restoring the preliminary decree passed by the Sub-Divisional Officer in a suit for partition under Section 176 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

Appearances for Parties

Advs For Petitioner: Shashi Kant Shukla
 Advs For Respondents: Udayan Nandan (for respondent No. 1/1); Sanjay Kumar Ray (Standing Counsel for respondents Nos. 3 & 4)

(Delivered by Hon'ble J.J. Munir, J.)

This is a defendant's writ petition arising out of a suit for partition under Section 176 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short, 'ZA & LR Act').

2. The suit for partition was instituted by Smt. Parwati, widow of Ram Narain, against Ramgopal, her late husband's brother, claiming a half share in the suit property (hereinafter referred to as 'land in dispute') on foot of a bhumidhari right that she inherited from her late husband, Ram Narain, upon his demise. She sought a decree of partition and separate possession of her half share. A written statement was filed by Ramgopal before the Sub-Divisional Officer, where the suit has been instituted, resisting the plaintiff's claim on ground that Parwati was not Ram Narain's lawfully wedded wife, and for the said reason, through a devise made by Ram Narain, Parwati was given a life estate alone in the land in dispute. She had no right to seek partition or separate possession. A copy of Ram Narain's Will dated 10.01.1961 was filed along with the written statement and a typewritten copy thereof has been annexed to the writ petition.

3. The Trial Court framed the following issues (translated into English from Hindi) :

(1) Whether the plaintiff, Parwati, and defendant No.1, Ramgopal, are co-tenure holder bhumidhar in possession of the land in dispute?

(2) What are the shares of the plaintiff, Parwati, and defendant No.2 (sic), Ramgopal, in the disputed land?

(3) To what relief is the plaintiff entitled?

(4) Whether the plaintiff has the right to seek partition?

(5) Whether the plaintiff has the right to alienate the land in dispute by Gift, Will, Mortgage etc.?

(6) Whether the defendant's case is barred by Section 49 of the Consolidation of Holdings Act?

(7) Whether the document mentioned in paragraph No.14 of the W.S. is forged and illegal?

4. The Trial Court answered Issue No.1 in the affirmative; Issue No.2, holding that the plaintiff and the defendant had a half share, as recorded during the consolidation proceedings; Issues Nos.3 and 4 have been decided together in terms of the remark that the plaintiff is a recorded co-tenure holder and there is nothing written in the Will about partition. The answer to the issues is not explicit; Issue No.5 has been answered holding that since the plaintiff is a bhumidhar with transferable rights, she has every right to alienate, but if the Will were proved, the right would end; Issue No.6 has been answered, holding that the suit is not barred by Section 49 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (for short, 'the CH Act'); and, Issue No.7 has been decided, holding that though it was not necessary for the Will to be registered, but the fact that for 33 years, after its execution, no rights were asserted on the basis thereof, renders it suspicious. There is a remark to the effect also in answering this issue that there is nothing said about division of crops. The Trial Court held that the plaintiff had a half share in the land in dispute and passed a preliminary decree to that effect on 28.02.1994.

5. The defendant, Ramgopal, carried an appeal to the Commissioner, Kanpur Division, Kanpur from the preliminary decree passed by the Sub-Divisional Officer. This appeal came up for hearing before the Additional Commissioner, Kanpur Division, Kanpur, being Appeal No.127 of 1994 on 20.01.1995. It was allowed by the Additional Commissioner and the suit dismissed.

6. The plaintiff carried a second appeal to the Board of Revenue, U.P. at Allahabad, which was registered as Second Appeal No.35 of 1994-95 before the Board. The Board, by the judgment and decree impugned dated 14.01.2016, allowed the second appeal, set aside the Additional Commissioner's decree and restored that of the Trial Court.

7. Aggrieved, this writ petition has been instituted by the heirs and LR's of the defendant, Ramgopal under Article 226 of the Constitution. It need be mentioned here that Ramgopal, the original defendant, apparently passed away sometime after the judgment in the second appeal was delivered or after it was reserved by the Board, and before the institution of this writ petition. His heirs and LR's have, therefore, instituted this writ petition, representing his estate and are arrayed as petitioner Nos.1/1 to 1/5/2. The heirs of Ramgopal, who have actually instituted this writ petition in his right, are seven in number and shall be collectively referred to as 'the defendant', unless the context requires otherwise.

8. The plaintiff, Parwati, passed away pending the second appeal before the Board and her heir and LR, Smt. Kamla Kushwaha, was substituted on record. Here, Smt. Parwati's estate is represented

by respondent Nos.1/1, Smt. Kamla Kushwaha, her LR, heir and daughter. Parwati, represented by her L.R., shall be called, "the plaintiff".

9. Heard Mr. Shashi Kant Shukla, learned Counsel for the defendant, Mr. Udayan Nandan, learned Counsel appearing on behalf of the plaintiff and Mr. Sanjay Kumar Ray, learned Standing Counsel appearing on behalf of respondents Nos. 3 and 4, representing the State. No one appeared for the Gaon Sabha.

10. Upon hearing learned Counsel for parties, what we find is that the remark in the judgment of the Board of Revenue that the Will was not registered tends to show that the Board overturned the judgment of the Additional Commissioner on the premise that an unregistered Will created no rights in favour of the legatee.

11. A reading of the provision to Section 169 of the ZA & LR Act shows that under the unamended provisions of Section 169(3) of the ZA & LR Act, all that was required is that the Will had to be made in writing and attested by two witnesses. When we say unamended here, we mean to refer to Section 169(3) of the ZA & LR Act as it stood before the amendment made by U.P. Act No. 27 of 2004 with effect from 23.08.2004. It was with effect from 23.08.2004 that U.P. Act No. 27 of 2004 amended sub-Section (3) of Section 169 of the ZA & LR Act to provide that a Will relating to agricultural land governed by the said Act had to be in writing, attested by two witnesses and registered. The requirement of registration, therefore, came in with effect from 23.08.2004. There was no such requirement earlier.

12. In the present case, the Will is a document dated 10.01.1961 and the testator, Ram Narayan son of Lallu died some time before 28.07.1992, as the written statement was filed on that date in the suit before the Sub-Divisional Officer, taking a defence based on the Will of 1961.

13. The difference of opinion between the two learned Judges of this Court **In re-Sobhnath Dube; In the Matter of the Goods of Late Kashinath Dube, 2015 SCC OnLine All 7548: 2015 (128) RD 507** on one hand, and, that in *Jahan Singh v. State of U.P. and others*, AIR 2017 All 247, on the other, about the retrospective application of the amended provisions of Section 169(3) of the ZA & LR Act to a will executed before the amendment, but which takes effect later after U.P. Act No.27 of 2004 came into force, would not be at all relevant in this case. The reason is that the Will was one dated 10.09.1961 and the testator died some time before 28.07.1992. The result would be that the Will would take effect before U.P. At No. 27 of 2004 came into effect on 23.08.2004. Therefore, so far as the Will, that is subject matter of action here, is concerned, there can be no cavil that it never required compulsory registration by dint of the amended provisions of sub-Section (3) of Section 169 of the ZA & LR Act.

14. Much later, a Division Bench of this Court in *Pramila Tiwari v. Anil Kumar Mishra*, AIR 2024 All 227 held the provisions of Section 169(3) of the ZA & LR Act, as amended by U.P. Act No.27 of 2004, to the extent these provided for compulsory registration of wills relating to agricultural land, void on ground that these were repugnant to Section 17 read with Section 40 of the Registration Act, 1908, a central legislation. Therefore, on any view

of the law applicable, the Will, subject matter of action here, is not required to be compulsorily registered. The Board of Revenue in proceeding on the premise that the unregistered Will here is not legally enforceable, a finding that has been recorded rather in the passing and in words lacking certitude, cannot be countenanced. The Will dated 10.01.1961 does not require compulsory registration by dint of Section 169(3) of the Act of 1950. It is held, accordingly.

15. Admittedly, the testator in this case Ram Narain, a bhumidhar with transferable rights, could devise a life estate in favour of his wife, Smt. Parwati with a reversion to his blood relatives. The principle that a bhumidhar can bequeath his bhumidhari rights by Will, granting a limited right and a lifetime interest to the legatee in view of the law laid down by the Supreme Court in **Jagan Singh (Dead) through LRs v. Dhanwanti and another, (2012) 2 SCC 628**, is well settled. The Will in this case, propounded by the defendant, if proved in accordance with law, cannot be held an invalid bequest on ground that it grants a lifetime estate alone to the legatee, Ram Narain's widow, under Section 169(3) of the ZA & LR Act.

16. This brings us to the most important question, whether the defendant's defence in the suit that the Will dated 10.01.1961, being one granting a life estate to the plaintiff, Parwati, did not entitle her to seek partition, was open to be determined by the Revenue Court, the said claim never being raised during consolidation proceedings held under the CH Act. There is no cavil that there were consolidation operations in the village that went through full course and came to be de-notified under Section 52 of the CH Act

before the suit was instituted. In those proceedings, the plaintiff, Parwati, was recorded in the khata, along with Ramgopal, as bhumidhar to the extent of a half share or a moiety.

17. In the supplementary counter affidavit, a copy of the CH Form 41, relating to Mauza Tajpur, has been filed as Annexure No. SCA-1. In the joint khata of parties, Parwati widow of Ram Narain and Ramgopal son of Lallu, are recorded in Column 8 as bhumidhar to the extent of a half share each. Final consolidation forms were drawn on this basis. CH Form 41 and CH Form 45 are also annexed to the supplementary counter affidavit. A perusal of CH Form 45 again shows that in the joint khata of parties, Parwati widow of Ram Narain and Ramgopal son of Lallu are recorded as co-sharers. The two apparently hold a half share each in the khata. In the six yearly khatauni for the fasli years 1389-1394 again Parwati widow of Ram Narain and Ramgopal son of Lallu are recorded as bhumidhar alone, giving rise to the inference that the two of them hold a half share in the khata that Parwati inherited from her husband, Ram Narain.

18. It is true that Ram Narain inherited the land in dispute from his father, Lallu, along with his brothers. There is no concept of a Joint Hindu family property in tenure land governed by the ZA & LR Act. The ZA & LR Act predicates a uniform civil code for all citizens and, therefore, a bhumidhar, upon the demise of his predecessor-in-title, succeeds to the bhumidhari as his own property and not one that is a Joint Hindu family property or coparcenary. At the same time, a bhumidhar, who has inherited property from his predecessors, can devise by Will a limited estate, as claimed to be done in the

present case, in Parvati's favour, by Ram Narain.

19. The question that then arises is, if during consolidation operations, Parvati, who was admittedly recorded as a co-sharer along with her deceased husband's brother, Ramgopal, in the khata, was not challenged about her right by filing an objection under Section 9 of the CH Act, questioning her rights as a bhumidhar recorded to the extent of a half share by Ramgopal, can Ramgopal now say that she has a life estate alone under Ram Narain's Will, when she seeks partition. There is admittedly nothing to show in the rights recorded during consolidation, or right through the proceedings under the CH Act, until the drawing up of the final consolidation records that might suggest that Parvati had a life estate alone as a bhumidhar.

20. It was submitted with formidable force by Mr. Shashi Kant Shukla that a co-sharer during consolidation, who is at peace with others, would not oblige those others to file objections under Section 9 of the CH Act and seek partition of the khata upon pain of losing their right to partition on account of the bar under Section 49 of the CH Act. The reason is, as Mr. Shukla rightly submits, that co-sharers, who are living at peace during consolidation proceedings, would not lose their right to seek partition at a later point of time, when the animus to separate comes into existence. A partition suit by one of the co-sharers, who have remained joint with their share recorded during consolidation proceedings, until denotification under Section 52 of the CH Act, would have a right at any time to seek partition and sue for it. We agree that a suit for partition by a co-sharer of a joint holding, that has suffered

consolidation under the CH Act, would not be barred by Section 49.

21. In support of his submission, Mr. Shukla has placed reliance upon a Bench decision of this Court in **Ram Briksha v. Dy. Director of Consolidation and others, 2017 SCC OnLine All 4417: 2017 (6) ALJ 610**. Reference was made to a Larger Bench by a learned Single Judge, where three questions, directly bearing on the issue, were involved. These questions were answered in **Ram Briksha** (supra) in the following terms :

Issue No. I

63. *Whether use of words "could or ought to have been taken" in latter part of Section 49 of the Act, compulsorily forces the co-sharers, who are living jointly, peacefully and have no grievance against their father/brother/co-sharer, whose name is recorded in representative capacity, or they were willing to live jointly, due to situation of their family, i.e. (father and minor son), (mother and minor son), (brother and minor brother) and (some co-sharer was student and had gone abroad for study and fully depends upon other co-sharers) etc., to file an objection under Section 9 of the Act for separation of his share?*

A. Because of the words "could or ought to have been taken" in latter part of Section 49 of the Act, same does not compulsorily force the co-sharers, who are living jointly, peacefully and have no grievance against their father/brother/co-sharer whose name is recorded in representative capacity or they were willing to live jointly due to situation of their family and who have not filed an objection under Section 49 of the Act for separation of their share inasmuch as

under the provisions of U.P. Consolidation of Holdings Act, 1953, it is the statutory obligation cast upon the authorities and the incumbent, who has been holding the property in question in the representative capacity to get the records corrected and in case in designed manner the obligation in question has not been discharged by Consolidation Authorities as well as by the incumbent holding the property in the representative capacity, men in such a situation Section 49 of the Act would not at all be attracted and such situation would be covered under the contingency of planned fraud to drop the name of other co-sharers from the revenue records.

Issue No. II

64. Whether by operation of law, the parties can be thrown into litigation against their will need and by not raising claim to land or partition and separation of the chak their right to property can be taken away in spite of protection available under Article 19(1) (f) and now Article 300-A of the Constitution?

A. The answer is that a party cannot be thrown in litigation against their will/need and by not raising claim to land of, partition and separation of chak, their rights to property cannot be taken away under the protection provided for under Article 19(1)(f)/Article 300-A of the Constitution of India.

Issue No. III

65. Whether, in spite of well settled legal principle in respect of joint property, right of a co-sharer will come to an end under Section 49 of the Act, on the notification under Section 52, due to not claiming partition of his share and separate chak in his name, although,

mere had been no ouster from joint property?

A. The rights of the co-sharers will not at all come to an end under Section 49 of the Act, on the notification under Section 52 due to not claiming partition of his share and separate chak in his name and till there is no ouster from the joint property his right in the property will continue to exist.

22. The position of the law, which Mr. Shukla emphasizes, is well settled and he is right in stating the principle that he urges, but the question is that this is not a case, where the plaintiff has been non-suited because she did not file objections under Section 9 of the CH Act. There was not even an issue, if her suit seeking partition is barred by Section 49 of the CH Act. To the contrary, Issue No.6, framed here, is not about the suit for partition being barred by Section 49, but the defendant's defence, based on the Will, being barred under the aforesaid provision.

23. There is little cavil that if Parwati and Ramgopal did not file objections under Section 9 of the CH Act while the consolidation operations were current and before the denotification under Section 52, because they did not want to partition at that time, the plaintiff's cause of action to sue for partition, when one of the co-sharers intended to separate, cannot be held barred by Section 49. But, this is a case where applying these principles are besides the point. It is not a simple case where parties have a moiety in the joint khata, which the plaintiff wants partitioned.

24. To the contrary, there is an underlying dispute of pure title between parties, which has necessarily arisen during consolidation, but not objected to by the defendant. That dispute is that whereas the plaintiff says that she has inherited intestate a half share in the khata, being her deceased husband's share, Ramgopal, the defendant says that Parvati does not have an absolute bhumidhari estate to the extent of the moiety that she claims. He asserts that it is not an estate that she has inherited intestate from her husband, but one taken under the Will dated 10.01.1961. The Will has given her a life estate alone, as distinguished from an absolute and unlimited bhumidhari. The dispute, therefore, is not about the plaintiff's moiety in the joint khata, but the nature of her right, to wit, whether it is unlimited and absolute or just a life estate, which she cannot seek partition of or assign or bequeath.

25. Now, this is a pure question of title, which had to be raised during consolidation proceedings by the party, who thought that the nature of the other's estate was incorrectly recorded by the Consolidation Authorities. Even if one of the parties thought that the Consolidation Authorities did not err in recording the nature of their respective estates, it has to be seen the way the Consolidation Authorities have recorded the rights or shares of both parties, vis-a-vis the nature of their right and title in the khata. A plain reading of CH Form-11, which comes at a quite late stage of the consolidation proceedings, in this case shows that in the said CH Form, as already noticed, the plaintiff, Parvati, and defendant, Ramgopal, were shown in Column-8 as shareholders of a moiety.

26. Column 8 in CH Form-11 carries the following particulars, according to the specified form in the rules : The name of the tenure holder with details of shares if partitioned on the basis of shares. The entry of a half share in Column 8 for the plaintiff and the defendant clearly shows that the two of them held a moiety each, though they might not have decided to partition by metes and bounds. That decision was taken much later, when the suit was filed.

27. However, in the nature of consolidation proceedings, title of a person has to be recorded. It is at the cynosure of these proceedings, quite apart from the creation of compact chak. It is for this reason that all issues of title, amongst the chak holders, that arise during consolidation, have been entrusted exclusively to be decided under the CH Act, be it Section 9-A or 12 thereof. The same position about the plaintiff and the defendant holding a moiety each in the khata is reflected in C.H. Form 45, again, subject to the right of the parties to seek a partition of their share, whenever they willed.

28. The jurisdiction is all encompassing. It is also much settled for a principle that a dispute relating to title about tenure land covered by the ZA & LR Act, if not raised after the issue of a notification under Section 4(1) of the CH Act, cannot, afterwards, be raised. Section 49 of the CH Act envisages a constructive bar to the adjudication of rights by a Civil or Revenue Court, not limited to rights arising out of consolidation proceedings, but the declaration and adjudication of the rights of tenure holders in respect of land falling in an area, for which, a notification under Section 4(2) of the CH Act has been issued. In fact, in the scheme of things, the

CH Act envisages a final settlement of all rights relating to land of a tenure holder, which is subject to consolidation proceedings, also constructively, if not raised, before proceedings for carving of compact chak commence.

29. One of the early and most eloquent authorities on the point is **Rishal Singh v. Board of Revenue, U.P., Alld. and others, 1969 SCC OnLine All 394 : 1970 RD 413**. In **Rishal Singh** (supra), it was held by Hari Swarup, J. :

5. Section 49 of the U.P. Consolidation of Holdings Act/hereinafter referred to as the Act) provides that notwithstanding anything contained in any other law for the time being in force the declaration of adjudication of rights of tenure-holders in respect of land lying within an area for which a notification has been issued under Section 4 or adjudication of any right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue Court shall entertain any suit or proceeding with respect to right in such land or with respect to any other matters for which the proceeding could or ought to have been taken under this Act'. Interpreting this section along with Section 5 of the Act, the Supreme Court in the case of *Ram Adhar Singh v. Ram Roop Singh* ([1968 A.W.R. 14 SC.]) held: 'Section 49 excludes the jurisdiction of Civil Courts to entertain any suit or proceeding with respect to rights in respect of lands covered by the notification, under Section 4, or with respect to any other matter for which a proceeding could or ought to have been taken under the Act'. Admittedly the opposite parties could have

taken the plea before the consolidation authorities under Sections 9 and 9-A of the Act to the effect that they were the exclusive owners of the plots and that the petitioner had no right therein. It is also not denied that no such action was taken. The adjudication on this point is therefore, barred by the provisions of Section 49 of the Act. Section 9-A(1)(ii) provides that where no objections are filed the Asstt. Consolidation Officer shall, after making such enquiry, as he may deem necessary, correct the mistakes. Section 10 of the Act deals with the preparation and maintenance of the revised annual register in accordance with the order passed under Section 9-A of the Act. Any order passed under Section 9-A of the Act is appealable under Section 11 of the Act and the same becomes final and not liable to be questioned in any court of law. If no appeal is filed the order of the Asstt. Consolidation Officer remains final. Subsection (3) of Section 9-A provides that the Asstt. Consolidation Officer while acting under sub-section (1) of Section 9-A of the Act shall be deemed to be a court of competent jurisdiction notwithstanding anything contained in any other law. It may be that the Asstt. Consolidation Officer is not a court in the strict sense of the term but for the purposes of determining the rights of the parties to the land which is brought under consolidation he is deemed to be a court and any order passed by him directing the making of corrections or not ordering any corrections in the event it is not necessary will be deemed to be final and not questionable in any civil or revenue court. This is the effect of Section 49 read with Section 5 of the Act.

6. After the proceedings under Section 9-A of the Act are over, the land which is subject to consolidation scheme is brought into the common consolidation

pool and thereafter the land distributed to various persons who have contributed to the pool. The Chaks are thereafter formed and proceedings are taken for finalisation of the chaks. After the Chaks are ultimately formed information is given by form No. 25 and thereafter the entries are made in the revenue records under Section 27 of the Act and form No. 45 is prepared to show the names of the parties and the consolidated areas which they have been allotted. After the consolidation comes to an end the rights of the parties get crystallised and new areas get allotted to the Chak-holders. These also become final.

30. In **Rakesh Kumar Minor u/g Smt. Shanti Devi v. Board of Revenue, U.P. and others, 1972 SCC OnLine All 81 : 1972 RD 326**, it was held by Satish Chandra, J. (as the learned Chief Justice then was), speaking for the Division :

6. Sec. 49 by its first clause declares that adjudication of rights of tenure-holders shall be done in accordance with the provisions of the Consolidation of Holdings Act while the second clause thereof debars civil or revenue court from entertaining any suit or proceeding with respect to rights which could or ought to have been so adjudicated. The defence in the present suit raises a question as to adjudication of right with respect to the plots in dispute. Such a defence cannot be entertained by the revenue court if "a proceeding could or ought to have been taken under the Act" with respect to the rights now sought to be questioned.

7. When Consolidation proceedings commenced the plaintiff was entered as a co-tenant. The defendant did not say that they were unaware of the consolidation proceedings or the state of entries at that time. Har Swarup had died

in 1936. The cause of action for adjudication of the question whether his widow inherited any share in the family properties arose on his death. After his death the defendant could have instituted a suit for the adjudication of the plaintiff's title. On commencement of Consolidation proceedings he could have raised a dispute about it by filing an objection under Sec. 9 of the Act. There is nothing upon which it could be held that the defendant could not have taken proceedings under the Act for the adjudication of the plaintiff's right or title. If he could, then Sec. 49 bars the civil or Revenue court from entertaining such a question of title.

8. The plaintiff's suit is of course not barred because it proceeds to enforce the entries made in Consolidation proceedings. The cause of action for the present suit arose after the closure of the consolidation proceedings, as is apparent from the plaint. The plaint is not asking for any disturbance of the entries made during the Consolidation operations. It is the defence which raises questions the acceptance of which will mean the setting aside and cancellation or ignorance of the entries made in consolidation proceedings; and that is, under the circumstance of the case, not permissible. Sec. 49 was a clear bar to this plea in defence.

31. Much later in the day, in **Shri Ram and others v. Deputy Director of Consolidation, Allahabad and others, 2011 SCC OnLine All 417 : (2011) 112 RD 734**, one of the questions, that were referred for consideration to the Division Bench by a learned Single Judge, was to the following effect :

(IV) Whether the provisions of the U.P. Consolidation of Holdings Act have an over riding effect over all other Acts for

the time being in force keeping in view the provisions of Section 49 and have the exclusive jurisdiction to decide right, title and interest of claimants relating to land tenures upon a notification under Section 4 or not?

32. In answering Question No. IV, it was opined by their Lordships of the Division Bench in **Shri Ram** (supra) :

As noted above, Section 5(2) of the Act, 1953 provides for abatement of all proceedings for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land laying in the area, or for declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference of revision.

A plain reading of Section 49, indicates that after the issuance of notification under sub-section (2) of Section 4 for declaration and adjudication of right of tenure-holder or adjudication of any other right, the forum is the consolidation court and no Civil or Revenue Court shall entertain any suit or proceedings with respect to rights in such land.

Section 49 of the Act, contains two prohibitions, firstly for an area which has been notified under sub-section (2) of Section 4, no Civil or Revenue Court shall entertain any suit or proceedings during currency of notification under Section 4(2) and secondly, even after consolidation proceedings are over, no civil or revenue court shall entertain any suit or proceedings in respect of rights in such land for which a proceeding could or ought to have been taken under this Act.

Section 49 of the Act, 1953 came up for consideration before this Court and the Apex Court in several cases.

The judgment of the Apex Court in Sita Ram v. Chhota Bhonde, 1990 RD, 439 had elaborately considered Section 49 of the Act, 53. Following was laid down by the apex Court in the aforesaid judgement.

“From a perusal of Section 49 it is evident that declaration and adjudication of rights of tenure-holders in respect land lying in an area for which a notification has been issued under Section 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to any other matter for which a proceeding could or ought to have been taken under the Act, has been taken away. The language used in Section 49 is wide and comprehensive. Declaration and adjudication of rights of tenure-holders in respect of land lying in the area covered by the notification under Section 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, would cover adjudication of questions as to title in respect of the said lands. This view also finds support from the other provisions of the Act and the amendments that have been introduced therein.”

33. This question was also considered by the Supreme Court in **Madan Mohan Mishra v. Chandrika Pandey (Dead) by Lrs.**, (2009) 3 SCC 720. Though the facts in **Madan Mohan Mishra** (supra) show that after issue of notification under Section 4 of the CH Act had attained finality and

the plaintiff, who was appellant before the Supreme Court, filed another suit for a decree of injunction, and, in the alternative, for the recovery of possession, the bar under Section 49 of the CH Act was held all encompassing. It was remarked by the Supreme Court in **Madan Mohan Mishra** :

20. Jurisdiction of the civil court not only in respect of the matters which are specified therein but also the matters which could and ought to have been the subject-matter of the proceedings under the said Act is barred. The words of the said section are absolutely clear and unambiguous.

23. In Audhar v. Chandrapati [(2003) 11 SCC 458] a Division Bench of this Court upon noticing Section 49 of the 1953 Act, opined that Section 49 of the 1953 Act confers exclusive jurisdiction under the Act and the jurisdiction of the civil court is barred, stating: (SCC pp. 463-64, paras 17-19)

“17. ... The authorities under the Consolidation Act of 1953 could justifiably conclude their proceedings under that Act despite pendency of second appeal against the order of the first appellate court declaring the proceedings in the civil suit to have abated.

18. We find that the main issue on facts is concluded against the appellants. The lands in the khatas in question are found to be tenancy lands of the classes 'bhumidhari' and 'sirdari'. They are not sir or khudkasht lands. Under the special mode of succession provided under the tenancy law widow Akashi inherited absolute title to 1/4th share of her husband and she could execute a valid gift deed in favour of her daughters.

19. The present legal position as it stands during pendency of the second appeal before the High Court is that the

civil court's decree declaring the gift deed as invalid has not attained finality because during pendency of proceedings before the first appellate court after remand by the High Court, proceedings under the Consolidation Act of 1953 had commenced and the jurisdiction of the civil court stood ousted. We, therefore, find no merit in any of the contentions advanced on behalf of the appellants.”

24. Yet again in Narender Singh v. Jai Bhagwan [(2005) 9 SCC 157] this Court, upon noticing GND, stated the law, thus: (SCC p. 160, paras 10-11)

“10. The learned counsel for the respondents is right in his reply that the lands being exclusively recorded in the name of the father, the sons who claim joint ownership in the lands could and ought to have approached the authorities under the Act for getting them jointly recorded in the revenue papers. Such proceedings for recording them as joint owners having not been initiated under the Act of 1953, the High Court was right in invoking bar against such plea in the suit in accordance with Section 49 of the Act. We find that the contention advanced and accepted by the High Court gets full support from the following observations of this Court in Sita Ram [Sita Ram v. Chhota Bhone, 1991 Supp (1) SCC 556] : (SCC p. 564, para 13)

‘13. In the instant case Respondent 1 was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions

assigned to the consolidation authorities under the Act the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act and the suit of the appellant was rightly dismissed on that ground.'

11. The argument that revenue entry in the name of the father should have been treated as in representative capacity for the sons is misleading. Whether the father was karta and manager of the family and as such could be recorded in representative capacity for all co-owners in the family was also a question of title which fell within exclusive jurisdiction of the authorities under the Act."

25. The jurisdiction of the civil court, therefore, is clearly barred as it is evident that subject-matter of both the suits is agricultural lands only. It is not, therefore, necessary for us to go into the question with regard to the effect of a prayer made in a suit for setting aside the deed of gift in terms of Section 31 of the Specific Relief Act, 1963 or otherwise.

34. What, therefore, in our opinion, bars the jurisdiction of the Revenue Court into examining the nature of parties' right, title and interest in the land in dispute is the fact that the defendant, who propounds the Will to establish a life estate for the plaintiff, never did so during consolidation proceedings, when he could and ought have done it, attracting the bar under Section 49 of the CH Act. While the suit would not be barred for the relief of partition in accordance with the determination of shares made by the Consolidation Authorities, reflected in the final consolidation forms and other proceedings, it would not be open to the Revenue Court to investigate and determine the nature and extent of the plaintiff's title on the basis of

Will dated 10.01.1996 that the defendant propounds to limit the plaintiff's interest to a life estate in the land in dispute. The Revenue Court's jurisdiction to investigate the extent of the plaintiff's right and title to the land in dispute, based on the Will propounded by the defendant, would be barred by Section 49 of the CH Act.

35. As already remarked, the suit for partition of the parties' shares in accordance with the determination made by the Consolidation Authorities can proceed and a final decree too can be passed in accordance with the preliminary decree. The Board of Revenue has, therefore, committed no error in restoring the Trial Court's decree.

36. No other point was pressed.

37. In the result, this petition **fails** and stands **dismissed**.

38. There shall be no order as to costs.

(2025) 12 ILRA 592

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 16.12.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 1647 of 2025
& other cases

**Centre for Management Technology,
Gautam Buddha Nagar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents**

ISSUE FOR CONSIDERATION

(i) Whether the claim of the petitioner institutions for reimbursement of fee and scholarship for the academic sessions 2013-14, 2014-15 and 2016-17 was barred by limitation;

(ii) Whether the objection of lapse of budgetary allocation and absence of claims by students disentitles the petitioners from reimbursement; and

(iii) Whether the petitioners are entitled to interest on delayed payment of scholarship and fee reimbursement and, if so, at what rate.

HEADNOTE

Uttar Pradesh *Anusuchit / Anusuchit Janjati / Samanya Varg / Alpsankhyak / Pichhdi Jati Dashmottar Chhatravritti Yojna*, 2012 – Fee reimbursement and scholarship – Writ petitions seeking payment of scholarship and reimbursement of fee for academic sessions 2013-14, 2014-15 and 2016-17 – Scholarship withheld on the ground of pendency of inquiry – Inquiry admittedly concluded and no allegation established against the petitioners – Authorities acknowledging liability and raising demand for allocation – Subsequent rejection of claim by State Government – Objections raised regarding limitation, lapse of budgetary allocation, absence of student claims and scheme providing for transfer of scholarship to students' bank accounts – Claim of interest on delayed payment.

HELD:

Claim of the petitioners was held not barred by limitation. District Social Welfare Officer had sent letters stating that a demand for allocation of the amount had been raised and that as soon as the amount is received from the State Government, the amount will be transferred to the bank accounts of the students, which amounted to a clear and categorical admission regarding liability of payment. Under the scheme, the limitation period would start running after the scholarship amount is transferred to the bank accounts of the students, which admittedly was not done and therefore the claim has not become barred by limitation and is still continuing.

Objection regarding lapse of budgetary allocation rejected. State Government ought to have made payment of the amount of scholarship as per the prescribed timeline and the delay was **not attributable to the petitioners**. Denial of payment on the ground of delay, when the inquiry stood concluded and no one was found guilty, would amount to

punishing the petitioners for a wrong which has not been committed by them, which is impermissible. It is a **basic principle of dispensation of justice that no person can be punished for a wrong which he has not committed**.

Mere fact that students have not come forward to challenge non-payment of scholarship money will not take away the petitioners' right to claim payment of the amount of fee, when the petitioners had taken admission of the students under the scheme **without charging any fee**, imparted education for the full course duration and the students had completed their studies. Petitioners were suffering losses due to non-payment of scholarship to the students, who in turn would have paid the amount to the petitioners.

On the question of interest, held that **interest is not a penalty or punishment at all, but is the normal accretion on capital**. When a person is deprived of the use of his money to which he is legitimately entitled, **he has a right to be compensated for the deprivation**.

However, the claim of compound interest at the rate of 18% per annum was held to be not justified. Interest directed to be paid **at the maximum rates prevailing in nationalised banks on fixed deposits**. Impugned office memorandum dated 15.01.2025 quashed and writ of mandamus issued directing payment of fee reimbursement along with interest. Writ petitions allowed. [Paras 15, 16, 17, 21, 22, 23 & 24] (E-5)

CASE LAW CITED

Dr. Purnima Advani v. Govt. of NCT of Delhi, (2025) 7 SCC 269;

List of Acts

Uttar Pradesh *Anusuchit / Anusuchit Janjati / Samanya Varg / Alpsankhyak / Pichhdi Jati Dashmottar Chhatravritti Yojna*, 2012

List of Keyword

Scholarship; Fee reimbursement; Limitation; Acknowledgment of liability; Continuing cause of action; Budgetary allocation lapsed; Restitution; Interest as accretion on capital; State default.

CASE ARISING FROM

From the office memorandum dated 15.01.2025 passed by the State

Government rejecting reimbursement of fee and scholarship.

Appearances for Parties

Advs For Petitioner: Apoorva Tewari, Shivang Tiwari, Vinod Kumar Singh, Balbir Singh, Paavan Awasthi.

Advs For Respondents: C.S.C.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Apoorva Tewari, the learned counsel for the petitioners, Sri S.K. Khare, the learned Standing Counsel appearing on behalf of the State of U.P. and perused the records.

2. The petitioner-C-MAT Business School has filed petition bearing Writ-C No. 8584 (M/S) of 2018 and Centre for Management and Technology has filed Writ Petition No. 8585 (M/S) of 2018 seeking issuance of a Writ of Mandamus commanding the opposite parties to make payment of scholarship and fee reimbursement to them for the students admitted in the institution for the courses mentioned in para 4 of the writ petitions for the academic sessions 2013-14, 2014-15 and 2016-17 in consonance with the provisions contained in Uttar Pradesh Anushuchit / Anusuchit Janjati / Samanya Varg / Alpsankhyak / Pichhdi Jati Dashmottar Chhatravritti Yojna, 2012.

3. On 28.09.2021, an order was passed in Writ Petition Nos. 8584 & 8585 recording that the fee reimbursement for the session 2013-14 had not been made to the petitioners without assigning any reason. In regard to academic sessions 2014-15 and 2016-17, show cause notices had been issued to the petitioners and they had submitted replies to the notices but no decision had been taken thereon. The learned Standing Counsel was granted time to seek instructions in the matter

whether the inquiry had been concluded and why the money allocated for the year 2013-14 had not been paid to the petitioners. On 14.03.2022, this Court granted two weeks further time to the learned Standing Counsel directing for filing a specific affidavit indicating:-

A. As to why the scholarship for the year 2013-14, 2014-15 and 2016-17 had not been paid?

B. As to whether any inquiry was pending for the purpose of scholarship reimbursement for the aforesaid years and if not

C. what was the impediment in reimbursement of the scholarship for the aforesaid years?

4. The Deputy Director, Directorate Social Welfare, U.P. filed a supplementary affidavit stating that in the year 2013-14, there were certain complaints regarding financial irregularities that took place in the year 2012-13. Therefore, the amount allocated for the year 2013-14 could not be disbursed and it lapsed. The supplementary affidavit specifically stated that the inquiry against the petitioners' institution has been conducted by a committee headed by the Additional District Magistrate. The Committee submitted its report on 07.05.2015. Another inquiry pertaining to the year 2016-17 had also been completed by the District Statistical Officer, Gautam Budh Nagar, Noida and no inquiry was pending against the petitioners thereafter. The inquiry report mentions that no allegation could be established in inquiry. Therefore, there is no allegation that any irregularity or illegality has been committed by any of the petitioners.

5. It was also stated in the supplementary affidavit that the Director, Social Welfare had sent a letter dated

26.05.2022 to the State Government for reimbursement of the amount of scholarship but the State Government rejected the request by means of a letter dated 14.06.2022. A copy of the letter dated 14.06.2022 written by the State Government to the Director Social Welfare was annexed with this supplementary affidavit.

6. Thereafter orders were passed in Writ Petition Nos. 8484 and 8485 (M/S) of 2018 granting liberty to the petitioners to challenge the order dated 14.06.2022. The petitioners accordingly filed Writ C Nos. 4838 of 2024 and 4836 of 2024 challenging validity of the order dated 14.06.2022 passed by the State Government. Both the writ petitions were disposed off by separate orders passed on 29.05.2024 on identical terms, setting aside the order dated 14.06.2022 for the reason that the order was not a reasoned order. The matter was relegated to the State Government to take a fresh decision after affording opportunity of hearing to the petitioners.

7. It is after the aforesaid remand, that the State Government has passed the impugned office memorandum dated 15.01.2025 which has been challenged by filing Writ C Nos. 1647 of 2025 and 1668 of 2025.

8. The order states that the scheme provides for transfer of the amount of scholarship to the bank accounts of the beneficiary students directly and there is no provision for payment of scholarship amount to the institutions. The matter is quite old and there is every possibility that bank accounts of several students would not be in operation. In such circumstances, if the department transfers the amount of scholarship to the bank accounts of the

students, the transactions would fail. The order further states that no student has raised claim for payment of reimbursement of fee or payment of scholarship. The institutions are demanding payment of money due to which there is every possibility of mis-utilization of Government money.

9. The State has filed counter affidavits in both the writ petitions opposing the writ petitions mainly on two grounds - the first is that the scheme does not provide for payment of scholarship money to the institution and it provides for payment of amount by transferring the same to the bank accounts of the students, no student has come forward for claiming the scholarship amount and the petitioner institutions have no right to claim the payment directly; the second objection raised in the counter affidavit is that the matter is quite old, the budgetary allocation for payment of scholarship stands lapsed and presently there is no budgetary allocation for payment of the amount.

10. The Uttar Pradesh Anushuchit/Anusuchit Janjati Dashmottar Chhatravritti Yojna, 2012 provides that the students eligible to get benefits under the scheme will be admitted to the concerned educational institutions without paying any fee. The petitioners took admission of the students, imparted education to them for 4 years i.e. 2013-14, 2014-15, 2015-16 and 2016-17. Students were paid scholarship for the session 2015-16 only and no amount was paid as scholarship to the students for the years 2013-14, 2014-15 and 2016-17. The scheme provides that the students shall transfer the amount to the educational institutions within 15 days since its receipt in their bank accounts. The students received the scholarship amount for the

year 2015-16 and they in turn paid the same to the petitioner institutions. They did not get any amount as scholarship for the rest of the years and, consequently, they did not pay any amount towards fee to the petitioner institutions.

11. The petitioners had taken admission of the students under the scheme without charging any fee, they imparted education to the students who completed their respective courses and left the institutions. Having completed their education and having got their marks-sheets / certificates / degrees etc., the students are no more aggrieved by non-payment of scholarship. It is the petitioner institutions, who had to receive money after the same was paid as scholarship by transferring the same to the students bank account. Due to non payment of money by transferring the same to the students' account, the petitioner institutions could not get the money payable towards their fees although they have imparted education to the students for three academic sessions.

12. In these circumstances, the petitioners are aggrieved by non payment of scholarship amount by the State due to which reason the students did not pay fee to the petitioners and, therefore, the mere fact that students have not come forward to challenge non-payment of scholarship money, will not take away the petitioners' right to claim payment of the amount of fee when the petitioners have imparted education to the students admitted under the scheme, without charging any fee.

13. So far as the objection of the State regarding budgetary allocation having lapsed is concerned, the budgetary allocation is made on yearly basis. The State Government ought to have made

payment of the amount of scholarship as per the timeline prescribed in the government order dated 26.09.2012 i.e. by the 31st day of January of the particular year, or in any case, before the end of the respective financial years. The State Government itself committed default in payment of the amount within time or even thereafter by the end of the financial years. The reason assigned for non-payment of the amount was pendency of some inquiry which admittedly stood concluded wherein the petitioners have not been found guilty of committing any misconduct. In these circumstances, denial of payment of scholarship to the petitioners on the ground of delay, which delay is not attributable to the petitioners, will amount to punishing the petitioners for a wrong which has not been committed by them. It is basic principle of dispensation of justice that no person can be punished for a wrong which he has not committed.

14. The learned Standing Counsel has also opposed the writ petitions on the ground that the claim of payment of fee stands barred by the period of limitation as the scholarship for the year 2013-14 was payable on 31.01.2014 and the writ petition has been filed in the year 2025.

15. In reply to the aforesaid objection, the learned counsel for the petitioners has submitted that the District Social Welfare Officer, Gautam Budh Nagar had sent letters dated 24.07.2015 to the petitioners stating that a demand for allocation of the amount had been raised for the session 2013-14. As soon as the amount is received from the State Government, the amount will be transferred to the bank accounts of the students. This amounts to a clear and categorical admission regarding liability of payment of amount and this would refresh

the running of limitation. Writ Petition Nos. 8584 of 2018 and 8585 of 2018 were filed on 22.03.2018, which was within the limitation period.

16. Further, the scheme provided that the State Government would transfer the scholarship amount to the bank accounts of the students and the students will in turn pay the amount of fee to the petitioners within 15 days since receipt of the amount in their bank accounts. Therefore, the limitation period would start running after the scholarship amount is transferred to the bank accounts of the students, which has not been done in the present case. Therefore, this Court is of the considered view that the claim of the petitioner has not become barred by the limitation and it is still continuing.

17. In view of the aforesaid observation, I find no force in any of the objections raised by the learned Standing Counsel and since the only objection due to which the payment of scholarship was withheld, was that an inquiry was pending in the matter and the inquiry stands concluded in which no one has been found guilty, there is no impediment in payment of the amount of scholarship and fee reimbursement.

18. As the students have completed their studies without payment of any fee to the petitioners in anticipation of payment of scholarship, they have no grievance left and they have not come forward to claim the payment of scholarship and it is the petitioners who are suffering losses due to non payment of scholarship to the students, who in turn would have paid the amount to the petitioners, the petitioners are entitled to be paid the amount of scholarship and

fee of the students as per the details already uploaded by them on the official portal.

19. The petitioners have claimed compound interest at the rate of 18% per annum from the date the amount became due till the date of actual payment of the amount. The learned counsel for the petitioners has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Dr. Purnima Advani & Anr. v. Govt. of NCT & Anr.**: (2025) 7 SCC 269, wherein the Hon'ble Supreme Court has held as under: -

“14. The concept of awarding interest on delayed payment has been explained by this Court in Karnataka Bank v. RMS Granites (P) Ltd.: 2024 SCC OnLine SC 4695, we quote the following observations:

“16. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say ten years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B ten years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. [See: Alok Shanker Pandey v. Union of India: (2007) 3 SCC 545.]”

15. Thus, when a person is deprived of the use of his money to which he is legitimately entitled, he has a right to be compensated for the deprivation which

may be called interest or compensation. Interest is paid for the deprivation of the use of money in general terms which has returned or compensation for the use or retention by a person of a sum of money belonging to other.

16. As per Black's Law Dictionary (7th Edn.): "interest" is the compensation fixed by agreement or allowed by law for use or detention of money or for the loss of money of one who is entitled to its use, especially, the amount owned to a lender in return for the use of the borrowed money.

17. As per Stroud's Judicial Dictionary of Words and Phrases (5th Edn.): interest means, *inter alia*, compensation paid by the borrower to the lender for deprivation of the use of his money.

18. In *Irrigation Deptt., State of Orissa v. G.C. Roy*: (1992) 1 SCC 508, a Constitution Bench of this Court opined that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This is also the principle of Section 34 of the Civil Procedure Code.

19. The essence of interest as held by Lord Wright in *Riches v. Westminster Bank Ltd.*: 1947 AC 390 (HL), at AC p. 400, is that it is a payment, which becomes due because the creditor has not had his money at the due date. It may be recorded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use.

20. In *CIT v. Sham Lal Narula*: 1962 SCC OnLine Punj 35, a Division Bench of the High Court of Punjab articulated the concept of interest as under: (SCC OnLine Punj)

"The words "interest" and "compensation" are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, "interest" is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category "interest" in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money belonging to another, or for the delay in paying money after it has become payable."

(emphasis supplied by Supreme Court)

21. The appeal filed against the aforesaid decision was dismissed by this Court in *Sham Lal Narula v. CIT*: 1964 SCC OnLine SC 151.

22. In *Hello Minerals Water (P) Ltd. v. Union of India*: 2024 SCC OnLine All 2187, a Division Bench of the Allahabad High Court explained the concept of interest as under:

"31. We may mention that we are passing the direction for interest since interest is the normal accretion on capital.

32. Often there is misconception about interest. Interest is not a penalty or punishment at all. For instance, if A had to pay a certain sum of money to B at a particular time, but he pays it after a delay of several years, the result will be that the money remained with A and he would have earned interest thereon by investing it

somewhere. Had he paid that amount at the time when it was payable then B would have invested it somewhere, and earned interest thereon. Hence, if a person has illegally retained some amount of money then he should ordinarily be directed to pay not only the principal amount but also the interest earned thereon.

33. Money doubles every six years (because of compound interest). Rupees hundred in the year 1990 would become rupees two hundred in the year 1996 and it will become Rs 400 in the year 2002. Hence, if A had to pay B a sum of Rs 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs 400 in the year 2002 instead of having only Rs 100. Hence, ordinarily interest should always be awarded whenever any amount is detained or realised by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay, it is for this reason that we have ordered for payment of interest along with the amount realised as export pass fee."

Interest is normal accretion on capital

23. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order. The term "restitution" is used in three senses, firstly, return or

restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

24. In *Hari Chand v. State of U.P.*: 2011 SCC OnLine All 283, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so retained i.e. from the date of deposit till the date of actual repayment/refund.

25. In *ONGC Ltd. v. Commr. of Customs*: (2007) 10 SCC 484, SCC para 6, the facts were that the assessment orders passed under the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs 54,72,87,536 was realised by way of customs duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in *South Eastern Coalfields Ltd. v. State of M.P.*: (2003) 8 SCC 648, this Court explained the principles of restitution in ONGC as under:

"6. The appellant is a public sector undertaking. The respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has

already been refunded, we direct that the amount deposited by the appellant shall carry interest @ 6% per annum. Reference in this connection may be made to Pure Helium India (P) Ltd. v. ONGC: (2003) 8 SCC 593 and McDermott International Inc. v. Burn Standard Co. Ltd.: (2006) 11 SCC 181"

(emphasis supplied by Supreme Court)

Compensation

26. The word "compensation" has been defined in *P. Ramanatha Aiyar's Advanced Law Lexicon*, 3rd Edn. 2005, p. 918 as follows:

"An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased something given or obtained as an equivalent, the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value, a recompense given for a thing received, recompense for the whole injury suffered, remuneration or satisfaction for injury or damage of every description, remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly, and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

27. In *Union of India v. Tata Chemicals Ltd.*: (2014) 6 SCC 335, this

Court held that when the collection is illegal, the Revenue is obliged to refund such amount with interest as money so deposited was retained and enjoyed by it. No discrimination can be shown between the assessee and the Revenue in paying interest on the refund of tax. Money received and retained without right, carries with it the right to interest. There being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, the Government cannot shrug off its apparent obligation to reimburse the deductor's lawful monies with accrued interest for the period of undue retention of such monies. Obligation to refund money received and retained without right implies and carries with in the right to interest. The relevant observations are as under:

"38. Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the aforesaid amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the deductor's lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it

the right to interest. Whenever money has been received by a party which ex aequo et bono ought to be refunded, the right to interest follows, as a matter of course. "

(emphasis supplied by Supreme Court)

22. Opposing the prayer for grant of interest, the learned Standing Counsel has submitted that the judgment in the case of **Dr. Purnima Advani** involved the question of payment of interest on delay in refund of stamp duty. He has submitted that the present case case regarding reimbursement of fee and scholarship amount under a scheme does not involve any such statutory liability and, therefore, the judgment in the case of **Dr. Purnima Advani** will not apply to the facts of the present case.

21. It is true that **Dr. Purnima Advani** (supra) arose from the Stamp Act but there is no provision in the Stamp Act for payment of interest on refund of the amount of stamp, and this was the precise submission of the learned Counsel for the Government in that case, which was rejected by the Hon'ble Supreme Court in paragraph 13 of the judgment, which is as follows: -

"13. The submission of the learned counsel appearing for the respondents that there is no provision in the statute for the payment of interest on refund of the amount of the e-stamp paper that was lost by the appellants herein, is without any merit. The subject General Mandamus is a salutary advancement of the law, calculated to insulate and protect a citizen from unfair treatment by the State."

22. Therefore, the ratio laid down in **Dr. Poornima Advani** (Supra) cannot be distinguished on the ground that the case arose from the Stamp Act. Moreover, the cases referred in **Dr. Poornima Advani** (Supra), namely **Karnataka Bank v. M/s R.M.S. Granites Pvt. Ltd.**, **Riches v. Westminster Bank Ltd.**, **Hello Minerals Water (P) Ltd. v. Union Of India** did not arise from any such statute. In **Hello Minerals Water (P) Ltd.**, the Division Bench of this Court has held that money doubles every six years (because of compound interest). Rs. hundred in the year 1990 would become Rs. two hundred in the year 1996 and it will become Rs. 400 in the year 2002. Hence, if A had to pay B a sum of rupees 100 in the year 1990 and he pays that amount only in the year 2002, the result will be that A has pocketed Rs. 300 with himself. This clearly cannot be justified because had he paid that amount to B in the year 1990, B would be having Rs. 400 in the year 2002 instead of having only Rs. 100/-. Hence, ordinarily interest should always be awarded whenever any amount is detained or realized by someone, otherwise the person receiving the amount after considerable delay would be losing the entire interest thereon which will be pocketed by the person who managed the delay. The aforesaid principle laid down in **Hello Minerals Water (P) Ltd.** squarely covers the claim of interest on delayed payment by the petitioners in the present case.

23. However, the claim of payment of compound interest at the rate of 18% per annum does not appear to be justified and it would be just to award payment of interest at the maximum rates being paid by Nationalized Banks on fixed deposits..

24. Accordingly, all the Writ Petitions are allowed. A Writ of Certiorari is issued quashing the impugned Office Memorandum dated 15.01.2025 rejecting the petitioners claim for reimbursement of the amount of fee of the students. A Writ of Mandamus is issued commanding the opposite parties to pay to the petitioners the amount of fee of the students to whom they have imparted education under the Uttar Pradesh Anushuchit / Anusuchit Janjati / Samanya Varg / Alpsankhyak / Pichhdi Jati Dashmottar Chhatravritti Yojna, 2012 for the academic sessions 2013-14, 2014-15 and 2016-17, as per the details already uploaded by them on the official portal, alongwith interest for the period of delay since the amounts had become payable till those are actually paid, on the maximum rates prevailing in nationalized bank for payment of interest on fixed deposits.

25. The parties shall bear their own costs of litigation.

(2025) 12 ILRA 602
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.12.2025

BEFORE

THE HON'BLE MRS. SANGEETA CHANDRA, J.
THE HON'BLE BRIJ RAJ SINGH, J.

Writ C No. 4177 of 2024

Rakesh Kumar Shukla **...Petitioner**
Versus
L.D.A. & Ors. **...Respondents**

Issue for Consideration

Matter pertains to challenge to the order dated 30.04.2024 passed by the Chairman, Lucknow Development Authority, relating to Plot No. 1/205, Vineet Khand, Gomti Nagar, and prayer for issuance of a writ of mandamus restraining the respondents from allotting the said plot to

any other person, on the basis of alleged housing pattas granted by the Gram Sabha in the years 1973 and 1981, and dispute as to whether the petitioner's house is situated on Khasra No. 55 (acquired land) or Khasra No. 88 (non-acquired land).(Paras 1, 8, 19, 24)

Headnotes

Land Allotment - Gram Sabha Land - Housing Patta - Validity - Allotment under S. 122-C of the U.P. Zamindari Abolition and Land Reforms Act, 1950 can be made only in favour of eligible categories in accordance with the prescribed order of preference and only after prior approval of the Assistant Collector, which is mandatory.(Paras 70, 75, 76)

Writ Jurisdiction - Article 226 - Suppression of Material Facts - Clean Hands - A litigant invoking the extraordinary and discretionary jurisdiction of the High Court must make full and true disclosure of all material facts; suppression or concealment of earlier litigations relating to the same subject-matter amounts to fraud on the Court and disentitles such litigant to relief.(Paras 11, 13, 29)

Statutory Requirement - Mandatory Approval - Requirement of prior approval of the Assistant Collector for allotment of Gram Sabha land, introduced by statutory amendment, is mandatory and cannot be dispensed with, and any allotment made in violation thereof is invalid. (Paras 20, 24, 71)

Evidence - Survey - Electronic Total Station (ETS) - Scientific survey conducted using Electronic Total Station (ETS) method constitutes reliable evidence for determination of location and boundaries of land. (Paras 24, 25)

Held: The petitioner's claim based on alleged housing pattas of 1973 and 1981 was unsustainable, as the allottee did not fall within the eligible categories under S. 122-C, and the pattas were issued without mandatory prior approval of the Assistant Collector, rendering them invalid - Joint survey conducted by the revenue authorities and officials of the Lucknow Development Authority using Electronic Total Station (ETS) established that the petitioner's house is situated on Khasra No. 55, which had

already been acquired after payment of compensation, and not on Khasra No. 88 as claimed - The petitioner was guilty of concealment and misrepresentation by failing to disclose earlier proceedings, including Regular Suit No. 233 of 1995 and Writ Petition No. 1701 (M/B) of 1998, relating to the same dispute - A litigant who obtains interim protection by suppression of material facts is not entitled to any discretionary relief under Article 226 of the Constitution of India - The action of the Lucknow Development Authority in directing removal of unauthorised encroachment and handing over possession of the plot to the lawful allottee was justified -Writ Petition dismissed. (Paras 11-29,72, 80-90) (E-7)

Case Law Cited

Amar Singh v. Ranpal Singh and Others, **2021 (8) ADJ 418**; *S.P. Chengalvaraya Naidu(Dead) by LRs Vs. Jagannath (Dead) by LRs and Others*, **(1994) 1 SCC 1**; *K.D. Sharma v. Steel Authority of India Ltd. and others*: **(2008) 12 SCC 481**; *Dalip Singh versus State of Uttar Pradesh and others*, **(2010) 2 SCC 114**; *Moti Lal Songara versus Prem Prakash Alias Pappu and another* **(2013) 9 SCC 199**; *State of Orissa versus Laxmi Narayan Das (Dead) Through LRs & Others*, **(2023) 15 SCC 273**; *Dina Nath v. State of U.P. & Ors.* **(2010) 15 SCC 218**; *Taylor v. Taylor* **(1875) 1 Ch D 426**; *Nazir Ahmed v. Emperor* **AIR 1936 PC 253(2)**; *Shiv Bahadur Singh v. State of U.P.*, **AIR 1954 SC 322**; *Deep Chand v. State of Rajasthan*, **AIR 1961 SC 1527**.

List of Acts

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950; U.P. Zamindari Abolition and Land Reforms Rules, 1952; Land Acquisition Act, 1894; U.P. Land Laws (Amendment) Act, 1971; Right to Information Act, 2005; U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970.

List of Keywords

housing Patta; misrepresentation; concealment; Fraud; unauthorized possession; Electronic Total Station Survey; Gram Sabha land; acquired land; Prior approval

Case Arising From

ORIGINAL JURISDICTION: Order dated 30.04.2024 passed by the Chairman, Lucknow Development Authority, on the representation of Vimal Chand Keshari, relating to Plot No. 1/205, Vineet Khand, Gomti Nagar.

Appearances for Parties

Advs. for the Appellant (Petitioner):

Sri Anshuman Singh

Advs. for the Respondents:

Sri Ratnesh Chandra (for Lucknow Development Authority)

Sri Sharad Pathak (for private respondent)

(Delivered by Hon'ble Mrs. Sangeeta Chandra, J.)

This judgment has been divided into the following Sections to facilitate analysis:

A.	The Challenge	Para 1
B.	Rival Submissions	Para 2 to 31
C.	Examination of pleadings by the Court	Para 32 to 68
D.	Statutory Provisions	Para 69 to 74
E.	Governing Principles	Para 75
F.	Analysis of Petitioner's Claim	Para 76 - 78
G.	Case laws on the Subject	Para 79
H.	Fraud through Misrepresentation and Concealment	Para 80 - 85
I.	Conclusion	Para 86- 90

A- The Challenge

1. Petitioner has prayed for quashing of order dated 30.04.2024 passed by the Chairman Lucknow Development Authority (hereinafter referred as L.D.A.) in relation to plot no. 1/205, and has also prays for a writ in the nature of mandamus, commanding the respondent not to allot

plot no. 1/205, Vineet Khand belonging to the petitioner to anyone else.

B- Rival Submissions

2. The case of the petitioner as has been put by Sri Anshuman Singh, learned counsel for the petitioner is that his father Kaushal Kishore Shukla had earlier filed Writ Petition No.8426 (M/B) of 2009 in relation to House No.A-1/205, Vineet Khand, Gomti Nagar, Lucknow challenging the order dated 12.08.2009 passed by the Lucknow Development Authority. The said writ petition was dismissed for want of prosecution on 07.03.2024. The petitioner has filed a recall application on 11.03.2024, which is pending for consideration, in which counsel for private respondent got an adjournment on 26.04.2024. It is also stated that Writ Petition No.1970 (M/B) of 2001 was filed by the father of private respondent, Sri V.D. Keshari against the Lucknow Development Authority and this writ petition was clubbed with Writ Petition No.8426 (M/B) of 2009 and was decided by this Court vide order dated 07.03.2024 directing the Lucknow Development Authority to consider the representation of Vimal Chand Keshari, who had been substituted on account of death of his father V. D. Keshari, who died in the meantime.

3. It is also the case of the petitioner that his father Kaushal Kishore Shukla was an ex-Army person and one plot of land in Gram Sabha, Khargapur Husariya admeasuring 8 Biswas was given to him by the Gram Pradhan by executing 2 pattas on 21.12.1973 and 02.09.1981 respectively. The plot in question i.e. 1/205, Vineet Khand, Gomti Nagar has been developed after the Lucknow Development Authority (hereinafter referred as L.D.A.) has taken

over the Gram Sabha land of Village Khargapur Husariya. It has been stated that petitioner's father Late Kaushal Kishore Shukla constructed a house for his family, which was numbered as House No.54 of Village Husariya and the name of the family members of Late Kaushal Kishore Shukla were shown in Pariwar Register of Gram Sabha, Khargapur Husariya. The Gram Sabha had passed a resolution in favour of Late Kaushal Kishore Shukla as he, being a Havaldar in Indian Army, had fought in the Indo-Pakistan War in the year 1971 and had been awarded a Special Service Medal with clasp while serving in Indian Peace Keeping Force in Sri Lanka. It has been stated in the writ petition that the house constructed by the father of the petitioner was assessed by the Nagar Mahapalika in the year 1992 and the Nagar Nigam gave it as House No. 1/205, Vineet Khand, Gomti Nagar. The Nagar Nigam is collecting the house tax from the father of the petitioner since 2002.

4. It is stated in the writ petition that under Section 198(4) of the U.P.Z.A.L.R. Act only the Collector is empowered to cancel a patta if any irregularities is found therein and such patta can only be cancelled after issuing a show cause notice and the limitation for cancellation of such patta is five years. However, no such show cause notice was ever issued by the Collector to the father of the petitioner since the inception of the two pattas dated 21.12.1973 and 02.09.1981. It has further been stated that the requirement of approval of the Sub-Divisional Magistrate was added only in the year 1975 and before 1975, the prior approval for grant of patta by Gram Sabha was not required. The Lucknow Development Authority has got no statutory authority to cancel or ignore the pattas granted by the Gram Sabha in

violation of Sections 198(4), (5) and (6) of the U.P.Z.A. & L.R. Act. It has also been stated that although the petitioner has been threatened to be thrown out from his plot, other similarly situated nine persons/patta holders were adjusted by providing them housing sites over their patta land.

5. It has also been stated that the petitioner and his family have been in continuous possession over Plot No.1/205, Vineet Khand, Gomti Nagar for the past 51 years as his father had constructed the house over the said plot of land of Khasra No.88 of Village Khargapur Husariya. Further submission has been made that V.D. Keshari, father of private respondent, had applied for a Lower Income Group house in Tikait Rai Housing Scheme of Lucknow Development Authority, but surprisingly his allotment was shifted to Gomti Nagar Scheme against the Rules and he was given 5,810 Sq. Ft. of land in the posh area of Gomti Nagar and besides this, his wife Smt. Kamla Keshari was also allotted Plot No.A-3/272, Vishwas Khand, Gomti Nagar, Lucknow. It is stated that both the spouses could not have been allotted a house or plot in the same city by the Lucknow Development Authority as it is against the Rules.

6. It has also been stated that on query being made by the father of the petitioner from the Lucknow Development Authority with regard to illegal allotment to the father of private respondent, it has been informed that application of V.D. Keshari is undated and was accepted sometimes in 1988, whereas allotment of developed plots in Vineet Khand itself had been started only in the year 1989. It has been submitted that it is not clear as to how in the year 1988 one A Type plot of 5810 Sq. Ft. was allotted to V.D. Keshari.

7. It has also been stated that a Resolution was passed by the Lucknow Development Authority in its Board meeting held on 27.11.1998 that patta holders of earlier Gram Sabha land would be adjusted against their plots after taking Development charges. This resolution was never acted upon in relation to the petitioner, but other patta holders were adjusted.

8. It has also been stated in the writ petition that the order impugned states that House No. A-1/205, Vineet Khand, Gomti Nagar is not situated over Khasra No.88, but it is situated over Khasra No.55, whereas no survey was done to find out on which Khasra Plot Number House No. A-1/205 Vineet Khand, Gomti Nagar is situated. The Public Information Officer's comments and the report of the Lucknow Development Authority submitted before the Grievance Redressal Committee of Vidhan Sabha has been filed as Annexure-21 to the writ petition.

9. Initially, when the writ petition was filed, counsel for the petitioner and the counsel for the Lucknow Development Authority were heard and notices were issued to private respondent and the Court had observed that till the next date of listing the petitioner shall not be evicted from the house and no demolition of the house shall be carried out. The petitioner was also restrained from raising any new constructions or creating any third party rights on the plot in dispute.

10. Later on, an application for recall of such order was filed by the counsel for private respondent, namely, C.M. Application No.2 of 2024, wherein it was stated that in pursuance of allotment made by the Lucknow Development Authority to

the father of OP. no. 4, the entire sale consideration was deposited in the year 1999. The Court after going through the affidavit filed in support of the Application for Recall, modified its order dated 07.05.2024 to the extent that house of the father of petitioner, which was said to be constructed only upon 645 Sq. Ft. of land and the appurtenant land thereto admeasuring only 2 Biswa as alleged to have been granted by way of patta in 1973 by the Gram Sabha concerned, should not be disturbed. The rest of the land, which is in dispute, was directed to be demarcated and handed over to the allottee, who had already paid the entire sale consideration to the Lucknow Development Authority. The Court also directed the listing of the writ petition along with the records of Writ Petition No.8426 (M/B) of 2009, Kaushal Kishore Shukla Vs. Lucknow Development Authority and others, and Writ Petition No.170 (M/B) of 2001, V.D. Keshari Vs. Lucknow Development Authority and others, and Writ Petition No. 1701 (M/B) of 1998, Kaushal Kishore Shukla Vs. Lucknow Development Authority and others, decided on 11.06.1998.

11. In the application for Recall of interim order dated 07.05.2024 filed by private respondent, Vimal Chand Keshari, it was stated that the entire writ petition had misleading averments and the interim order dated 07.05.2024 had been obtained on the basis of misrepresentation and concealment. Though, the lease in favour of the petitioner's father is said to have been made initially on 15.12.1973 by a Resolution passed by the Gaon Sabha actual allotment in Prescribed Form 5 had not been filed along with the petition. Also, Kaushal Kishore Shukla had retired in 1990. Having been in active service as havaldar/clerk in the Indian Army, he could

not be said to be belonging to reserved category or landless or living Below Poverty Line. Also, allotment of housing site could not have been made to him a second time in 1981 as alleged in the petition. The L.D.A. had acquired the land somewhere in the year 1980, and the land vested initially in the State Government and thereafter in the L.D.A. It allotted plot no. 1/205, Vineet Khand in favour of the father of the private respondent.

12. It was also stated that it seems that after such acquisition of land in Vineet Khand, late Kaushal Kishore Shukla had got prepared documents in 1981, and he claimed Two Pattas, to have been given to him, one of which was of 2 Biswa and the other of 6 Biswa. Currently, the petitioner was in possession of almost 7000 ft² of land. However Resolution which the petitioner is alleging to have been passed by the Gram Sabha in 1973 was only for 2 Biswa of land which comes to around 2600 ft². Kaushal Kishore Shukla has encroached on much more land than was allegedly allotted in his favour. The Gaon Sabha Husariya has also not been impleaded as respondent in the petition otherwise facts regarding alleged allotment of Housing Patta in favour of the petitioner's father would have been verified. Such land on which the petitioner's house is built is situated on the main road in front of Jaipuria school and the construction of the petitioner is only 645.50 ft². The father of private respondent was a retired judicial officer who was allotted 540 m² of land Plot No. 1/205 which comes to around 5810ft.²

13. It was stated by the private respondent that while filing the petition, the petitioner has resorted to concealment as he had not given reference of Writ Petition

No. 1701 M/ B of 1998, which Kaushal Kishore Shukla had filed. He has also not given reference of Regular Suit no. 233 of 1995, which had been filed by Kaushal Kishore Shukla against L.D.A. in which application for Interim Injunction was rejected by the Court of Munsif Havali on 31.03.1998. The father of the petitioner had also filed Writ Petition No. 1701 (M/B) of 1998, which was disposed of by this court on the first date. True copies of the order dated 25.04.1995 and of order dated 31.03.1998 passed by Munsif Havali Lucknow in Civil Suit no. 233 of 1995 have been filed as Annexures to such application for Recall.

14. Sri Sharad Pathak, learned counsel for private respondent has pointed out the plaint of Regular Suit No.233 of 1995, which has been filed as Annexure to his Counter Affidavit, and has stated that in paragraph-1 of such plaint, the petitioner's father had stated that Khasra No.88(Min.) admeasuring 8 Biswa in Village Khargapur Husariya was allotted to him in 1973 by the Gram Sabha Khargapur Husariya as housing site and the plaintiff- Kaushal Kishore Shukla was given the possession in 1973 by the Gram Panchayat and he built his house in 1980 over the said housing site. A boundary wall was also constructed. It was also stated that in the plaint the plaintiff - Kaushal Kishore Shukla had planted 40 Eucalyptus Trees, 8 Mango Trees, 3 Guava Trees, 10 Poplar Trees and 10 other trees in the open land surrounding his house. On the northern side of the plot, the boundary is mentioned as Sadak Sarkari. An allegation was made against in the plaintiff that the defendant-Lucknow Development Authority that they had tried to interfere in the possession of the plaintiff on various dates and an attempt was made to demolish the house and the boundary

wall of the disputed house/property situated in Khasra No.88, Village Husariya

15. Further, it has been pointed out by Sri Sharad Pathak from the Writ Petition No. 1701 (M/ B) of 98 that was filed earlier by the petitioner's father in 1998, a copy of which has been filed as Annexure to the Counter Affidavit that, in the said writ petition, father of the petitioner had stated that the respondents were threatening to demolish his house in Village Husariya, Post Malesemau, Lucknow, now also known as Vineet Khand-I, Gomti Nagar, Lucknow and that he had constructed a house on the plot of land Khasra No. 88 admeasuring 6 Biswas on 02.09.1981, after getting permission and patta from the Gram Sabha Khargapur Husariya, Lucknow. The then Pradhan of the Gram Sabha had given patta on 02.09.1981. It has been stated in the Counter Affidavit of the private respondent that there is no mention in the said writ petition of alleged earlier patta granted in 1973 of 2 Bigha land for housing purposes. The said Writ Petition No. 1701 (M/B) 1998 was disposed of on the first day itself by this Court by observing that counsel for the Lucknow Development Authority had stated that the Lucknow Development Authority would act only in accordance with law.

16. It has been submitted by the counsel for the private Respondent that later Writ Petition No. 8426 (M/B) 2009 was filled praying for a writ in the nature of Certiorari quashing Annexure-1, which is a letter dated 12.08.2009 issued by the Under Secretary, Lucknow Development Authority indicating that an earlier letter had been issued on 12.11.2008 wherein it has been stated that Plot No.A-1/205 Vineet Khand, Gomti Nagar may be taken from him and it its place, father of the

petitioner may be adjusted by giving a plot to him in Gomti Nagar Vistar Yojana at current rate of Rs.112.50 per Sq. Mtr. However, the father of the petitioner had not given any consent for such adjustment. Father of the petitioner was informed that registry has to be executed in favour of the allottee of plot in Vineet Khand, Gomti Nagar, in case no consent is given by Kaushal Kishore Shukla, then demolition of the petitioner's encroachment would be undertaken soon. A prayer was made in this Writ Petition No. 8426(M/B) 2009 for issuance of a Mandamus to regularize the occupancy of House No.1-205 Vineet Khand, Gomti Nagar in favour of the father of the petitioner after taking requisite Development Charges. A prayer was further made for quashing the allotment order made in favour of opposite party no.2 V. D. Keshari i.e. father of private respondent.

17. Since Writ Petition No.8426 (M/B) of 2009 was listed along with writ petition filed by V.D. Keshari, namely, Writ Petition No.1970 (M/B) of 2001 and no counsel appeared to press this petition, while the writ petition filed by the petitioner's father was dismissed for want of prosecution, writ petition filed by the father of private respondent Late V.D. Keshari (Substituted by Vimal Chand Keshari) was disposed of with the observation that in case a representation is moved by him to the Vice- Chairman/Secretary, Lucknow Development Authority raising his grievance and annexing therewith all documents in support of his claim, the same shall be considered and a decision will be taken in accordance with law by a reasoned and speaking order, within four weeks from the date a certified copy of the order dated 07.03.2024 was produced before the Vice Chairman.

18. Writ Petition No.1970 (M/B) of 2001 filed by V.D. Keshari, father of private respondent was only for issuance of a writ in the nature of Mandamus commanding opposite parties to perform its legal obligations by executing and registering the deed of conveyance in respect of Plot No.A-1/205, Vineet Khand, Gomti Nagar and to deliver its vacant possession to the allottee after removal of encroachments thereon.

19. Sri Sharadh Pathak, learned counsel for private respondent while arguing the matter on merits has submitted further that the petitioner in his writ petition has stated that the house was constructed by his father on Khasra No.88. However, a survey was done by a joint team of revenue officials and the officials of the Lucknow Development Authority and it was found that house of the father of the petitioner had actually been constructed over Khasra No.55, which land had already been acquired by notification issued under Sections 4 and 6 of the U.P. Land Acquisition Act and the compensation has been paid to the recorded tenure holders. It has also been argued that petitioner concealed the report of the Consolidation Officer dated 27.04.2024, wherein it was apparent that the land upon which the petitioner's father had constructed the house was on Khasra No.55 and not on Khasra No.88. Actually, a major portion of Khasra No.88 is lying vacant, upon which illegal encroachments had been made by some other villagers. It has been argued that it appears that when the Colony was being developed, the father of the petitioner moved towards the main road by leaving the land on which he was claiming to be allotted a housing patta. It has also been submitted that patta that has been relied upon and stated to have been issued in

favour of Kaushal Kishore Shukla, is apparently not a genuine housing site allotment as the father of the petitioner was working as Havaladar in the Army and was not Below Poverty Line and he belonged to General Category, therefore, he was not falling within any of the categories as provided under Section 198(F) of the U.P.Z.A.L.R. Act for preferential allotment.

20. It has also been submitted that petitioner's father had initially claimed that patta had been given to him by the Gram Sabha on 15.12.1973 for 2 Biswa of land and then again in 1981 for 6 Biswa of land i.e. total 8 Biswa land is alleged to have been allotted. The 1981 patta is apparently in violation of the amended provisions of the U.P.Z.A.L.R. Act, which requires prior permission of the Assistant Collector in-charge of Sub Division for grant of patta. Also, by that time the father of the petitioner was not landless and not Below Poverty Line.

21. Sri Ratnesh Chandra, learned counsel appearing on behalf of the Lucknow Development Authority has pointed out from the Counter Affidavit filed on behalf of L.D.A. on 26.03.2025 praying for dismissal of the petition that plot no. 1/205 Vineet Khand, Gomti Nagar was allotted in favour of V.D. Keshari on 18.07.1988 in pursuance of Cash Down Payment policy. Since, there was unauthorised construction and possession over the said plot, so he could not be delivered the possession of such plot and he preferred Writ Petition No. 1970 (M/B) of 2001 before this Court, which was finally decided by this Court by order dated 07.03.2024, directing the substituted petitioner Vimal Chand Keshari to file a fresh representation before the Chairman/

Secretary Lucknow Development Authority, and such representation would be considered and decided in accordance with law by reasoned and speaking order.

22. In compliance of such order dated 07.03.2024 Vimal Chand Keshari had preferred representation on 11.03.2024 in pursuance of which hearing took place on 22.04.2024. Vimal Chand Keshari, son of V.D. Keshari and Rakesh Kumar Shukla, son of Kaushal Kishore Shukla were present and made their detailed submissions. The records relating to the case were also perused and thereafter a reasoned and speaking order has been passed, which has been challenged in the petition.

23. It has also been stated in paragraph 8 of such Counter Affidavit filed by L.D.A. that earlier also the Vice Chairman by his order dated 05.05.1998 had directed that possession of plot no. 1/205 to be delivered to V.D. Keshari and Kaushal Kishore Shukla be allotted some other plot on the prevailing rates in some other Yojna. Kaushal Kishore Shukla submitted various applications before different authorities for getting executed sale deed in respect of plot no. 1/205 Vineet Khand, Gomti Nagar. He did not give consent for allotment of another plot in another Scheme at prevailing rates, and the earlier order dated 05.05.1998 stood automatically cancelled.

24. Also, in the said Counter Affidavit of the Lucknow Development Authority, genuineness of the alleged Housing patta allotment made in 1973 and 1981 of 8 Biswa of land in khasra no. 88 village has been strongly disputed. Such Patta was not allotted in accordance with the provisions of the U.P.Z.A.L.R. Act and could not be treated to be a valid document. Even

otherwise the land on which the petitioners father had constructed his house has been identified as Khasra No.55, for which payment of compensation has been made to the recorded tenure holders on completion of acquisition thereof. At no point of time, the L.D.A. had admitted that the house was situated over Khasra No.88, only the submission of the father of the petitioner was recorded in various orders that his house was situated over Khasra No. 88. However, after due survey, it has been found that the plot in question 1/205, Vineet Khand, Gomti Nagar is falling over Khasra No. 55 and not Khasra no. 88. Copy of Survey done through Electronic Total Station method on 23.04.2024, by the Tehsildar, the Revenue Inspector, the Area lekhpal, and the Surveyor has been filed as annexure CA 6 to the Counter Affidavit.

25. Sri Ratnesh Chandra, learned counsel for the Lucknow Development Authority has pointed out Annexure-CA-6 of Counter Affidavit filed by private respondent, which is a report of the joint team of the revenue officials and the officials of the Lucknow Development Authority along with a private company namely M/s P.C.S. Management Consultancy Private Limited, which was engaged to find out the location of Plot No.88 and Plot No.55 of Village Khargapur, Husariya, Lucknow. Earlier also, measurement and demarcation was tried to be done, but the same could not be carried out because of difficulty in determining Fixed Points. Therefore, M/s P.C.S. Management Consultancy Private Limited team was engaged. They along with revenue team and the team of the Lucknow Development Authority officials had resorted to Electronic Total Station (ETS) Survey, which is a computerized survey and Khasra No.232, area 0.013 hectare

recorded as Nala was taken as a Fixed Point. Such Nala was later on converted into a road when the Gomti Nagar Vineet Khand- I Scheme was developed. From this Road/Nala/Khasra No.232, the location of Khasra No.55 and Khasra No.88 was found. The house of the petitioner's father was found to be situated at Plot No.55 and not on Plot No.88 and Plot No.55 admeasuring 0.6100 hectares had already been acquired in the land acquisition proceedings and compensation was paid to the recorded tenure holders, Ram Prasad, Santosh Kumar and others.

26. It has been stated by the Lucknow Development Authority in its Counter Affidavit that since it is clear that House on Plot No.1/205, Vineet Khand, Gomti Nagar is constructed over part of Khasra No.55, which has been acquired after payment of compensation to the recorded tenure holders by the impugned order dated 30.04.2024, the possession of the said plot was directed to be taken within a period of one week and it was directed that the same be handed over to private respondent in the impugned order dated 30.04.2024.

27. It has been pointed out by Shri Ratnesh Chandra from page 18 of the writ petition which is the impugned order dated 30.04.2024, that Vice-Chairman, Lucknow Development Authority has dealt with the allotment made in favour of V.D. Keshari. The records relating to such allotment had been examined by the Vice-Chairman and it was found that Plot No.1/205, Vineet Khand, Gomti Nagar had been given on the basis of a Scheme floated by the Lucknow Development Authority to V.D. Keshari on 18.07.1988. The allottee had deposited the entire amount of sale consideration along with interest thereon and the stamp papers were also made available by the allottee,

but because of the unauthorised encroachment over such plot of land by the petitioner's father, the sale deed could not be executed. It has also been mentioned in the impugned order that father of the petitioner had been given a choice to take another plot of land in Gomti Nagar Vistar Yojana and Shri V.D. Keshari be given the possession of Plot No.1/205, Vineet Khand, Gomti Nagar. However, he had refused such option given by the Lucknow Development Authority by its letter dated 05.05.1998. It has also been mentioned in the impugned order that V.D. Keshari, the erstwhile allottee, died on 09.11.2016 and private respondent, his son, has been allotted Plot No.A-1/205, Vineet Khand, Gomti Nagar on the basis of Will made out in his favour by his father.

28. In the Rejoinder Affidavit filed by the petitioner, it has been mentioned that Writ Petition No.8426 (M/B) of 2009 was filed by Late Kaushal Kishore Shukla and Writ Petition No.1970 (M/B) of 2001 was filed by Late V.D. Keshari. V.D. Keshari in his writ petition had alleged that he has been allotted Plot No.1/205, Vineet Khand, Gomti Nagar by the Lucknow Development Authority, whereas Late Kaushal Kishore Shukla had said that a housing site was allotted by the Land Management Committee and Gram Sabha Khargapur Husariya and such land was never acquired by the Lucknow Development Authority. Since the very inception of the case, the Lucknow Development Authority had stated that House No.A-1/205, Vineet Khand, Gomti Nagar was situated over Khasra No.88 and it could not now turn around and say that the house is constructed on Khasra no. 55 on the basis of report made by a survey committee. It has also been stated in the Rejoinder Affidavit that although in the

impugned order, mention has been made that the petitioner was heard along with private respondent by the Vice- Chairman, Lucknow Development Authority, in fact he was not heard at all and it was a one sided order. The allotment in favour of Late V.D. Keshari was illegal and the sale deed was never executed in favour of Late V.D. Keshari, therefore, his legal representatives could not have been allotted the plot in question only on the basis of a Will. It has also been stated that Late V.D. Keshari has fraudulently applied for allotment of plot in Vineet Khand, Gomti Nagar, although, his wife had already been allotted House No.A-3/272, Vishwas Khand, Gomti Nagar.

29. In the Rejoinder Affidavit to the Counter Affidavit filed by the Sri Sharad Pathak, Counsel for the private respondent which has been filed on 20.08.2025, the petitioner has reiterated the contents of the writ petition and contents of Writ Petition No. 8426 (M/B) of 2009 filed by the father of the petitioner. Denying the contents of para 2 of the Counter Affidavit where in allegation of misrepresentation and deliberate concealment has been made by private respondent, it has been stated that the order dated 11.06.1998 was annexed in Writ Petition No. 8426 (M/B) of 2009. Writ Petition No. 4177 (M/B) of 2024 has been filed against order dated 30.04.2024. which order is an altogether new order and therefore there was no need of mentioning the order dated 11.06.1998, which was passed in reference to a different order passed by the L.D.A. It has also been stated that Writ Petition No.1701 (M/B) of 1998 related to a different cause of action and had no concern with the present petition which has been filed against order dated 30.04.2024. It has also been stated that in petition no. 1701 (M/B) of 1998 and

petition no. 8426 (M/B) of 2009, this court had directed L.D.A. to take appropriate action. Therefore, Regular Suit no. 233 of 1995 became redundant and it was not necessary to carry on with it any further or to mention it in the Writ Petition No.4177 (M/B) of 2024.

30. In Paragraph 6 of such Rejoinder Affidavit, it has been stated that actually the father of the petitioner was allotted a total of 10,000 ft.² of land through two Pattas. Two Biswa of land i.e. 272 2 ft.² was given in 1973, and at that time approval from the SDM was not required. Later on, housing patta of 6 Biswa of land was given in 1981, i.e. 816 6 ft.² Later on, some land was taken by the L.D.A. for construction of Road and for carving out plot no. 1/206, 1/204, 1/203F. Presently only 6500 ft.² of land is available with the petitioner. It has also been stated that after the order dated 29.05.2024, the L.D.A. has demolished the boundary wall of the petitioner on 05.06.2024. The house of the petitioner is constructed over 1100 ft.² of the land and not 645 ft.² only as alleged by the respondents.

31. It has also been argued by Sri Anshuman Singh that the Lucknow Development Authority could not be allowed to change its stand and take an altogether different stand by saying that the super imposition of Google map was done and House No.A-1/205, Vineet Khand, Gomti Nagar belonging to the petitioner was found over Khasra No.55. No Survey commission was ever conducted and only on the basis of such non-existent Survey, the location of the house of the petitioner cannot be ascertained. A dispute has also been raised regarding the survey that was allegedly conducted on 23.04.2024 as it has been stated that such survey has taken the

entire Nala as Fixed Point. As per the Survey Rules, no Fixed Point can be taken over Nala Road or River at all as these things have no corners and only two parallel arms over which Fixed Point cannot be taken until there is corner. It has also been argued that an alternate land was offered by the father of the petitioner on the current rate in 1998, whereas, the petitioner's house was constructed over a plot given to his father in 1973 sometimes in 1981.

C. Examination of pleadings by the Court:-

32. Since the records of Writ Petition No. 1701 (M/B) 2005: Kaushal Kishore Shukla v. State of U.P. and others and Writ Petition No. 8426 (M/B) 2009 had been summoned by an earlier order and they were tagged to the instant writ petition, we have perused the said records.

33. Writ Petition No.- 1970 (M/B) of 2001 was filed by V.D. Keshari, father of the private respondent, praying for a direction to be issued to the L.D.A. to perform its legal obligation by executing and registering deed of conveyance in respect of plot no. A - 1/205, Vineet Khand, Gomti Nagar, and also to deliver its vacant possessions to the petitioner after removal of encroachment thereon within time as prescribed by the Court; and also for a direction to the Lucknow Development Authority not to transfer the said plot in question, either as a whole or in piecemeal by way of allotment to any other person.

34. A perusal of the record of this petition shows that when the writ petition was taken up as fresh on 27.04.2001, the Court noted that the petitioner had already

deposited the entire amount for the plot in question and directed the Standing Counsel for the L.D.A. to seek instructions in the matter, and in the meantime, the respondents were directed not to allot the plot in question to any other person till next date of listing of the Court.

35. Writ Petition No.1970(M/B) of 2001 was dismissed for want of prosecution on 03.04.2013. An application for restoration was filed on 24.07.2014, which was dismissed for want of prosecution on 13.01.2017. V. D. Keshari had died on 09.11.2016 and an application for substitution and an application for recall were filed which were both allowed on 08.11.2017. The petition was listed for hearing, but no one appeared to the court and writ petition was again dismissed for want of prosecution on 22.05.2018. An application for recall of order dated 22.05.2018 was filed which was rejected by this Court by its order dated 09.08.2019. Again application for recall was filed, which was eventually allowed and writ petition was restored to its original number on 20.04.2022 by this Court on 09.11.2016. Vimal Chand Keshari S/o V.D. Keshari had sought substitution as he had been appointed to succeed upon the property in dispute on the basis of a registered Will deed executed by his father on 21.08.2015 in his favour.

36. Writ Petition No. 1970(M/B) of 2001 was directed to be listed along with Writ Petition No. 8426(M/B) of 2009, Kishore Shukla Vs. L.D.A. on 20.03.2023. Writ Petition No. 8426 (M/B) of 2009 was filed by Kaushal Kishore Shukla, the predecessor in interest of Rakesh Kumar Shukla, praying for a writ in the nature of mandamus to the respondent L.D.A. to regularise the occupancy of the petitioner

of house no. 1/205 Vineet Khand, Gomti Nagar after taking requisite development charges, etc: The petitioner also prayed for a writ in the nature of certiorari for quashing illegal and backdated, fraudulent allotment Order contained in Annexure, 15 to the petition by which it allotted plot no. 1/205, Vineet Khand to opposite party no. 2, V.D. Keshari as on the said land on which petitioners' house exists for the last 28 years and to allot any other plot in favour of opposite party no. 2. It was also prayed that a high-level enquiry into bungling and fraud in allotment against the rules and removal of relevant L.D.A. records be also made.

37. It was alleged in the Writ Petition no. 8426(MB) of 2009 that Gram Sabha Khargapur Husariya gave two Pattas of land to the petitioner. One Patta for two Biswa of land was executed on 21.12.1973, and the other Patta of six Biswa of land was executed on 02.09.1981, under Section 198 of the U.P.Z.A.L.R. Act. After getting Patta the petitioner constructed a house for his family. There were about 35 such houses built on Gram Samaj land in Village Husariya before Lucknow Nagar Palika took over possession of Gram Samaj land in 1987. Lucknow Nagar Mahapalika exchanged this land with L.D.A. in 1995 in lieu of land on which presently Sahara Shehar exists. In such circumstances, the petitioners' house and appurtenant land came under the control of L.D.A.

38. It was further alleged that the L.D.A. Board met on 27.11.1998 to consider the case of persons who had been allotted housing sites by Gram Sabha Husariya and whose possession could not be regularised. A decision was taken to regularise their possession, subject to payment of certain charges. A Sub-

committee was constituted and the Additional Secretary, L.D.A. recommended that the petitioner should be allotted a plot elsewhere by the L.D.A. in lieu of present plot no. 1/205, Vineet Khand, Gomti Nagar. A copy of the proceedings dated 10.02.1999 of the Sub-committee have been filed as Annexure 14 to the petition. It has been alleged further that other allottees of housing sites of village Husariya have not been disturbed by the L.D.A., although they are similarly situated like the petitioner, but the petitioners plot no. 1/205, Vineet Khand, Gomti Nagar has been allotted to one Shri V.D. Keshari Opp party no. 2 and the L.D.A. is threatening demolition of the house of the petitioner.

39. It has also been alleged that the son of the petitioner, Rakesh Kumar Shukla tried to obtain certain information and copies of documents relating to Vineet Khand Phase 1, but was informed that such files were missing from the L.D.A. office.

40. It has also been stated that in 1998 also, L.D.A. had tried to demolish the petitioners house and the petitioner had filed a Writ Petition No. 1701 (M/B) of 1998, which was disposed off on statement being given on behalf of L.D.A. that they will only act in accordance with law. It has been further stated that there are a large number of plots still lying vacant in Gomti Nagar Housing Scheme which can be allotted in favour of the opposite party no. 2, and the possession of the petitioner and his house on plot no. 1/205 Vineet Khand, Gomti Nagar can be regularised.

41. Annexure 1 to the Writ Petition No. 8426 (M/B) 2009 is a letter dated 12.08.2009 sent by the Under Secy of L.D.A. to the petitioner indicating that on 12.11.2008, petitioner had been offered a

plot in Gomti Nagar Vistar Yojna at the current rate of Rs 112.50 per square metre in lieu of plot no. A - 1/205. The petitioner had rejected such offer. He was still in possession of plot no. A 1/205, which had been allotted to another person and execution of sale deed could not be done in favour of the allottee because of illegal possession of Kaushal Kishore Shukla. A Direction was issued to handover vacant possession of plot no. A- 1/205, Vineet Khand, Gomti Nagar to the officials of the L.D.A. within 15 days or else the illegal construction of the petitioner would be demolished forcibly by the L.D.A. Late V.D. Keshari was impleaded as respondent no. 2 in Writ Petition No. 8426, (M/B) 2009, but notice was never served upon him and he did not file any Counter Affidavit. Later on a Substitution Application was filed for impleading Vimal Chand Keshari, his son as respondent which was allowed 2023 by court's order. VC Keshari thereafter filed a Counter Affidavit wherein it was stated that L.D.A.'s allotment of land/housing site at Khasra no. 88 in the year 1973 to the Petitioner's father was not a genuine document as he did not fall within any of the categories/order of preference as mentioned under the relevant sections of the U.P.Z.A.L.R. Act. Kaushal Kishore Shukla retired from Service in 1990, and he was very much in service in 1973, when the alleged housing Patta was allotted to him of 2 Biswas of land on Khasra no. 88. The formalities required for completing such allotment on the basis of resolution passed by the Gaon Sabha were also not observed as no prior permission of the Sub-Divisional Magistrate was taken. It was also alleged that Lucknow Development Authority had acquired land for Vineet Khand phase 1, sometime in the year 1980 which is evident from an application for

allotment of plot in Vineet Khand phase 1 made by one Pushpa Gattani on 01.12.1982 on which allotment was made to her of plot no. A - 1/207, Vineet Khand, Gomti Nagar of an area of 540 m². It was also stated in the said Counter Affidavit that the petitioner had earlier filed Original suit no. 233 of 1995 against the L.D.A. along with an application for Interim Injunction. Such application was rejected by the Munsif Hawali on 21.03.1998.

42. In the Counter Affidavit to W.P. 8426 (M/B) 2009 filed on behalf of the L.D.A. in February, 2020 it was stated that the patta allegedly granted by the Gram Pradhan was fictitious as no person can be granted more than 1.5 Biswa of Abadi land for Housing Patta. The case of the petitioner that he was ex-army person and therefore he was granted patta on special consideration is also not correct as persons belonging to general category can be given land only if they are landless and below poverty line. Also, the Patta had not been approved by Assistant Collector First Class/Sub-Divisional Magistrate. It was also stated that only on the basis of receipts of payment of house tax, ownership could not be established. The petitioner has remained in unauthorised possession of land which was acquired by the Government for L.D.A.. It was also stated that Gram Samaj land has been taken over by the Development Authority on the basis of resumption orders issued in this regard by the State Government.

43. Writ Petition No. 8426 (M/B) 2009 was dismissed for want of Prosecution on 07.03.2024. Application for recall of order dated, 07.03.2024 was filed by the legal heirs of the petitioner Kaushal Kishore Shukla on 12.03.2024 to which a detailed objection was filed by Vimal

Chand Keshari. When application was taken up for hearing on 29.05.2024, Shri Anurag Narayan Srivastava, counsel for the petitioner stated that he did not wish to press this application for recall as Lucknow Development Authority has passed a fresh order which he proposed to challenge in another writ petition. Accordingly, the application for recall of order dated 07.03.2024 was rejected on 29.05.2024.

44. In paragraph 13 of the Writ Petition No.4177 of 2024, it has been stated that V.D. Keshari had applied for LIG house in Tikait Rai housing scheme of L.D.A. Subsequently, he was allotted 540 m² of land in Gomti Nagar and besides his wife Kamla Keshari was also allotted B-3/272, Vishwas Khand, Gomti Nagar. As both spouses cannot be allotted house and a plot in the same city by the L.D.A. This allotment was illegally done and in support of this allegation Annexure-16 has been filed.

45. On a perusal of Annexure 16 to the Writ Petition no.4177 of 2024, it is evident that it relates to lease in the name of Manoj Kesarwani, son of V.D. Keshari, and Smt. Kamla Keshari, wife of V.D. Keshari of house no. 3/272, Vishwas Khand, Gomti Nagar constructed on 200 m².

46. A copy of the resolution dated 10.02.1999 and a copy of the letter dated 29.01.2008 issued by the Public Information Officer and also a report submitted by the L.D.A. before the Yachika Samiti of Vidhan Sabha, showing such admission has been collectively filed as Annexure 21 to the petition.

47. On the basis of such submissions made in Writ Petition No. 4177 (M/B) of 2024, petitioner Rakesh Kumar Shukla has

prayed for quashing of order dated 30.04.2024 passed by the Chairman L.D.A. in relation to plot no. 1/205, and has also prayed for a writ in the nature of mandamus commanding the respondents not to allot plot no. 1/205, Vineet Khand, belonging to the petitioner, to any other person.

48. A perusal of Annexure 20 of the Writ Petition No.4177 (M/B) of 2024 shows that it is a letter sent on 05.05.2008 by the Joint Director Land Development, L.D.A. Lucknow to Kaushal Kishore Shukla, wherein it has been stated that the Patta/allotment made in favour of the petitioner is doubtful and his possession over plot no. 1/205, Vineet Khand is illegal as such Khasra number has already been acquired and made a part of layout plan of Vineet Khand, Phase-I Gomti Nagar.

49. It was also informed to him that the allottee V.D. Keshari had filed petition no. 1970 (M/B) of 2001 in the High Court in which an interim order dated 27.04.2005 was passed that since the petitioner had deposited the entire amount relating to allotment of plot no. 1/205, Vineet Khand such plot may not be allotted to anyone else during pendency of the petition.

50. A perusal of Annexure 21 to the Writ Petition No. 4177 of 2024 shows that it is reply given by Public Information Officer L.D.A. on 29.01.2008 to Kaushal Kishore Shukla with respect to an application made by him under the Right to Information Act. The petitioner had perhaps filed an appeal no. 45(A)/07 before the State Information Commission alleging withholding of information by the L.D.A. This information related to plot numbers 1/208A and 1/208B situated in Vineet Khand, Gomti Nagar. Information had also

been sought with regard to allotment of plot no. 1/205, Vineet Khand in favour of V.D. Keshari as well. Such information being in the nature of information relating to third party, objections were raised by Shri V.D. Keshari regarding giving of the same to Kaushal Kishore Shukla. Nevertheless, the entire file relating to allotment of plot no. 1/205, Vineet Khand, Gomti Nagar was shown to Kaushal Kishore Shukla in the office of the State Information Commission on 10.01.2008 and photocopies of relevant papers were also given to him.

51. We have carefully gone through the alleged receipt dated 02.09.1981 of Rs.50 relating to Housing site allotment of six Biswa. It has been issued in the name of Kaushal Kishore Shukla, son of Sant Baksh Shukla, and the name of the Gaon Sabha is shown as "Chanda" and the name of the Gram Pradhan has been shown as Ram Bharose. Another receipt which has been filed was also issued by Ram Bharose Pradhan on 21.12.1973 which is again for Rs.50 regarding allotment of 2 Biswa of land in Khasra no. 88 for housing purposes. It is not clear from both receipts of only Rs.50 as to why Ram Bharose Gram Pradhan of Gram Sabha "Chanda" had issued such receipts for two Biswa of land i.e. around 272 2 ft.² in 1973 and again six Biswa of land ie. around 816 6 ft.² in 1981, showing the same amount of money for different pieces of land, one land being evidently only one third of the other.

52. This Court has also carefully gone through the letters of recommendation allegedly made in favour of Kaushal Kishore Shukla by the Camp Commandant to the Deputy Collector, Lucknow and to the Consolidation Officer collectively filed as Annexures to the Writ Petition No.8426 (M/B) of 2009. It is clear from a perusal of

such documents that one letter was sent by the Camp Commandant on 20.02.1984 addressed to the Consolidation Officer Lucknow, forwarding an application of Havaladar KK Shukla serving in the Headquarters of 11 Mountain Brigade, regarding registration of purchased land in his name as mentioned in his application submitted along with the covering letter. Copy of such recommendatory letter dated 20.02.1984 has been endorsed to Shri Sant Baksh Shukla, resident of village Kinhauli ka Purva, Post Office Malauli, district Barabanki, (the father of Kaushal Kishore Shukla) and to Shri Ram Bharose Rawat, owner of the land R/O Village Husariya, Post Chinhat Lucknow. The application submitted by Havaladar KK Shukla enclosed along with the covering letter has conveniently not been filed by the petitioner, Kaushal Kishore Shukla in such Writ Petition No. 8426(MB) of 2009.

53. This court has also carefully perused the letter dated 26.10.1988 sent by Major K.V. Rajan Camp Commandant from the Headquarters of 54 th Infantry Division, forwarding an application in respect of prayer for excluding allotted land out of the plan of L.D.A., and strongly recommending the same. This letter is also endorsed to R B pandey advocate High Court, Lucknow and Sri Sant Baksh Shukla R/O Village Kinhauli ka Purva, Post Malauli, District Barabanki.

54. We have also carefully gone through copy of the Parivar Register filed by the petitioner showing house No. 54 with the name of it's occupants as Kaushal Kishore Shukla, son of Sant Baksh Shukla, Smt Kanti wife of Kaushal Kishore, Rajesh Kumar and Rakesh Kumar sons of Kaushal Kishore, such copy of Parivar Register has also been issued on 11.09.1981, showing

the name of the Gram Sabha as Khargapur Husariya, name of Nyay Panchayat as Nizampur Malhaur, name of village as Husariya, showing the name of Ram Bharose as Gram Pradhan as the person who had made the entries. It is common knowledge that Parivar Registers are maintained by Gram Panchayat Secretaries and entries therein are made by such Secretaries alone. It is not clear as to under what circumstances the Gram Pradhan and not the Panchayat Secretary to the Gram Sabha had made such entries in the Pariwar Register. A presumption can be drawn regarding Ram Bharose Gram Pradhan being the same person as Ram Bharose Rawat, the seller of certain land of village Husariya to the father of the petitioner late Kaushal Kishore Shukla, as the copy of the recommendatory letter dated 20.02.1984 sent by the Camp Commander to the Consolidation Officer has been endorsed to Ram Bharose Rawat as seller of the land.

55. It is also not clear as to how Ram Bharose Gram Pradhan of Gram Sabha "Chanda" as mentioned in the receipt of 1973, also, claimed to be the Gram Pradhan of village Husariya. There may be different hamlets of one Gram Panchayat. Village Husariya may be a hamlet of Gram Panchayat Khargapur Husariya. The Gram Pradhan Ram Bharose would only be competent to issue receipt for Gram Panchayat Khargapur Husariya but he had issued receipt for Gram Sabha Chanda in 1981, and also shown himself to be Gram Pradhan Husariya for a period of nearly fifteen years right from 1973 to 1987.

56. We have carefully examined various annexures to the Writ Petition No. 8426(MB) of 2009 and Writ Petition No. 4177 of 2024 and we find that Annexure 18 to the petition no. 4177 of 2024, which is a

copy of the minutes of the meeting dated 27.11.1998 held by the L.D.A. Board. With regard to Agenda item no. 16, the office noting has been relied upon by the petitioner, where it has been stated that Ujariaon Housing Scheme Part II was notified on 08.12.1984, under which acquisition of land of village Husariya was done by the L.D.A. Layout plan was prepared of Vineet Khand, Gomti Nagar in 1988-89 and allotment was done with effect from 1989. Such Scheme could not be completed because the land which was acquired had already be occupied by local people by raising permanent constructions thereon and they wanted regularisation of such possession and construction, and were willing to pay charges as fixed by the L.D.A. The problem was continuing for the past several years and was still unresolved i.e. till the date of meeting held in November 1998. There were around thirty to thirty five such permanent constructions. The office noting stated that the local residents were constantly pressurising the officers of L.D.A. to regularise/adjust their construction and they were obstructing all development work which was tried to be carried out in the area. There were also certain people who had being granted interim orders by the court. There were still others in whose case the court had directed that their construction be considered for regularisation. Officials of the L.D.A. had held repeated meetings with such local residents who had raised constructions on land belonging to Gram Samaj or land which had been acquired by the L.D.A.

57. It was proposed in the office note that where no acquisition proceedings had taken place and Gram Samaj land was converted into Bhumidhari land, construction raised thereon should be regularised by taking development charges

from the owners. Also, regularisation be done of construction on such land which, though acquired, no compensation had been paid to such occupiers by taking current rates fixed by the L.D.A. for such land. The L.D.A. Board had given its approval in principal to such proposal. The Vice Chairman L.D.A. was given the power to decide each case on its merit later on.

58. We have also gone through Annexure 14 to the Writ Petition No.8426 (M/B) of 2009, which is a copy of minutes of meeting held on 10.02.1999. With regard to plot no. 88 area 8167.50 ft.², the case of Kaushal Kishore Shukla was considered and it was found that as per Patta receipts produced by him he had been allotted 8167.50 ft.² of land. He had built boundary wall on 5423.23 ft.² and constructed a house on 645.60 ft.² of such land. Such construction was affecting plot no. 1/205, Vineet Khand, Gomti Nagar which had already been allotted by the L.D.A. to someone else and the entire cost had been deposited by the allottee. Therefore, it was recommended that KK Shukla be allotted land at some other place at current rates.

59. Annexure 18 of the Writ Petition No.8426 (M/B) of 2009 relates to First Appeal filed by Rakesh Kumar Shukla under Right to Information Act in relation to information sought regarding allotment of plot nos. 208A and 208 B of Vineet Khand, phase 1, Gomti Nagar, and is not related in any manner to plot no. 1/205 Vineet Khand, Gomti Nagar Development charges from them.

60. On consideration of Annexures to the counter affidavits filed by respondents it is evident from a perusal of the plaint in Regular Suit no. 233 of 1995 filed for

permanent injunction, it is evident that the plaintiff had initially stated that 6 Biswa of land was allotted in 1980 for Housing purposes by the Gram Sabha Khargapur Husariya and possession was given in 1980 and house was constructed there on also in 1980. Later on the figure '6' was scratched out and over written by figure of '8'. Also the year, 1980 was scratched out and 1973 over written on it. It has been argued by learned Counsel for the Respondents that such interpolation was done without any application being moved for Amendment of plaint by the plaintiff. This argument has not been disputed by learned counsel for the petitioner.

It was stated further in the plaint by Kaushal Kishore Shukla that on 25.03.1995 at around 11 A.M., L.D.A. officials had approached the property in dispute and tried to demolish the boundary wall. Since, the plaintiff was present he objected to such illegal demolition. He also showed papers relating to allotment of Housing Patta to them and they returned but threatened to come again and demolish the house and boundary wall. Again on 27.03.1995 at around 11:15 AM, employees of the L.D.A. tried to demolish the house of the plaintiff. The plaintiff objected and the employees returned. Since then twice attempt had been made by the officials of L.D.A. to demolish the house and boundary wall of the plaintiff and he had felt the need to approach the civil court, praying for Permanent Injunction.

61. Copies of the order dated 25.04.1995 and 31.03.1998 passed by Munsif Hawali Lucknow, have also been annexed by the Respondents. It seems from a perusal of the orders passed by Munsif Hawali that when the suit for Permanent Injunction was filed, no Ad interim ex parte

injunction was granted and L.D.A. was issued notice. The L.D.A. filed objections to the application for Interim Injunction where copies of Gazette notification relating to acquisition of land of village Husariya in Gomti Nagar were annexed. The court rejected the application for temporary injunction. A written statement was also filed by Lucknow Development Authority, copy of which is also annexed to the Counter Affidavit of the private respondent. In such written statement it has been mentioned that Khasra no. 88 ad-measuring 3 Bigha 15 Biswansi, is divided into six parts out of these six parts, Khasra no. 88/1, 88/2, and 88/3 had been acquired through a notification issued under Section 4, read with Section 17 of the Land Acquisition Act on 4.12.1984. Also, Section 6 read with Section 17 notification was also issued on 4.12.1984. The Award was declared on 25.02.1987, and possession was given to L.D.A. on 30.03.1986. Khasra no. 88/4, 88/5 are recorded in revenue records as Banjar and Khasra no. 88/6 has been recorded as Raasta and belonged to Gaon Sabha Husariya. After expansion of municipal limits such land of Gram Sabha was vested in the Nagar Nigam. From Nagar Nigam, such land was transferred to L.D.A.. It is incorrect to say that Khasra no. 88 is Abadi land and Gram Pradhan had a right to give Housing Patta on it. In case any allotment had been done by the Pradhan, it was illegal as it was against the provisions of Section 122C of the U.P.Z.L.A.R. Act. The ownership of the plaintiff over 8 Biswa of land on the basis of Housing Patta allotted to him by Gram Pradhan was seriously disputed as such allotment could not have been done without prior approval of the Assistant Collector first class/ SDM. The plaintiff was also not coming within the order of preference/eligibility as mentioned

in the U.P.Z.A.L.R. Act. The Suit had been filed without impleading the State of U.P. and Nagar Nigam and suffered from non-joinder of necessary party. No notice under Section 80 of this C.P.C. and Section 106 of Panchayat Raj Act was given. Hence, it was not maintainable. Thereafter the Original Suit no. 233 of 1995 was listed on several occasions. Issues were framed on 02.12.1998. After exchange of pleadings the Suit was dismissed for want of prosecution on the continued absence of the counsel for the plaintiff.

62. A true copy of Writ Petition No. 1701 (M/B) of 1998 has been filed and also of the order of this Court dated 21.03.1998. From a perusal of Writ Petition No. 1701 (M/B) of 1998, it is evident that in paragraph 3, the petitioner had stated that he had constructed a house on a plot of land measuring 6 Biswa which was granted as housing Patta by Gaon Sabha Khargapur Husariya and a house was built on permission being given by the Gram Pradhan on 02.09.1981. Much after the petitioner built the aforesaid house, Gomti Nagar Scheme was extended to nearby areas and in 1992 land of nearby areas was taken over by L.D.A. and layout plan of Vineet Khand, Phase-I, Gomti Nagar was made. However, the persons who were already residing in those areas for the last 10 years were not touched. No formal notice was issued of any kind to the petitioner by L.D.A. and its officials tried to demolish the petitioners house alleging that the land had been acquired. Due to oral threats of demolition made by L.D.A. officials on 28.05.1998, and no order in writing having been passed in this regard, the petitioner had approached the High Court. The prayer made in the Writ Petition No.1701 (M/B) of 1998 was for issuance of a Mandamus to the respondent L.D.A. not

to interfere with the peaceful possession of petitioner's house, presently numbered by L.D.A. as plot no.1/205, Vineet Khand, Gomti Nagar, Lucknow, and that they may be restrained from damaging or demolishing the aforesaid house or taking possession of the aforesaid a plot from the petitioner. A further prayer was made for issuance of writ in the nature of Certiorari for quashing the impugned order, if any, passed against the petitioner in respect of the plot in question after summoning the original from the opposite party. It appears that the Writ Petition No. 1701 (M/B) 1998 was filed on 08.06.1998, taken up as fresh on 11.06. 1998 and was disposed of on the same day recording the statement of the counsel for Lucknow Development Authority that it will only act in accordance with law. A perusal of this petition shows that there is no mention of Regular Suit No.233 of 1995 filed in the court of Civil Judge, Hawali Lucknow praying for Permanent Injunction where notice was issued to L.D.A. and application for Interim Injunction was rejected on 31.03.1998.

63. True copy of topographical Survey map of village Husariya of Khasra no. 88, Vineet Khand, Gomti Nagar, prepared by joint team of L.D.A. and Revenue officials has been filed in the Counter Affidavit of the private respondent. From a perusal of the report submitted on 27.04.2024, by the Consolidation Officer in the office of the L.D.A. to the Deputy Secretary, L.D.A. it is evident that a request was made in pursuance of filing of Writ Petition No. 8426 (M/B) of 2009, (Kaushal Kishore Shukla versus L.D.A.), on 12.10.2023, for spot inspection to be carried out of Khasra no. 55 and Khasra no. 88 in village Husariya and plot no. A - 1/205 area 540 m² in Vineet Khand, Gomti Nagar. The SDM Sadar had constituted the team of

Revenue Officials on 22.04.2024, and the team inspected the area and conducted demarcation/identification on 23.04.2024, and it was found that plot no. A-1/205, Vineet Khand, Gomti Nagar was situated on part of Khasra no. 55, which had been acquired under Ujariaon Housing Scheme phase 2 in 1984, and had been incorporated in the planned development of Vineet Khand by the L.D.A. A true copy of the notification under Section 4 and Section 6 of the Land Acquisition of Khasra no. 55 has also been filed. A true copy of the detailed Counter Affidavit filed by the L.D.A. in Writ Petition No. 8426 (M/B) of 2009 has also been filed in the Counter Affidavit of V.C. Keshari, private respondent in Writ Petition No. 4177 of 2024.

64. On consideration of the order impugned in Writ Petition No. 4177 of 2024, we find that the Order dated 30.04.2024 passed by the Vice Chairman, L.D.A. on the representation of Vimal Chand Keshari, son of Vaman Das Keshari impugned in Writ Petition No. 4177 of 2024 states that it has been passed in compliance of order dated 07.03.2024 passed in Writ Petition No. 1970 (M/B) of 2001. A representation was made in compliance of such order by Vimal Chand Keshari on 11.03.24 and on 22.04.2024 both Vimal Chand Keshari and Rakesh Kumar Shukla were heard in person and the records perused by him. As per the records, plot no. 1/205, Vineet Khand, Gomti Nagar was allotted on cash down basis to V.D. Keshari on 18.07.1988. The entire amount along with interest thereon was deposited by V.D. Keshari, but because of encroachment on such plot of land, its possession could not be delivered and lease deed could not be executed. The land was found to be encroached upon by Kaushal

Kishore Shukla who alleged that the same had been granted to him on Patta by the Gaon Sabha. The then Vice Chairman L.D.A. had on 05.05.1998, on Pradhikaran Mitra Diwas directed that possession should be given of the plot to V.D. Keshari and Kaushal Kishore Shukla should be allotted some other plot in another scheme of the L.D.A. at current rates. However, Kaushal Kishore Shukla continued to give representations at various levels for regularisation of his illegal encroachment on land occupied by him. He did not give any consent for being allotted another plot of land somewhere else. As a result, the order dated 05.05.1998 came to be automatically cancelled.

65. Shri V.D. Keshari thereafter approached the High Court by filing Writ Petition No. 1970 (M/B) of 2001. Kaushal Kishore Shukla also filed Writ Petition No. 8426 (M/B) of 2009, and alleged that his allotment for Housing site in village Husariya was on Khasra no. 88 by the Gaon Sabha.

66. It was further stated in the order dated 30.04.24 by the Vice Chairman that The Land Acquisition Section had submitted Google superimposed map of Vineet Khand, Gomti Nagar and plot no. 1/205, actually fell on Khasra no. 55, which was acquired by the L.D.A. and incorporated in its Layout Plan after giving compensation to the tenure holders in this regard. Khasra no. 88 was not being affected by the encroachment made by Kaushal Kishore Shukla. The ADM Land Acquisition had given possession to the L.D.A. of the land falling in village Husariya in 1986 and Award was declared on 25.02.1987. The land had vested in the State Government and thereafter transferred to the L.D.A.. Shri Vaman Das

Keshari died on 09.11.2016 and the allotment of plot no. A - 1/205. Vineet has been made in his son's name.

67. During the course of hearing, given by V.C. L.D.A. Rakesh Kumar Shukla son of late Kaushal Kishore Shukla had stated that his father was allotted Khasra no. 88 as Housing site in 1973 by Gram Pradhan village Husariya and the report submitted by the Land Acquisition Section of the L.D.A. was incorrect. Again, taking into account such objection, the Land Acquisition Section, the Lekhpal of area Khargapur constituted a joint team and inspected the site and identification by Total Station Machine was done on the basis whereof a report was submitted on 23.04.2024 that the Survey carried out through ETS had identified Khasra no. 232 area 0.013 ha as Naala in village Husariya over which road was constructed which was in existence till date and in the map prepared by ETS Consultancy of village Husariya on the basis of such Fixed point, land of Khasra no. 55 is shown in pink colour, and Khasra no. 88 has been shown in green colour. In such map of Village Husariya, the house of Kaushal Kishore Shukla is situated on Khasra no. 55 and not on Khasra no. 88. Also Khasra no. 55 area 0.6100 ha was acquired after giving compensation to its recorded tenure holders Ram Prasad, Santosh Kumar and others. Even on a perusal of Report submitted by the Consolidation Officer on 27.04.2024, it is evident that plot no. A - 1/205 Vineet Khand, Gomti Nagar falls on Khasra no. 55 of village Husariya which had been acquired under the Ujariaon Residential Scheme Part II in 1984 itself. Land of Khasra no. 55 had been acquired and planned development has been carried out by L.D.A..

68. The Vice Chairman also dealt with submission made by Rakesh Kumar Shukla that allotment of A-1/205 in favour of V.D. Keshari could not have been done because he had already been allotted house no. 3/272 Vishwas Khand Gomti Nagar. The original records were perused and it was found that house no. 3/272 Vishwas Khand, Gomti Nagar was allotted to Shri Rajeev Kesarwani son of Ramakrishna Kesarwani through lottery mode on 07.01.1984, and Manoj Kesarwani was allotted plot no. 3/438 Viram Khand, Gomti Nagar. Rajiv Kesarwani and Manoj Kesarwani had given an application for mutual exchange of the allotments made to them as a result of which house no. 3/272 Vishwas Khand Gomti Nagar was allotted in favour of Manoj Kesarwani and plot no. 3/438 Viram Khand Gomti Nagar was allotted in favour of Rajiv Kesarwani. Smt. Kamla Keshari wife of V.D. Keshari was not the original allottee of house no. 3/272, Vishwas Khand Gomti Nagar. Her name was added later on in the lease deed on the request of her son Manoj Kesarwani.

D- Statutory Provisions

69. Furthermore, the submissions of both parties also require scrutiny on the basis of the governing statutory framework. A housing site patta can be given as per the provisions of Section 122-C of the U.P.Z.A. & L.R. Act, 1950 read with Rules 115-L, 115-N & 115-O of U.P. Zamindari Abolition and Land Reforms Rules, 1952 (Published vide Notification No. 7996/I-A-1282-1952, dated 08.10.1952) and Paras 47 and 49 along with Z.A. Form 49-D, Z. A. Form 49-E, Z. A. Form 49-F (Certificate of Allotment) under Para 49 (3) of the U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual (hereinafter referred to as The Manual).

70. Section 122-C of the U.P. Zamindari Abolition and Land Reforms Act, 1950, is the substantive provision, introduced by the U.P. Land Laws (Amendment) Act, 1971, with the object of regulating the allotment of housing sites. This amendment came into force on 22 August 1971. The relevant part of the U.P. Land Laws (Amendment) Act, 1971, is being quoted below:-

“In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Bhoomi-Vidhi (Sanshodhan) Adhiniyam, 1971 (Uttar Pradesh Adhiniyam Sankhya 21 of 1971) as passed by the Uttar Pradesh Legislature and assented to by the President on August 22, 1971.

UTTAR PRADESH LAND LAWS
(AMENDMENT) ACT, 1971 (U.P. Act No.
21
of 1971)
(As passed by the Uttar
Pradesh Legislature) An
Act

further to amend the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956.

It is hereby enacted in the Twenty-Second Year of the Republic of India as follows:-

CHAPTER I

Preliminary

1.

CHAPTER II

2.

3. *After section 122-B of the principal Act, the following sections shall be inserted, namely ;*

“122-C, (1) The Assistant Collector In-charge of the sub- division, of his own motion or on the resolution of the Land Management Committee, may ear-mark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers etc., and village artisans –

(a) lands referred to in clause (i) of sub-section (1) of section 117 and vested in the Gaon Sabha under that section ;

(b) lands coming into possession of the Land Management Committee under Section 194 or under any other provision of this Act;

(c) any other land which is deemed to be or becomes vacant under section 13, section 14, section 163, section 186 or section 211;

(d) where the land ear-marked for the extension of abadi and reserved as abadi site for Harijans under the U.P. Consolidation of Holdings Act, 1953, is considered by him to be insufficient and land ear-marked for other public purpose under that Act is available, then any part of the land so available.

(2) Notwithstanding anything in sections 122-A, 195, 196, 197 and 198 of this Act, or in Section 4, 15, 16, 28-B and 34 of the United Provinces Panchayat Raj Act, 1947, the Land Management Committee may with the previous approval of the Assistant Collector In-charge of the sub-division, allot, for the purpose of building of houses, to persons referred to in sub-section (3) –

(a) any land ear-marked under sub-section (1);

(b) any land ear-marked for the extension of abadi sites for Harijans under the provisions of the U.P. Consolidation of Holdings Act, 1953;

(c) any abadi site referred to in clause (vi) of section (i) of section 117 and vested in the Gaon Sabha;

(d) any land acquired for the said purposes under the Land Acquisition Act, 1894.

(3) The following order of preference shall be observed in making allotments under sub-section (2)-

(i) an agricultural labourer or a village artisan residing in Gram Sabha and belonging to any of the following categories in the order of preference:-

(a) persons belonging to the Scheduled Castes and the Scheduled Tribes;

(b) persons belonging to other Backward Classes;

(c) persons belonging to the general category living below poverty line;

(ii) any other agricultural labourer or village artisan residing in the village;

(iii) any other person residing in the Gram Sabha and belonging to any of the following categories in the order of preference:-

(a) persons belonging to the Scheduled Castes or the Scheduled Tribes;

(b) persons belonging to Other Backward Classes;

(c) persons belonging to the general category living below poverty line;

(iv) a person with disability residing in the village.

Explanation I-The expression "agricultural labourer" shall have the same meaning as in Section 198.

Explanation II-The expression 'village artisan' means a person who does not hold any agricultural land and whose main source of livelihood is manufacture or repair of traditional tools, implements and other articles or things used for agriculture or purposes ancillary thereto and includes a carpenter, weaver, potter, blacksmith, silversmith, goldsmith, barber, washerman, cobbler or any other person who normally earns his livelihood by practising a craft either by his own labour or by the labour of any member of his family in any rural area:

Provided that no person shall be deemed to be a village artisan whose total income (including income of his or her spouse and minor children) exceeds two thousand four hundred rupees in a year.

Explanation III-The expression "person with disability" shall mean a person with any disabilities mentioned in Clause (I) of Section 2 of the persons with Disabilities (Equal Opportunities, Protection & Rights and Full Participation) Act, 1955 (Act No. 1 of 1996).

Explanation IV-Preference shall be given to a person who either holds no house or has insufficient housing accommodation considering the requirements of his family.

Explanation V-The expression "persons of General Category living below poverty line" shall have the same meaning as in Section 198.

(4) If the Assistant Collector-in-charge of the sub-division is satisfied that the Land Management Committee has failed to discharge its duties or to perform its functions under sub-section (2) or it is otherwise necessary or expedient so to do,

he may himself allot such land in accordance with the provisions of sub-section (3).

(5) Any land allotted under this section shall be held by the allottee on such terms and conditions as may be prescribed.

(6) The Collector may of his own motion and shall on the application of any persons aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.

(7) Every order passed by the Assistant Collector under sub-section (4) shall, subject to the provisions of sub-section (6) and every order passed by the Collector under sub-section (6) shall be find, and the provisions of Section 333 and Section 333-A shall not apply in relation thereto.

(8) The Assistant Collector in-charge of the sub-division, of his own motion or on any application made to him in that behalf may in order to carry into effect any allotment of land or other order made under sub-section (2), sub-section (4) or sub-section (6) direct delivery of possession of any such land to an allottee or to the Gaon Sabha after ejectment of every person holding or retaining possession thereof, any may for that purpose use or cause to be used such force as may be necessary. "

71. The procedural aspect of grant of Lease/Allotment Certificate is governed by Rule 115-L, Rule 115-M and Rule 115-O of the Zamindari Abolition and Land Reform Rules, 1952. This rule was added by notification no. 11/1-A-1199-1953, dated March 11, 1954 and substituted by

No. 188/1-A-4(11)-70, dated April 5, 1971, and again substituted by No. 256/Rajaswa-1, dated March 16/17, 1972.

72. Rule 115-L, Rule 115-M, and Rule 115-O of the U.P. Zamindari Abolition and Land Reforms Rules, 1952, as they stood at the relevant time, are reproduced herein-below:

"Allotment of Land for Housing Sites

115L. A-Abadi sites for preferential categories. - *(1) The Assistant Col-lector-in-charge of the sub-division may, wherever land ear-marked for the extension of abadi for Harijans under the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953 and any other land of abadi site vested in Gaon Sabha is insufficient to meet the housing requirements of persons referred to in sub-section (3) of Section 122-C, proceed to earmark land for abadi sites in accordance with sub-section (1) of the said section.*

(2) [* *]*

(3) Before allotting housing sites to persons referred to in sub-section (3) of Section 122-C, the Assistant Collector in-charge of the sub-division shall, in respect of each village, cause to be prepared the following lists and extracts-

(i) a list in Z.A. Form 49-D showing separately particulars of persons of the three categories mentioned in sub-section (3) of Section 122-C;

(ii) a list in Z.A. Form 49-E of lands enumerated in sub-section (2) of Section 122-C; and

(iii) an extract of village map showing the plots given in the above list.

(4) In making allotment of housing sites under this rule, the order of

preference mentioned in sub-section (3) of Section 122-C shall be observed.

(5) No premium shall be charged for allotment of housing sites under this rule.]

115M. B-Other abadi sites. - (1) Abadi sites other than those referred to in Rule 115-L and vested in a Gaon Sabha may be allotted for construction of buildings for residential or charitable purposes or for purposes of cottage industry in the following order of preference –

(a) a landless agricultural labourer or a village artisan residing in the village;

(b) a bhumidhar, sirdar or asami residing in the village and holding land less than 1.26 hectares (3.125 acres);

(c) any other person residing in the village.

(2) Every allottee under this rule shall be required to deposit an amount equal to 40 times of the rent of the land calculated at hereditary rates which shall be credited to the Gaon Fund:

Provided that no premium shall be charged in respect of site allotted for charitable purpose.

115N. -General. - (1) Whenever the Land Management Committee proceeds to allot housing sites under Rule 115-L, or 115-M, it shall announce by beat of drum in the village the exact location of the sites to be allotted, the time, the date and venue of allotment.

(2) All allotment shall be made by the Land Management Committee in a meeting held for the purpose on the date announced under sub-rule (1). Where more than one person belonging to the same order of preference express their desire to be

allotted a particular site, the said Committee shall draw lots to determine the person to whom the site should be allotted :

Provided that the prior approval of the Assistant Collector-in-charge of the Sub-Division shall be obtained for every allotment under Rule 115-L or 115-M.

(3) The allottee of the housing site shall be given a receipt for the premium, if any, paid by him to the Land Management Committee and a certificate of allotment. The certificate shall be in Z.A. Form 49-F which shall be prepared in two parts, the main certificate being given to the allottee and its counterpart remaining with the Land Management Committee for record.

115O. The maximum area of allotment under Rule 115-L or 115-M shall not exceed 250 square metres and the allottee shall not be required to pay ground rent therefor :

Provided that the limit of 250 metres shall not apply to cases of allotment of land for construction of a building for a charitable purpose or for setting up a cottage industry.

Relevant Provisions Contained in the U.P. Gram Sabha, Gram Panchayat, and Bhumi Prabandhak Samiti Manual (Published on 17 April 1954)

73. Para 49 of the Manual prescribes the detailed procedure to be followed for such allotment of housing sites, as provided under Rule 115-N of the U.P.Z.A. & L.R. Rules. Together, these provisions lay down both the substantive eligibility criteria and the mandatory procedural safeguards governing the allotment of Gram Sabha land for residential purposes.

74. The relevant provisions contained in Para 49 of the U.P. Manual, 1954, as it

prevailed at the material time, is extracted as under

District... .. ,

“49. (1) Whenever the Bhumi Prabandhak Samiti proceeds to allot housing sites under Rule 115-L or 115-M, it shall announce by beat of drum in the village the exact location of the sites to be allotted, the time, the date and venue of allotment.

(2) All allotment shall be made by the Bhumi Prabandhak Samiti in a meeting held for the purpose on the date announced under sub-rule (1). Where more than one person belonging to the same order of preference express their desire to be allotted a particular site, the said Samiti shall draw lots to determine the person to whom the site should be allotted:

Provided that the prior approval of the Assistant Collector-in-charge of the Sub-division shall be obtained for every allotment under Rule 115-L or Rule 115-M.

(3) The allottee of the housing site shall be given a receipt for the premium, if any, paid by him to the Bhumi Prabandhak Samiti and a certificate of allotment. The certificate shall be in Z.A. Form 49-F which shall be prepared in two parts, the main certificate being given to the allottee and its counterpart remaining with the Bhumi Prabandhak Samiti for record.”

The relevant IA forms 49-D, 49-E and 49F are being quoted hereinbelow:-

*Z.A. Form 49-D
[See Rule 115-L(3)]*

List of persons preferred to in sub-section (3) of Section 122-C

*Village... .. , Pargana... ..
... .. , Tahsil... .. ,*

	Na	C	Ot	Rela	A	Housi	Housi	Re
S	me	as	her	tions	g	ng	ng	ma
l	an	te	me	hip	e	Acco	acco	rks
N	d	or	mb	with		mmod	mmod	
o	Ad	tr	ers	the		ation	ation	
.	dr	ib	of	head		availa	further	
	ess	e	his	of		ble	r	
	of		fa	the			neede	
	he		mil	fami			d	
	ad		y	ly				
	of							
	fa							
	mil							
	y							
1	2	3	4	5	6	7	8	9

A. Agricultural labourers or village artisans belonging to Scheduled Caste or Scheduled Tribe.

B. Other agricultural labourers or village artisans.

C. Other persons belonging to Scheduled castes or Scheduled Tribes.

*Z.A. Form 49-E
[See Rule 115-L(3)]*

List of Land for Abadi Sites

*Village... .. , Pargana... .. ,
Tahsil... .. ,
District ,*

*Khasra No. of plot
Area
Remarks
Dated... .. ,
Sub-Divisional Officer
Tahsil... .. ,
District... .. ,*

*Z.A. Form 49-F
[See Rule 115-N (3)]*

Certificate of Allotment of Housing Sites

I, ..., Chairman of the Bhumi Prabandhak Samiti of Circle
 Tahsil District... ..
 Assistant Collector in-charge of the sub-division District... ..
 Certify that Sri, s/o Sri
 ..., resident of village, has been
 allotted housing site measuring... ..
 sq. metres detailed below. The allottee paid
 Rs... .. as premium to the Committee
 through Receipt No... .., dated... ..
 ..., Village... .. Pargana... ..
 ..., Tahsil... .. Distict... ..

Khasra No. of the Plot Area Boundaries

North

South

East

West

Dated... .. Day of 19

Chairman

Bhumi Prabandhak Samiti

Assistant Collector-In-Charge of Sub- Division"

E- Governing Principles

75. From the above-quoted provisions, the following governing principles emerge:

-

(i) Sub-Section (1) of Section 122-C empowers the Assistant Collector in charge of a subdivision, on his own or on a Land Management Committee's resolution, to earmark specific classes of Gaon Sabha vacant land for abadi (housing) sites for Scheduled Castes, Scheduled Tribes, Other Backward Classes, persons of general category below the poverty line,

agricultural labourers, and village artisans.

(ii) Sub-sections (2) to (8) provide that subject to the previous approval of the Assistant Collector, the Land Management Committee may allot such land for construction of houses in accordance with the prescribed order of preference among the eligible categories. In case, the Committee fails to perform its duties, the Assistant Collector himself may make the allotment. Any irregular allotment may be cancelled by the Collector after due inquiry, and his decision shall be final.

(iii) Rule 115-L empowers the Assistant Collector-in-charge of the subdivision to earmark suitable land for abadi sites when the land already set apart for Harijans, Scheduled Tribes, or agricultural labourers under Section 122-C or vested in the Gaon Sabha is insufficient to meet their housing requirements. It also mandates that allotments must follow the order of preference specified in Section 122-C, ensuring fair distribution, and that no premium shall be charged for such housing site allotments.

(iv) 115-L further provides that before making allotments, Assistant Collector in-charge of Sub-division shall prepare, for each village, three lists (i) a list of eligible persons in Form 49-D, (ii) a list of available lands in Form 49-E, and (iii) an extract of the village map showing proposed plots.

(v) Rule 115-N ensures transparency and fairness in allotments. It mandates public announcement of site details, date, and venue. All allotments must be made by the Land Management Committee in a properly convened meeting, with prior approval of the Assistant Collector, and every allottee must be issued a formal receipt and a certificate of

allotment (Form 49-F), one copy for the allottee and one retained by the Land Management Committee for record.

(iv) Rule 115-O limits the maximum area of each allotment to 250 square metres, except where land is allotted for charitable purposes or cottage industries.

(vii) Para 49 of the Manual directs that before allotting housing sites under Rules 115-L or 115-M, the Bhumi Prabandhak Samiti shall announce by beat of drum the site location, date, and time of allotment. Allotments must be made in a meeting convened for that purpose, and if multiple applicants of the same category seek one plot, lots shall be drawn. Every allotment must obtain prior approval of the Assistant Collector, and the allottee receives a receipt and certificate (Form 49-F).

(viii) Para 49 of the U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual, 1954, as applicable at the relevant time, when read together with Rule 115-L, 115-M, 115-N and 115-O, provide the statutory framework governing the management, control, and allotment of Gram Sabha land. These provisions collectively prescribe the duties, responsibilities and procedural safeguards to be followed by the Bhumi Prabandhak Samiti, including maintenance of land records, protection of Gram Sabha property from encroachment, and the manner in which allotments are to be considered, approved or rejected.

F- Analysis of Petitioner's Claim

76. On a conjoint reading of the above provisions, it is clear that the legislative intent is to ensure fair and equitable allotment of abadi sites to members of weaker sections, including Scheduled Castes, Scheduled

Tribes, and agricultural labourers and village artisans etc. The Assistant Collector is entrusted with the responsibility to identify suitable land, prepare the requisite records, and make allotments strictly in accordance with the prescribed order of preference under Section 122-C. The process must be transparent and just, ensuring that no premium is charged from the allottees. These safeguards collectively promote social justice and prevent arbitrary or irregular allotments. It is also clear from above quoted provisions that Section 122-C of the U.P.Z.A.L.R Act was inserted for the first time, vide Uttar Pradesh Land (Laws) Amendment Act, 1971 which was published in the Official Gazette on 22.08.1971. Sub-Section 2 of Section 122-C which was inserted vide the aforesaid amendment specifically required obtaining of previous approval of the Assistant Collector before making allotment.

77. As regards the contention of the learned counsel for the petitioner that the requirement of prior approval of the Sub-Divisional Magistrate was introduced only in the year 1975, and that before 1975 no such approval was necessary for the grant of patta by the Gram Sabha, we find no merit in this submission. The requirement of obtaining previous approval was incorporated in the substantive provision itself by the Uttar Pradesh Land (Laws) Amendment Act, 1971, which was published in the Official Gazette on 22.08.1971. Sub-section (2) of Section 122-C expressly mandates prior approval of the Assistant Collector before any allotment is made. Therefore, no subsequent Rule, Manual or Provision, in any or notification can override or dilute the substantive statutory requirement.

78. However, any subsequent provision can only be made to bring it in conformity with the substantive provision,

and this is clearly reflected in the proviso to sub-para (2) of Rule 115-N, which provides that prior approval of the Assistant Collector-in-charge of the Sub-Division shall be obtained for every allotment made under Rule 115-L or Rule 115-M. This requirement was introduced by substitution through Notification No. U.O. 605/Rajaswa-1-2(8)-75 dated 01.11.1975, thereby ensuring consistency with the mandate already contained in sub-section (2) of Section 122-C of the U.P. Zamindari Abolition and Land Reforms Act.

G- Case Law on the Subject

79. In **Amar Singh v. Ranpal Singh and Others, 2021 (8) ADJ 418** this Court has held that the requirement of previous approval of the Assistant Collector before grant of allotment under Sections 195, 197, and 198 of the U.P.Z.A.L.R. Act was introduced by the U.P. Zamindari Abolition and Land Reforms (Amendment) Act, 1968, while the corresponding provision under Section 122-C came into force through the U.P. Land Laws (Amendment) Act, 1971. The Court further held that the substantive provisions contained in the U.P.Z.A.L.R. Act prescribed for previous approval of the Assistant Collector before allotment was very much in force prior the date of grant of alleged lease. The contention that the same was introduced for the first time on 01.11.1975 by amending Rule 115-N, can be of no help as it is settled law that Rules cannot override or control the provisions contained in the Parent Act. It is a well-established legal principle that subordinate legislation, such as Rules or Notifications, cannot override, amend, or control the substantive provisions of the parent Act. The Rules must operate strictly within the framework and intent of the Statute, yielding to it

whenever any inconsistency with the Act arises.

H- Fraud through Misrepresentation and Concealment

80. Courts exist to uphold justice, not to shelter deceit. Any litigant approaching the Court must come with clean hands. A claim founded on misrepresentation or falsehood amounts to fraud and a grave abuse of judicial process, warranting prompt dismissal at any stage.

81. In *S.P. Chengalvaraya Naidu(Dead) by LRs Vs. Jagannath (Dead) by LRs and Others*, (1994) 1 SCC 1, the Supreme Court discussed the consequence of an order obtained by fraud. It also defined the meaning of fraud. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a cheating intended to get an advantage. A litigant who approaches the court is bound to produce all the documents which are relevant to litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the court as well as on the opposite party. Non-production and even non-mentioning of a relevant fact or document is tantamount to playing fraud on the Court. One who comes to the court must come with clean hands. A person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. A judgement or decree obtained by fraud on the court is a nullity and non-existent in the eyes of law.

82. In *K.D. Sharma v. Steel Authority of India Ltd. and others: (2008) 12 SCC 481*, the Court held that the jurisdiction of

the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayshree and others v. Bhagwandas S. Patel and others* : (2009) 3 SCC 141.

83. In *Dalip Singh versus State of Uttar Pradesh and others*, (2010) 2 SCC 114, the Supreme Court observed that a litigant's efforts to mislead the authorities and the Court cannot but be treated as reprehensible. Such litigant belongs to a category of persons who not only attempt but succeed in polluting the course of Justice. While exercising discretionary and equitable jurisdiction under Article 32 and 226, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the litigant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of, and he intends to delay the proceedings, then the court will non suit him on the ground of contumacious conduct. A party which has misled the court in passing an order in its favour is not entitled to be heard on the merits of the case. A person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been

placed before the High Court, then it will be fully justified in refusing to entertain a petition under Article 226 of the Constitution. Jurisdiction under Article 32 and 226 of the Constitution is extraordinary, equitable, and discretionary, and it is imperative that the petitioner approaching the court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

84. In *Moti Lal Songara versus Prem Prakash Alias Pappu and another* (2013) 9 SCC 199, the Supreme Court observed that anyone who takes recourse to method of suppression in a court of law is in actuality, playing fraud upon the court and the maxim "*suppressio veri, expressio falsi*" that is suppression of the truth is equivalent to expression of falsehood gets attracted.

85. In *State of Orissa versus Laxmi Narayan Das (Dead) Through LRs & Others*, (2023) 15 SCC 273, the Supreme Court has made observations that misrepresentation and concealment on the part of the litigant should be discouraged and viewed seriously.

I- Conclusion

86. The statutory scheme regulating the allotment of Gram Sabha land for housing sites is embodied in Section 122-C of the U.P. Zamindari Abolition and Land Reforms Act, 1950, read conjointly with Rules 115-L, 115-N and 115-O of the U.P.Z.A. & L.R. Rules, 1952, and Paras 47

and 49 of the U.P. Gram Sabha, Gram Panchayat and Bhumi Prabandhak Samiti Manual, 1954. Section 122-C, introduced by the U.P. Land Laws (Amendment) Act, 1971 and enforced from 22.08.1971, authorises the Assistant Collector to earmark suitable Gaon Sabha or vacant land for abadi sites for Scheduled Castes, Scheduled Tribes, Other Backward Classes, persons of the general category below the poverty line, agricultural labourers and village artisans. Significantly, sub-section (2) unequivocally mandates that no allotment can be made without the prior approval of the Assistant Collector, a statutory condition in force since 1971. Further Rules 115-L to 115-O prescribe the procedural safeguards governing such allotments, including preparation of the list of eligible persons (Form 49-D), list of available land (Form 49-E), village map extracts, public announcement by beat of drum, convening of the Bhumi Prabandhak Samiti meeting, adherence to the order of preference, drawing of lots wherever required, issuance of the allotment certificate in Form 49-F, and limiting the allotment area to 250 square metres. The 1975 amendment to Rule 115-N merely harmonised the Rules with the already existing statutory requirement of prior approval. Further, Para 49 of the Manual consolidates the above statutory and procedural requirements and reiterates the mandatory duties of the Bhumi Prabandhak Samiti, together with the supervisory control vested in the Assistant Collector during the entire process of earmarking and allotment of abadi sites. Accordingly, any patta issued without obtaining the prior approval of the Assistant Collector is void, illegal and unenforceable in law.

87. Cancellation of a Patta necessarily presupposes the prior existence of a

lawfully executed and validly conferred allotment made by a competent authority strictly in accordance with the statutory scheme. In the present case, however, the documentary record clearly establishes that no such Patta was ever granted under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or the Rules framed thereunder, and the claim of the Petitioner rests only on an oral assertion, unsupported by any legal or documentary evidence. Moreover, in view of the statutory mandate introduced by the 1971 Amendment to Section 122-C, no Patta could legally have been issued without obtaining the previous approval of the Assistant Collector. This requirement is not directory but mandatory, and it constitutes a jurisdictional precondition for the lawful creation of any allotment. In the absence of any legal or documentary evidence, any purported allotment cannot, in any manner, be presumed to exist. The petitioner has failed to produce even a single document to support his claim, rendering the alleged allotment wholly baseless. The claim is entirely imaginary, made only with the intent of grabbing public land. Consequently, when no lawful Patta ever came into existence, the question of its cancellation does not arise.

88. The Hon'ble Supreme Court in *Dina Nath v. State of U.P. & Ors. (2010) 15 SCC 218*, has held that the Court cannot remain a silent spectator and is duty-bound to ensure that public property is not frittered away by unscrupulous persons. The Court must safeguard public land by ensuring that such illegal claims are thoroughly enquired into and that appropriate remedial action is taken.

89. In view of the aforesaid discussion, we, hereby, **dismiss** the Writ

Petition for the following reasons, as enumerated hereinbelow:

i. *The question of cancellation presupposes the existence of a Patta lawfully issued by a competent authority under the statutory framework. In the present case, the record clearly establishes that no such Patta was ever granted under the relevant provisions. The petitioner relies solely on a receipt allegedly issued by the Gram Pradhan of Gram Sabha 'Chanda' and not Gram Sabha Khargapur Husariya, which is entirely devoid of statutory authority or procedural compliance. Such a document cannot, under any legal interpretation, be treated as a valid or subsisting Patta.*

ii. *Prior approval of the Assistant Collector, as expressly mandated under Section 122-C of the U.P. Zamindari Abolition and Land Reforms Act, 1950, was a condition precedent for making any allotment of a housing site. Section 122-C, inserted by the U.P. Land Laws (Amendment) Act, 1971 and published in the Official Gazette on 22.08.1971, has unequivocally required such prior approval since its very inception in 1971. The contention that this requirement was introduced only in 1975 is wholly misconceived and untenable, as the statutory mandate has been in force since 22.08.1971 and cannot be overridden, diluted, or nullified by any subsequent rule or executive instruction. In fact, the later amendment of Rule 115-L was entirely in consonance and uniformity with Section 122-C, serving merely to bring the procedural rules in line with the substantive statutory requirement already in place.*

iii. *The copy of the Parivar Register filed by the petitioner also fails to inspire confidence, as entries therein can*

be made only by the Secretary in accordance with the provisions of the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. The said copy of the Parivar Register, produced by the petitioner, shows House No. 54 with the names of its occupants as Kaushal Kishore Shukla, son of Sant Baksh Shukla, Smt. Kanti, wife of Kaushal Kishore, and Rajesh Kumar and Rakesh Kumar, sons of Kaushal Kishore. The document is stated to have been issued on 11.09.1981, indicating the name of the Gram Sabha as Khargapur Husariya, the Nyay Panchayat as Nizampur Malhaur, and the village as Husariya, and it bears the name of Ram Bharose, Gram Pradhan, as the person who purportedly made the entries, though the Gram Pradhan had no authority whatsoever to make or authenticate entries in the Parivar Register under law.

iv. *It is a settled principle of law that when a statute prescribes a particular act to be done in a particular manner, it must be done in that manner alone or not at all. Every word of the statute must be given due effect. Over a century ago, in Taylor v. Taylor (1875) 1 Ch D 426, Jassell M.R. enunciated this rule, which has withstood the test of time and was reaffirmed by the Privy Council in Nazir Ahmed v. Emperor AIR 1936 PC 253(2), and later by the Hon'ble Supreme Court in Shiv Bahadur Singh v. State of U.P., AIR 1954 SC 322 and Deep Chand v. State of Rajasthan, AIR 1961 SC 1527.*

v. *The status of the petitioner over the property in question is nothing more than that of an encroacher, having no lawful title, right, or interest therein. The alleged receipts relied upon are devoid of evidentiary value, as they neither emanate from nor bear the approval of any competent authority. In the absence of any valid Patta, lease, or allotment order, claim*

is wholly unauthorized, illegal, and without legal sanctity, constituting a mere act of encroachment upon government land.

vi. The alleged allottee Kaushal Kishore Shukla, the father of the petitioner belonged to the General Category and, being an ex-army personnel, did not fall within any of the eligible categories prescribed for allotment under Section 122-C of the U.P. Zamindari Abolition and Land Reforms Act, 1950, namely, the Scheduled Castes, Scheduled Tribes, Other Backward Classes, persons of the General Category living below the poverty line, agricultural labourers, or village artisans. Consequently, no allotment could have been legally made in his favour under the applicable rules. Therefore, the mere production of certain receipts or papers not issued or authenticated by any competent authority cannot establish that any valid patta ever existed in his name; hence, the question of cancellation of such patta does not arise at all. The action of the L.D.A. is, therefore, entirely justified and fully in accordance with law.

vii. The Hon'ble Supreme Court has consistently emphasized that fraud, concealment, and misrepresentation strike at the very integrity of the judicial process. A litigant invoking the jurisdiction of the Court must act with utmost candour and make full disclosure of all material facts. Withholding documents, suppressing truth, or presenting distorted facts amounts to fraud and attracts the maxim suppressio veri, expressio falsi. Any order or judgment procured through such deceit is a nullity in law. Given the equitable and discretionary nature of jurisdiction under Article 226 of the Constitution of India, courts may reject a petition at the threshold when the litigant is guilty of suppression or misrepresentation.

90. For all the aforesaid reasons, the writ petition stands *dismissed*.

(2025) 12 ILRA 634

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 02.12.2025

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.

THE HON'BLE PRASHANT KUMAR, J.

Writ C No. 8939 of 2025

M/S Sahu Land Developers Pvt. Ltd.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Matter pertains to Whether the order passed by National Commission in its Appellate or revisional jurisdiction can be challenged before the High Court in writ jurisdiction under Article 226 of the Constitution of India and If so, then under what circumstances should such writs be entertained and what is the scope of challenge before the writ court under Article 226? (Paras 3, 18–21)

Headnotes

Maintainability of writ petition - Challenge to concurrent findings of District Commission, State Commission and National Commission - Scope of interference under Articles 226/227 - Rule of alternate remedy - Exceptions - Disputed questions of fact - Consumer Protection Act, 2019. (Paras 8-27)

Alternative remedy - Not an absolute bar - Self-imposed restraint by High Court - Exercise of writ jurisdiction only in exceptional circumstances such as violation of fundamental rights, principles of natural justice, lack of jurisdiction or patent illegality. (Paras 12-21)

Concurrent findings of fact - District Commission holding unfair trade practice - State Commission and National Commission affirming - Re-agitation of

factual issues impermissible in writ jurisdiction. (Paras 22-26)

Held: when supervisory jurisdiction under Article 227 of the Constitution is available, writ petition under Article 226 should not be normally entertained, except in exceptional circumstances involving violation of fundamental rights, principles of natural justice, or patent illegality - findings recorded by the District Commission, State Commission and National Commission were based on appreciation of evidence and did not suffer from perversity or jurisdictional error - the issues raised by the petitioner relating to possession, consolidation proceedings and force majeure were purely factual and disputed in nature and could not be re-examined in writ jurisdiction - petitioner failed to make out a case for interference, and accordingly, the writ petition was dismissed. (Paras 21 – 27) (E-7)

Case Law Cited

Whirlpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1; *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107; *Radha Krishan Industries v. State of H.P.*, (2021) 6 SCC 771; *Ibrat Faizan v. Omaxe Buildhome (P) Ltd.*, (2023) 11 SCC 594; *Universal Sompo General Insurance Co. Ltd. v. Suresh Chand Jain*, (2024) 9 SCC 148; *Rikhab Chand Jain v. Union of India*, 2025 SCC OnLine SC 2510; *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261; *Associated Cement Companies Ltd. v. P.N. Sharma*, AIR 1965 SC 1595; *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97; *Garment Craft v. Prakash Chand Goel*, (2022) 4 SCC 181; *Satyabrata Ghosh v. Mugneeram Bangur & Co.*, AIR 1954 SC 44; *Alopi Prasad & Sons v. Union of India*, AIR 1960 SC 588; *Delhi Airtech Services Pvt. Ltd. v. State of U.P.*, (2011) 9 SCC 354; *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

List of Acts

Constitution of India; Consumer Protection Act, 2019; Uttar Pradesh Consolidation of Holdings Act, 1953; Indian Contract Act, 1872; Real Estate (Regulation and Development) Act, 2016

List of Keywords

Writ jurisdiction; Alternative remedy; Supervisory jurisdiction; Consumer Commission; Consolidation proceedings; Unfair trade practice; Disputed questions of fact; Force majeure; Concurrent findings.

Case Arising From

ORIGINAL JURISDICTION: Order dated 09.01.2024 passed by the District Consumer Disputes Redressal Commission, Lucknow, as affirmed by order dated 01.08.2024 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow, and order dated 01.04.2025 of the National Consumer Disputes Redressal Commission.

Appearances for Parties

Advs. for the Appellant (Petitioner):

Learned counsel for M/s Sahu Land Developers Pvt. Ltd.

Advs. for the Respondents:

Learned counsel for the State of U.P. and respondent nos. 5 to 7

(Delivered by Hon'ble Shekhar B. Saraf, J.)

The present writ petition has been filed under Article 226 of the Constitution of India wherein the petitioner has prayed for the issuance of a writ of certiorari quashing the impugned judgement and order dated August 1, 2024 and January 9, 2024 passed by State Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as the 'State Commission') and District Consumer Disputes Redressal Commission, Lucknow (hereinafter referred to as the 'District Commission') respectively. The petitioner in furtherance prays for the issuance of a writ of prohibition, prohibiting the respondent no. 5 to 7 as well as other complainants in respect of recovery of claims. Moreover, the petitioner further prays for writ of mandamus commanding the Commissioner, Lucknow (hereinafter referred to as 'respondent no.2') to specify the time frame to conclude the

consolidation operation in the concerned area.

FACTS

2. The factual matrix of the present writ petition is delineated below:

a. The petitioner is a Private Limited Company incorporated in the year 2007, engaged in the business of real estate development in Lucknow has launched a residential plotting development scheme titled “Sahu City Phase-2” on August 29, 2012 at Village Shivpuri, Tehsil Bakshi Ka Talab, District Lucknow. The said land was located outside the municipal and planning area as per Section 2(zh) of the Real Estate (Regulation & Development) Act, 2016 at the time of launch.

b. Subsequent to launch of the scheme, the layout plan of the project was duly approved by the Zila Panchayat, Lucknow in two parts under the Uttar Pradesh (Kshetra Panchayats and Zila Panchayats) Adhiniyam, 1961, in two phases on April 28, 2018 and April 29, 2019.

c. Respondent nos. 5 to 7 and other consumers booked residential plots under valid booking agreements, and the petitioner proceeded with development work in accordance with the scheme wherein possession was to be delivered within the specified time, subject to completion of development.

d. However, after initiation of the project and acceptance of bookings, consolidation proceedings in the said village was initiated pursuant to a notification issued by the State of Uttar Pradesh under Section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953, vide publication dated July 5, 2013. As a result, the petitioner’s project has

come to a halt and he was unable to deliver the possession to plot allottees.

e. Respondent nos. 5 to 7 lodged complaints before the District Commission seeking refund of the total amount deposited by them and petitioner filed its objection against the said complaint. Thereafter District Commission passed an order dated January 9, 2024 directing the petitioner to refund the amounts alongwith 9% interest. Respondent nos. 5 to 7 preferred cross appeal against the said order for the enhancement of rate of interest from 9% to 12% per annum and also for the payment of interest from date of deposit till the date of actual payment, which was allowed by modification of order dated January 9, 2024.

f. Petitioner filed appeal under Section 41 of the Consumer Protection Act, 2019 (hereinafter referred to as ‘Act’) before State Commission and the said appeal was decided vide order dated August 1, 2024 against the petitioner. Subsequently petitioner filed revision against the aforesaid order before National Consumer Disputes Redressal Commission (hereinafter referred to as ‘National Commission’) which was dismissed vide order dated April 1, 2025.

g. Respondent nos. 5 to 7 filed execution proceedings before respondent no. 4 pursuant to which a demand notice dated January 4, 2025 was issued by Tehsildar and attachment order dated February 18, 2025 was issued by Sub Divisional Magistrate thereby attaching the bank account of the petitioner pursuant to which the amount of Rs. 48,80,493 was realized and paid to the respondents 5 to 7 from the account of petitioner.

h. The present writ petition is therefore being filed seeking quashing of the impugned orders passed by the District Commission upheld by State Commission

alongwith setting aside the recovery proceedings, and declaring that the continuation of such action is wholly without jurisdiction and in violation of statutory and constitutional safeguards.

ISSUE

3. A. Whether the order passed by National Commission in its Appellate or revisional jurisdiction can be challenged before the High Court in writ jurisdiction under Article 226 of the Constitution of India?

B. If yes, then under what circumstances should such writs be entertained and what is the scope of challenge before the writ court under Article 226?

CONTENTIONS OF PETITIONER

4. The learned counsel appearing on behalf of the petitioner has made the following submissions:

a. On the date of launch of the plotting scheme, the concerned land was not under any consolidation operations.

b. The petitioner sought information from respondent authorities regarding the initiation, stage and date of completion of the consolidation proceedings in the concerned village but a vague and unclear reply was given leading to complete uncertainty and confusion thereby rendering the petitioner incapable of completing the project.

c. The petitioner is in absolute possession and occupation of the land on which the residential plotting scheme has been launched and has clear title to the said land without any encumbrance.

d. Petitioner is willing to provide possession to customers once the development work is completed but due to an unforeseen event that is initiation of the consolidation proceedings which is beyond the control of the petitioner and is akin to force majeure event under Section 56 of the Indian Contract Act, 1872, petitioners work has come to halt.

e. As per the terms and conditions of the scheme, the customer is not entitled to any interest but only to the refund of actual amount when there is no deficiency on the part of the petitioner

f. Despite the supervening legal impediment and doctrine of frustration/impossibility of performance under Section 56 of the Indian Contract Act, 1872, due to initiation of consolidation proceedings, respondent nos. 5 to 7 initiated consumer complaints alleging deficiency of service and sought refund with interest and accordingly the impugned order dated January 9, 2024 was passed by District Commission directing refund alongwith interest which suffers from patent illegality, arbitrariness and complete non-consideration of the statutory bar under the U.P. Consolidation of Holdings Act, 1953, and against the settled proposition of law laid down by the Supreme Court.

*g. To buttress his arguments, counsel has placed reliance on **Satyabrata Ghosh v. Mugneeram Bangur & Co.** reported in AIR 1954 SC 44); **Alopi Prasad & Sons v. Union of India** reported in AIR 1960 SC 588; **Delhi Airtech Services Pvt. Ltd. v. State of U.P.** reported in (2011) 9 SCC 354; **Pioneer Urban Land & Infrastructure Ltd. v. Union of India** reported in (2019) 8 SCC. 416 wherein the Supreme Court has held that supervening impossibility/illegality discharges contractual obligations and court may*

intervene to grant interim protection from consumer redressal proceedings.

CONTENTIONS OF RESPONDENTS

5. The learned counsel appearing on behalf of the respondents has rebutted the arguments of petitioner and made following submissions:

a. The petitioner was unable to deliver the possession of the land within time, therefore he is liable to return the aforesaid amount alongwith interest to the respondents.

b. The order of the District Commission was passed after perusal of evidence and was upheld by the State Commission and thereafter the National Commission that held that the order does not suffer from any illegality.

b. The writ petition is not maintainable before this court as there is an alternative remedy to approach the Supreme Court under Section 67 of the Act.

ANALYSIS

6. I have given my thoughtful consideration to the submissions canvassed by the learned counsel for the parties and have also perused the materials placed on record.

7. The framework of the Consumer Protection Act was provided by a resolution dated April 9, 1985 of the General Assembly of the United Nations Organisation which is known as "Consumer Protection Resolution No. 39/248". India is a signatory to the said Resolution. Ergo, the Act was enacted in pursuance of the said Resolution. It further

seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as would appear from the Statement of Objects and Reasons of the Act inter alia to promote and protect the rights of consumers.

8. In the present case writ petition under Article 226 of the Constitution of India is filed for interfering with the recovery proceedings initiated in pursuance of an order passed by District Commission which was affirmed by State Commission and National Commission.

9. The petitioner then preferred a revision under Section 58(1)(b) of the Act before National Commission wherein the commission has converted the said revision into second appeal under Section 51(2) of the Act which was dismissed too for the reason that no substantial question of law was involved in the matter. The order passed by National Commission is quoted hereinbelow:

"These are Revision Petitions filed against the order dated 01.08.2024 of the Uttar Pradesh State Consumer Disputes Redressal Commission wherein the appeals filed by the Petitioner were dismissed. The question before us is whether these three Revision Petitions are maintainable before this Commission under the Consumer Protection Act, 2019. In a recent order of this Commission in RP/1879/2024, Vivo Mobile India Pvt. Ltd. Vs. Mavuram Sujatha & Ors, decided on 20.01.2025, it has been held that revisional power of this Commission is not available for orders arising out of a complaint before the

District Commission or out of an appellate order of the State Commission. Further it has been held that the orders pending a complaint before the District Commission or after a decision would only be revisable before the State Commission and not before this Commission under Section 58(1)(b) of the Consumer Protection Act, 2019. Learned Counsel for the Petitioner submitted that those revision petitions were filed before this order of the Commission and therefore the Revision Petitions may be converted into Second Appeal under Section 51(2). Accordingly these Revision Petitions are converted as Second Appeal.

Heard the arguments of the learned Counsel for both the parties. The Section dealing with Second Appeal in the 2019 Act, which is Section 51(2), clearly states that there should be a substantial question of law involved for filing of Second Appeal. On hearing arguments and on perusal of record, we find there are no substantial questions of law involved in the Second Appeal as the State Commissioner, had reiterated the order of the District Commission which has been passed after taking into account the evidences and hearing the parties. In the grounds of Second Appeal, only issues relating to facts have been mentioned like allotment of plot, giving possession development work, etc. which have been adequately dealt with by this Commission. Accordingly, these three Revision Petitions converted as Second Appeal are dismissed as not maintainable.

These three Second Appeals arising out of the same matter and decided by Uttar Pradesh State Consumer Disputes Redressal Commission on the same date but by different orders, again we find that the Second Appeals have been filed without any question of any substantial law involved in the matter. Accordingly, these

three Second Appeals are also dismissed as not maintainable.”

10. The petitioner heavily relies on the order passed by National Commission Disputes Redressal Commission, New Delhi in **Vivo Mobile India Private Limited v. Smt. Mavuram Sujatha and others**; (Revision Petition no. 1879 of 2024, decided on January 20, 2025) to submit that the National Commission has itself stated in the said order to invoke writ jurisdiction before High Court against the order of the State Commission. The paragraphs of the order relied upon by the petitioner is quoted hereinbelow:

“71. Accordingly, we do not find that the power to revise a revisional order passed by the State Commission is available to us. The order of the State Commission in the present case cannot be stated to be an order in an original complaint of a consumer dispute pending before the State Commission. Admittedly, the dispute is pending before the District Commission and not before the State Commission. Consequently, we cannot assume the revisional jurisdiction on the arguments advanced by the learned Counsel for the parties.

72. We may also point out that the remedy by way of a Writ Petition has been held to be available in the judgments referred to above, and in the absence of any statutory specific remedy, it is open to the aggrieved party to approach the jurisdictional High Court for redressal of their grievances. The compilation, therefore, presented as a Revision Petition, being not maintainable under Section 58(1)(b) of the Consumer Protection Act, 2019, is hereby dismissed.

11. Per contra, the respondents vehemently rebuked the arguments of the petitioner and contend that the District Commission has rightly passed an order dated January 9, 2024 which was decided against petitioner wherein it was directed to deposit Rs. 8,64,000/-alongwith 9% annual interest to the complainant from the date of filing the complaint till the date of actual payment within 30 days from the date of order due to default of the petitioner.

12. In **Whirlpool Corporation v. Registrar of Trademarks, Mumbai** reported in (1998) 8 SCC 1 has held that alternative remedy will not act as a bar for writ court in the contingencies. The relevant paragraph of the judgment is quoted hereinbelow:

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.....”

(Emphasis added)

13. In **Harbanslal Sahnia v Indian Oil Corpn. Ltd** reported in (2003) 2 SCC 107 has reiterated the view of Whirlpool Corporation (Supra) and held as follows:

“7.....In an appropriate case, in spite of availability of the

alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.....”

(Emphasis added)

14. The Supreme Court in **Radha Krishan Industries v. State of H.P.** reported in (2021) 6 SCC 771 has discussed in detail about the maintainability of writ petition under Article 226 of the Constitution of India and also laid down principles of law that emanates from a plethora of precedents. The relevant paragraphs of the judgment are quoted hereinbelow:

“C.1. Maintainability of the writ petition before the High Court

24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in *CCT v. Glaxo Smith Kline Consumer Health Care Ltd.* [CCT v. Glaxo Smith Kline Consumer Health Care Ltd., (2020) 19 SCC 681 : 2020 SCC OnLine SC 440] , the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this “rule of alternate remedy” include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to

invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the “rule of alternate remedy” and its judicial exposition. In *Whirlpool Corpn. v. Registrar of Trade Marks* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ

petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

26. Following the dictum of this Court in *Whirlpool* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1] , in *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* [*Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] , this Court noted that : (*Harbanslal Sahnia case* [*Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, (2003) 2 SCC 107] , SCC p. 110, para 7)

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corpn.v. Registrar of Trade Marks*

[Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be

entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(Emphasis added)

15. The Supreme Court in **Ibrat Faizan v. Omaxe Buildhome (P) Ltd.** reported in (2023) 11 SCC 594 after noting the dicta in **L. Chandra Kumar v. Union of India** reported in (1997) 3 SCC 261 while dealing with the special leave petition against the order passed by National Commission in its appellate jurisdiction upholding the order of State Commission has categorically held that National commission is a 'tribunal' within the meaning of Article 136 of the Constitution and writ court has supervisory jurisdiction over the tribunal under Article 227 of the Constitution. Ergo, the writ petition under Article 227 before the High Court would be maintainable. The relevant paragraphs of the judgment are quoted hereinbelow:

“17. It is not in dispute that in the present case, the appeal before the National Commission was against the order passed by the State Commission under Section 47(1)(a) of the 2019 Act. Therefore, against the order passed by the State Commission passed in a complaint in exercise of its powers conferred under Section 47(1)(a) of the 2019 Act, an appeal to the National Commission was maintainable, as provided under Section 58(1)(a)(iii) of the 2019 Act. As per Section 67 of the 2019 Act, any person, aggrieved by an order made by the National Commission of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 58, may prefer an appeal against such order to the Supreme Court. Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act. No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the 2019 Act. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) would be to approach the High Court concerned having jurisdiction under Article 227 of the Constitution.

18. Whether the National Commission can be said to be a ‘tribunal’ for the purpose of exercise of powers under Article 227 of the Constitution by the High Court is concerned, has been considered by a Constitution Bench of this Court in

Associated Cement Companies [Associated Cement Companies Ltd. v. P.N. Sharma, 1964 SCC OnLine SC 62 : AIR 1965 SC 1595] , which is required to be referred to. In paras 44 and 45, it is observed and held as under : (SCC p. 1609)

“44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such

a body or authority is vested with the trappings of a court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

45. The word 'tribunal' finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article 136."

Therefore, the National Commission can be said to be a "Tribunal" which is vested by statute with the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a "Tribunal" within the meaning of Article 227 and/or 136 of the Constitution. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution, in view of the remedy which may be available to the aggrieved party before the High Court concerned under Article 227 of the Constitution, as it is appropriate that aggrieved party approaches the High Court concerned by way of writ petition under Article 227 of the Constitution.

19. At this stage, another Constitution Bench decision of this Court in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] is required to be referred to. While dealing with the jurisdiction of the High Courts under Articles 226/227 of the Constitution in respect of powers of

judicial review, it is observed and held in para 90 as under : (SCC pp. 307-308)

"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous

claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.”

That thereafter, it is observed and held that against the order passed by the Tribunal, the aggrieved party may approach the High Court concerned under Article 227 of the Constitution.

23. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in Estralla Rubber v. Dass Estate (P) Ltd. [Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97] , which has been consistently followed by this Court (see the recent decision of this Court in Garment Craft v. Prakash Chand Goel [Garment Craft v. Prakash Chand Goel, (2022) 4 SCC 181 : (2022) 2 SCC (Civ) 424]). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution.

24. In view of the above discussion and for the reasons stated above

and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution before the High Court concerned against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable... ..”

(Emphasis added)

16. The Supreme Court in **Universal Sompo General Insurance Co. Ltd. v. Suresh Chand Jain** reported in (2024) 9 SCC 148 applying the precedent in **Ibrat Faizaan** (Supra) wherein the petitioner has directly approached the Apex Court under Article 136 of Constitution to challenge the order passed by National Commission that had affirmed the order of State Commission, held that a party can always approach the High Court having supervisory jurisdiction under Article 227 of the Constitution. The relevant paragraphs of the judgment are quoted hereinbelow:

“25. The provisions of Article 136 of the Constitution as such are not circumscribed by any limitation. But when the party aggrieved has alternative remedy to go before the High Court, invoking its writ jurisdiction or supervisory jurisdiction as the case may be, this Court should not entertain petition seeking special leave thereby short-circuit the legal procedure prescribed. The limitations, whatever, they be are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in very exceptional situations. The power will only be used to advance the cause of justice and its exercise will be governed by well-established principles

which govern the exercise of overriding constitutional powers.

34. This Court considered the question for its decision as to whether against the order passed by Ncdrc in an appeal under Section 58(1)(a)(iii) of the 2019 Act, petition before the High Court under Article 227 of the Constitution of India would be maintainable.

39. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing special leave petition, seeking leave to appeal under Article 136 of the Constitution.”

17. The Supreme Court in **Rikhab Chand Jain v. Union of India** reported in 2025 SCC OnLine SC 2510 wherein the Apex Court has disapproved the High Court entertaining a writ petition when there is an appropriate remedy before a different jurisdiction of the same High Court. The relevant paragraphs of the judgment are quoted hereinbelow:

“10. We may profitably refer, in this context, to the Constitution Bench decision in *Thansingh Nathmal v. A. Mazid,*

Superintendent of Taxes.. In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:

“The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy

provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

12. That apart, the majority view in a previous Constitution Bench in *A.V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani* reads thus:

"14. ... we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in Mohammed Nooh case with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule."

In essence, this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the

discretionary remedy under Article 226 may not be available.

15. In our considered opinion, the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in the (mis) adventure of invoking its writ jurisdiction which was rightly not entertained.

(Emphasis added)

18. Upon careful perusal of umpteen judgements of the Supreme Court and sifting through the ratios ordained in the precedents, the following principles emerges with regard to the maintainability of writ petition under Article 226 against the orders passed by District, State and National Commissions in its appellate jurisdiction:

A. Alternative remedy would not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged;

B. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion;

C. An appeal against the order of National Commission to writ court in cases where there are disputed questions of fact or the grounds taken in the writ petition is not so cogent, where prima facie patent illegality or perversity findings of Tribunal are not shown on the face of the record, the High Court has the discretion to decline jurisdiction in a writ petition; and

D. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.

E. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

19. So far as the issue of maintainability of writ petition before the High Court is concerned, one may look into the judgment of Supreme Court in **Whirlpool Corporation** (Supra), **Haribanslal Sahnia** (Supra) and **Radha Krishan Industries** (Supra) wherein the court has clarified that writ petition against the order of National Commission is maintainable before High Court subject to some restrictions.

20. Moreover, the Supreme Court in **Ibrat Faizaan** (Supra) and **Universal**

Sompo General Insurance Co. Ltd. (Supra) has held that writ petition against order of National Commission is maintainable either under Article 226 or Article 227 of the Constitution. Subsequently, the Supreme Court in **Rikhab Chand Jain** (Supra) has held that writ petition under Article 226 would not be maintainable if there is an alternative remedy under different jurisdiction of the same High Court.

21. In light of the judgments referred above, we are of the view that when a supervisory jurisdiction under Article 227 is available to the petitioner, writ petition under Article 226 should not be normally entertained but the remedy under Article 226 would be available under exceptional circumstances. Furthermore, writ jurisdiction under Article 226 is cautiously to be used when grave injustice has been caused due to violation of principles of natural justice and/or when there is a clear violation of fundamental rights or patent illegality in the impugned order. [see **Radha Krishan Industries** (Supra)]

22. In the present case, the District Consumer Forum after perusal of evidence placed on record has held that despite the amount paid by the respondents under the aforesaid scheme, neither the possession had been handed over to them nor any construction work had been carried out by the petitioner. It is the case of the petitioner that the consolidation proceedings had been initiated after the launch of the project by the petitioner. But the District Commission has observed that petitioner was never in possession of the land as it was already under consolidation proceedings and petitioner had taken the aforesaid amount from the respondents by hiding the fact that the land was under consolidation

proceedings. Hence, petitioner had committed an unfair trade practice and was therefore liable to return the said amount to the respondents.

23. The petitioner then approached the State Commission to contend that District Commission had overlooked the fact of possession and consolidation proceedings as the possession is still with the petitioner and it had come under consolidation proceedings after launch of the project by the petitioner which is a 'force majeure' event rendering him incapable of completing the project. State Commission has dismissed the appeal by upholding the order of the District Commission. Subsequently, the National Commission also dismissed the appeal on the ground of absence of any substantial question of law.

24. The petitioner is here before this Court and has again reiterated the same ground that has already been taken by him before the District Commission, State Commission and National Commission who have concurrently come to a finding against the petitioner. The issue of the knowledge of consolidation proceedings as to from when they were being carried out and the fact of possession of the land are purely factual in nature and based on disputed questions of fact which cannot be gone into by us in writ jurisdiction. The other pleas taken by the petitioner are also not so cogent as to persuade us to interfere with the findings of the National Commission. It is to be further noted that till date, the petitioner has not given the possession of the land to the respondents who are the allottees of land.

25. The case of the petitioner does not fall under any of the grounds mentioned herein below:-

i) the writ petition has been filed for the enforcement of any of the Fundamental Rights;

ii) where there has been a violation of the principle of natural justice; or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged;

iii) the findings of the Commission (District Commission, State Commission, National Commission) are perverse.

26. In fact, we are of the view that the Commissions have rendered a finding that is reasonable and cannot be termed as perverse. Ergo, we come to an obdurate finding that the petitioner has failed to make out a case requiring interference of orders passed by the three consumer commissions.

27. In light of the above, the writ petition is dismissed. Parties shall bear their own costs.

(2025) 12 ILRA 649
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.12.2025

BEFORE
THE HON'BLE ALOK MATHUR, J.

Writ C No. 11553 of 2025

Smt. Gyanpati & Anr.	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

ISSUE FOR CONSIDERATION

Whether the appellate authority under the U.P. Zamindari Abolition and Land Reforms Act, 1950 has the power to review its own order.

HEADNOTE

U.P. Zamindari Abolition and Land Reforms Act, 1950 – Ss. 176, 331(3), 341 – U.P. Zamindari Abolition and Land Reforms Rules, 1952 – R. 339 – U.P. Tenancy Act, 1939 – S. 274 – Code of Civil Procedure, 1908 – Order XLVII Rule 1 – Proceedings relating to partition of agricultural land – Suit under Section 176 for partition – Preliminary decree fixing shares – Preparation and confirmation of Kurra report – Appeal under Section 331(3) dismissed – Review application filed before Additional Commissioner (Administration) rejected on the ground of non-maintainability – Challenge in writ jurisdiction – Question relating to power of review vested in revenue appellate authorities under the U.P.Z.A. & L.R. Act.

HELD:

Section 341 of the U.P. Zamindari Abolition and Land Reforms Act, makes the provisions of the Code of Civil Procedure, 1908 applicable to the proceedings under the Act and Rule 339 of the U.P.Z.A. & L.R. Rules expressly applies the provisions of Sections 256, 261, 273, 274 and other provisions of the U.P. Tenancy Act, 1939 to the suits and proceedings specified in Schedule II and appeals, revisions and reviews arising therefrom. Section 274 of the U.P. Tenancy Act specifically provides for the power of review and Order XLVII of the Code of Civil Procedure is applicable. Catena of judgments to indicate that power of review is vested in the authorities under the U.P.Z.A. & L.R. Act. Appellate authority committed manifest error in dismissing the review application of the petitioner on the ground that the same was not maintainable. Writ petition allowed. Impugned order set aside and the matter remitted to the appellate authority to consider and decide the application for review in accordance with law.

[Paras 12, 13, 15, 16 & 17] (E-5)

CASE LAW CITED

Hakim Ali v. Board of Revenue, 1991 Supp (1) SCC 565;
Niyaz Ahmad v. Board of Revenue, U.P., 1978 LJ (NOC) 25.

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950;
U.P. Zamindari Abolition and Land Reforms Rules, 1952;
U.P. Tenancy Act, 1939;
Code of Civil Procedure, 1908.

List of Keyword

Power of review; Revenue appellate authority; Section 341; Rule 339; Order XLVII CPC; Partition proceedings; Kurra report; Manifest error; Remand.

CASE ARISING FROM

From the order dated 19.08.2025 passed on review application and the appellate order dated 18.07.2025 passed by the Additional Commissioner (Administration), Ayodhya Division, Ayodhya.

Appearances for Parties

Advs For Petitioner: Rama Pati Shukla, Shreya Shukla.

Advs For Respondents: C.S.C., Mohan Singh, Niteesh Kumar, Rajeev Narayan Pandey.

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri R.P. Shukla, Sri A.K. Pandey, and Shreya Shukla, learned counsel for petitioners as well as Sri Upendra Singh, Additional Chief Standing Counsel, Sri Dev Prakash Mishra, Additional Chief Standing Counsel and Sri Yogehs Kumar Awasthi, learned Standing Counsel for respondent Nos. 1 & 11, Sri Mohan Singh, learned counsel for respondent No. 112 and Sri Anup Kumar Pandey, learned counsel for respondent Nos. 9 & 10 and Sri Rajeev Narayan Pandey, learned counsel for respondent No. 2.

2. In the present writ petition, the petitioner has assailed the validity of the order dated 19.08.2025 passed on a review application as well as order dated 18.07.2025 passed by Additional

Commissioner (Administration), Ayodhya Division, Ayodhya.

3. It has been submitted by learned counsel for petitioner that the dispute in the present case pertains to the proceedings initiated U/S 176 of U.P.Z.A. & L.R. Act with regard to the partition of land situated at Kata No. 237 Gata No. 253 and 432K as well as Khata No. 238 Gata No. 325. It has been submitted that the aforesaid land was recorded in the name of Mewa Lal who had four sons, namely, Tilak Ram, Ichha Ram, Atma Ram and Balram and Atma Ram had filed an application for partition claiming 1/4th share for himself and according to him the remaining 3 brothers also had 1/4th share in the said property.

4. It has been submitted that a settlement had taken place between the parties and all of them were in possession of their respective shares. It is stated that the aforesaid partition was oral and accordingly in order to effect a formal partition the suit was filed by Atma Ram U/S 176 of U.P.Z.A. & L.R. Act. The said suit was initially dismissed in default but subsequently a restoration application was filed and the said application was allowed and the suit was restored by means of order dated 10.07.2008.

5. The trial court decided the matter by means of judgment dated 03.03.2010 and the shares of all the sons of Mewa Lal were fixed at 1/4th share and directions were issued for preparation of a final decree. Subsequently the Kurra reports were prepared but the petitioners had aggrieved with the Kurra reports as they were never given opportunity of hearing and moved an application on 22.06.2015 to go through the Kurra report and also to file his objections. It is stated that his application remained

pending and a final order was passed on 30.01.2016 confirming the Kurra report dated 11.02.2015.

6. While passing the final orders, the trial court held that the despite giving several opportunities no objections were filed in the Kurra report and accordingly proceeded to confirm the said report. The petitioners had filed an appeal U/S 331(3) of the Act of 1950 before the Additional Commissioner (Administration), Ayodhya which was rejected by means of order dated 18.07.2025. The Appellate Court had recorded that several opportunities were granted before preparation of kurra but no objections were filed and as the grounds raised by the petitioners in appeal were not taken before the court below he did not think it proper to deal with the said issues and rejected the appeal preferred by the petitioner.

7. It is in the aforesaid circumstances that the petitioner had filed an application for review of the judgment and order dated 18.07.2025 which has been rejected by means of order dated 19.08.2025 holding that the review is not maintainable.

8. With regard to the maintainability of the review application, it has been submitted by learned counsel of petitioners that as per provisions of Section 341 of the U.P.Z.A. & L.R. Act, provisions of Code of Civil Procedure, 1908 had been made expressly applicable to all the proceedings under the U.P.Z.A. & L.R. Act.

9. He has further submitted that as per Rule 339 of U.P.Z.A. & L.R. Rules, provisions of Sections 256, 261, 273, 274, 277 to 282 of the U.P. Tenancy Act, 1939 have been made applicable to the suits and proceedings specified in Section (ii) of the

Act and appeal, revision and review arisen therefrom. He has further submitted that the dispute pertaining to partition has also been specifically mentioned in Schedule 2 to the said Act. He further relies upon the provisions of Section 274 of the U.P. Tenancy Act, 1939 to submit that even the Act of 1939 provided for review by the other courts and therefore in any view of the matter there is no doubt that the appellate authority i.e. Additional Commissioner (Administration) had committed manifest error by rejecting the application for review only on account of the fact that such power was not vested in him.

10. Learned Standing Counsel on the other hand has opposed the writ petition but could not dispute the aforesaid facts.

11. I have heard contentions of rival parties and perused the record.

12. The only question which is engaging the contention of this Court is with regard to power of review by the appellate authority under the U.P.Z.A. & L.R. Act. The relevant provisions which are necessary for adjudication of the said case are quoted hereinbelow:-

"341. Application of certain Acts to the proceeding of this Act.

- Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the [Limitation Act, 1963 (XXXVI of 1963)] [Substituted by U.P. Act No. 12 of 1965.], [including Section 5 thereof] [Inserted by U.P. Act No. 37 of 1958.] shall apply to the proceedings under this Act.

Rule 339 of U.P.Z.A and L.R Rules runs as follows:-

"339.(1) Unless otherwise expressly provided by or under the Act the provisions of Sections 256, 261, 273, 274, 277 to 282 of the U.P Tenancy Act, 1939 shall apply to the suits and proceedings specified in Schedule II of the Act and appeals, revisions and reviews arising therefrom.

(2) In respect of the suits or proceedings mentioned in sub-rule (1) the first appeal shall lie within thirty days of the date of the decree or order appealed against and the second appeal, if any, shall lie within ninety days of the date of the decree or order passed by the court of first appeal."

Sec 274 of U.P. Tenancy Act, 1939-

274. Review by other Courts

"Every other Court shall be competent to review its judgment in accordance with the provisions of the Code of Civil Procedure, 1908, and the provisions of Order XLVII of the said Code shall apply to any such review"

13. A reading of the aforesaid statutory provisions indicate that Section 274 specifically provides for the power of review and at the time when U.P.Z. A. & L.R. Act was enacted provisions of U.P. Tenancy Act were repealed but certain provisions of U.P. Tenancy Act were saved by under Rule 339 of U.P.Z. A. & L.R. Rules, 1952 which were expressly made applicable including provisions of Section 274 of the U.P. Tenancy Act, 1939. Apart from which Section 341 had already made Code of Civil Procedure applicable to the proceedings under U.P. Z.A. & L.R. Act."

14. Needless to say that order 47 Rule 1 of the CPC was already made applicable by the U.P.Z.A. & L.R. Act. This aspect of the matter was duly considered by the Hon'ble Supreme Court in the case of **Hakim Ali Vs. Board of Revenue**, 1991 Supp(1) SCC 565, which had observed as under:-

"5. By Section 293 of the Zamindari Abolition Act the provisions of Chapters IX and X of the Land Revenue Act have been made applicable to applications in proceedings under the Zamindari Abolition Act. The said provision which is contained in Chapter X of the Zamindari Abolition Act provides as under:

"293. Provisions of Act 3 of 1901 applied to applications and proceedings under this chapter.? The provisions of Chapters IX and X of the United Provinces Land Revenue Act, 1901, as amended by this Act shall, insofar as they are not inconsistent with the provisions of this Act, apply to applications and proceedings made or taken under this chapter."

6. Section 339, which makes provision for repeals, is as follows:

"339. Repeals.- With effect from the date of vesting in respect of any area-

(a) the enactments mentioned in List I of Schedule III shall be and are hereby repealed in their application to such area;

(b) so much of any other enactments as is inconsistent with the provisions of Chapters VIII to X of this Act shall be deemed and is hereby repealed in its application to such area;

(c) the United Provinces Land Revenue Act, 1901 (U.P. Act 3 of 1901), shall in its application to such area be deemed to be and is hereby amended to the extent mentioned in column 3 of the List II of the Schedule aforesaid:

Provided that where under this Act any interpretation has to be made, action taken or thing done in accordance with the provisions of the United Provinces Tenancy Act, 1939 (U.P. Act 17 of 1939), the same may be made, taken or done as if it has not been repealed by this Act."

9. It is no doubt true that under Section 293 of the Zamindari Abolition Act, the provisions of Chapters IX and X of the Land Revenue Act have been made applicable only to applications and proceedings made or taken under Chapter X of the Zamindari Abolition Act and since Section 203 falls in Chapter IX of the Land Revenue Act, it would not be applicable to proceedings made or taken under provisions other than those contained in Chapter X of the Zamindari Abolition Act. In our view, however, Section 293 cannot be read in isolation. It has to be read along with Section 339. In clause (c) of Section 339 it is prescribed that with effect from the date of vesting in respect of any area, the Land Revenue Act shall, in its application to such area, be deemed to be and is hereby amended to the extent mentioned in column 3 of the List II of Schedule III of the said Act. As a result the provisions of the Land Revenue Act containing the amendments as mentioned in column 3 of List II of Schedule III, would be applicable to the area to which the Act has been made applicable with effect from the date of vesting. Under column 3 of List II of Schedule III certain modifications and amendments have been made in the various provisions of the Land Revenue Act, but no modification has been made in Section 203 of the said Act. This would mean that the provisions of the Land Revenue Act, including Section 203, are applicable to the area in which the Zamindari Abolition Act has been applied with effect from the date of vesting.

11. *This distinction based on the difference in terminology used in Sections 293 and 339(c) does not, in our view, advance the case of the appellants. It only indicates that Section 293 is limited in its scope in applying the provisions of Chapters IX and X of the Land Revenue Act to applications and proceedings under Chapter X of the Zamindari Abolition Act whereas Section 339(c) is much wider in amplitude inasmuch as it makes all the provisions of the Land Revenue Act applicable to the area to which the provisions of the Zamindari Abolition Act are applied. The Land Revenue Act contains provisions relating to appointments and jurisdiction of revenue officers, maintenance of maps and records and appointment of Kanungos and Lekhpals for that purpose, revision of maps and records, settlement of the revenue, revision of assessment, partition and union of Mahals, collection of revenue, procedure of Revenue Courts and Revenue Officers, appeals reference and revision, etc. As a result of the application of the provisions of the Land Revenue Act, as amended to the extent mentioned in column 3 of List II of the Schedule to the Zamindari Abolition Act, to the area to which the provisions of the Zamindari Abolition Act are applied, all the various provisions of the Land Revenue Act would be applicable to all the matters dealt with by the Zamindari Abolition Act including applications and proceedings under the said Act. The width and amplitude of the said provision contained in Section 339(c) of the Zamindari Abolition Act cannot, in our opinion, be curtailed by reference to Sections 293 and 341 of the said Act."*

15. This Court further finds that the scope of review under the aforesaid provisions was also considered by the

Hon'ble Supreme Court in the case of **Niyaz Ahmad Vs. Board of Revenue, U.P. Allahabd, 1978 LJ (NOC) 25) 11**, relevant portion quoted as under:

"16. Therefore, our conclusion is that the provisions of section 341 of U.P. Act 1 of 1951 read with Rule 339 of the U.P. Zamindari Abolition and Land Reforms Rules and section 273 of the U.P. Tenancy Act lead to only one inference, namely, that the requirement of law is that the Board should exercise its power of review in conformity with the guidelines furnished by Order 47 of the Code of Civil Procedure."

16. Accordingly, the aforesaid dispute is no longer res integra and there are catena of judgments to indicate that power of review vested in the authorities under the U.P.Z.A. & L.R. Act and therefore, the appellate authority has committed manifest error in dismissing the review application of the petitioner on the ground that the same was not maintainable.

17. In light of the above, the writ petition is **allowed**. The impugned order dated 19.08.2025 is set aside. The matter is remitted to respondent No. 1 to consider and decide the application for review preferred by the petitioner in accordance with law. He is also directed to decide the same within a period of two months from the date a certified copy of this order is produced before him.

18. It is made clear that this Court has not consider the prayer of the petitioners for setting aside the order dated 18.07.2025 inasmuch as that is. the order the review of which would now be pending before the appellate authority.

(2025) 12 ILRA 655
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.12.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ C No. 11631 of 2025

Omkar Gupta ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mudit Agarwal

Counsel for the Respondents:
C S.C., Abhishek Mishra, Anurag Kumar Singh, Sajjad Husain, Syed Aftab Aftab Ahmad

ISSUE FOR CONSIDERATION

- (i) Whether the District Judge deciding an election petition under the U. P. Municipalities Act, 1916 is a Court or a tribunal/persona designata; and
- (ii) Whether the delay in filing an Election Petition under the U. P. Municipalities Act, 1916 can be condoned under Section 5 of the Limitation Act.

HEADNOTE

Constitution of India – Art. 226 – U. P. Municipalities Act, 1916 – Ss. 20, 22 & 23 – Limitation Act, 1963 – Ss. 5, 12(2) & 29(2) – Election petition challenging election of Chairperson of Nagar Panchayat – Statutory limitation of 30 days – Application under Section 5 of the Limitation Act for condonation of delay – Preliminary issue of limitation – Question whether District Judge deciding an election petition acts as a Court or persona designata – Applicability of Section 5 of the Limitation Act to election petitions under the Municipalities Act – Effect of express application of Section 12(2) and exclusion of other provisions – Sustainability of orders condoning delay and allowing election petition.

HELD:

Whether the District Judge deciding an election petition is a Court or not. It was held that District Judge, while deciding an election petition, acts as a Court and not as a tribunal or persona designata. Municipalities Act originally provided for filing the election petition before the 'Court', but the word 'Court' was substituted by the phrase 'District Judge'. As per Section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887, the District Judge is a Civil Court. While deciding an election petition, the District Judge has all the powers of a Civil Court. Section 23 of the Municipalities Act provides that while deciding an election petition the District Judge shall follow the procedure provided in the Civil Procedure Code in regard to suits, so far as it is not inconsistent with the Act.

Provisions of Section 5 of the Limitation Act not apply to an election petition filed under Section 20 of the Municipalities Act. The impugned order dated 04.11.2025, passed by the learned Additional District Judge, allowing the application under Section 5 of the Limitation Act unsustainable in law and the same was set aside. Election petition being barred by the limitation period was liable to be dismissed. **[Para 23, 29, 39] (E-5)**

CASE LAW CITED

Improvement Trust, Ludhiana v. Ujagar Singh and Others, (2010) 6 SCC 786;
Abdul Ghafoor and Others v. State of Bihar, AIR 2012 SC 640;
K.V. Rao v. B.N. Reddi, 1968 SCC OnLine SC 285;
Hukumdev Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133;
Hari Shanker Tripathi v. Shiv Harish, (1976) 1 SCC 897;
Lachhman Das Arora v. Ganeshi Lal, (1999) 8 SCC 532;
Suman Devi v. Manisha Devi, (2018) 9 SCC 808;
Maneka Sanjay Gandhi v. Rambhual Nishad, 2024 SCC OnLine All 4203;
Sharda Devi Dinesh Chaudhary v. State of U.P., 2012 SCC OnLine All 4160;
Jay Prakash and Another v. Anjula Singh Mathur and Another, 2024 (3) All LJ 794;
Mahendra v. State of U.P. and Others, (2021) 4 AWC 4008;

Heera Devi v. Additional District Judge and Others, (2011) LawSuit (All) 63;
Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5;
Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Others, (2008) 7 SCC 169;
LIC v. Nandini J. Shah, (2018) 15 SCC 356.

List of Acts

Constitution of India;
 U. P. Municipalities Act, 1916;
 Limitation Act, 1963;
 Bengal, Agra and Assam Civil Courts Act, 1887;
 Code of Civil Procedure, 1908.

List of Keyword

Election petition; District Judge as Court; Persona designata; Limitation; Section 5 Limitation Act; Municipal elections; Condonation of delay; Special law; Statutory exclusion.

CASE ARISING FROM

Challenge to the order dated 04.11.2025 passed by the Additional District Judge (F.T.C.-I), Ambedkar Nagar, condoning delay in filing the election petition, and the consequential judgment and order dated 15.11.2025 allowing the election petition relating to the election of Chairperson, Nagar Panchayat.

Appearances for Parties

Advs For Petitioner: J. N. Mathur, Sr. Adv., Mudit Agarwal

Advs For Respondents: C.S.C., Rahul Shukla, Abhishek Mishra, Anurag Kumar Singh, Sajjad Husain, Syed Aftab Ahmad

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri J. N. Mathur Senior Advocate assisted by Sri Mudit Agarwal Advocate, the learned counsel for the petitioner, Sri Rahul Shukla, the learned Additional Chief Standing Counsel appearing on behalf of the State/opposite parties no.1 and 2, Dr. L. P. Mishra, Sri Syed Aftab Ahmad and Sri Ayush Chaudhary Advocates, the learned counsel

for the opposite party no.4 and perused the records.

2. By means of the instant petition filed under Article 226 of the Constitution of India the petitioner has challenged the validity of an order dated 04.11.2025, passed by learned Additional District Judge (F.T.C.-I), Ambedkar Nagar in Election Petition No.4 of 2023, whereby an application under Section 5 of Limitation Act for condonation of delay in filing election petition has been allowed, the delay in filing the election petition has been condoned and the preliminary issue that the election petition was barred by the prescribed period of limitation, has been decided in the negative. Thereafter the election petition itself has been allowed by means of a judgment and order dated 15.11.2025 and the petitioner has challenged the validity of that judgment also.

3. As a purely legal issue is involved in this petition as to whether the delay in filing an Election Petition under the U. P. Municipalities Act, 1916 can be condoned under Section 5 of the Limitation Act, the learned Counsel for the opposite parties stated that they would not file any counter affidavit in the matter and they have opposed the Petition by advancing oral submissions.

4. Briefly stated, facts of the case are that in the elections conducted for the office of Chairman, Nagar Panchayat Ashrafpur Kichhauncha, the petitioner was one of the candidates. The polling was held on 11.05.2023 and result was declared on 13.05.2023, in which the petitioner was declared as the returned candidate and the opposite party no.4 stood at the fourth position.

5. On 18.07.2023 the opposite party no.4 filed an election petition challenging the election of the petitioner. The petitioner filed a written statement in response to the election petition inter alia pleading that the election result was declared on 13.05.2023 in presence of the election petitioner and he did not raise any objection and did not submit any representation alleging any irregularity/illegality committed in the election process. The election petition filed on 18.07.2023 is barred by the period of limitation as Section 20 of the Municipalities Act, 1916 provides that an election petition shall be presented within 30 days after the day on which the result of the election is announced.

6. On 04.09.2025 the petitioner filed an application requesting that the plea that the election petition is time-barred, gives rise to a preliminary issue affecting the maintainability of the petition, which should be framed and decided first.

7. On 22.09.2025, the opposite party no.4/election petitioner filed an application under Section 5 of the Limitation Act, 1963, stating that the result of the election was declared on 13.05.2023, as per section 20 (1) of the U. P. Municipalities Act, 1916, an election petition ought to have been filed within 30 days, there was a vacation in the courts from 01.06.2023 to 30.06.2023, and the election petition could have been submitted on 01.07.2023, but the election petition could not be filed within the prescribed limitation period as the election petitioner got some important information on 30.06.2023, and he got the relevant documents on 01.07.2023. Thereafter, the election petition was filed on 18.07.2023. The petitioner contended that a delay of 17 days had occurred in filing of the election petition, which was

neither deliberate nor due to negligence, but it was due to sufficient cause, and he requested for condonation of the delay of 17 days in filing the election petition.

8. The petitioner filed objections against the application under Section 5 of the Limitation Act, stating that the delay in filing the election petition cannot be condoned under Section 5 of the Limitation Act.

9. On 30.10.2025, the learned Additional District and Sessions Judge framed issues in the election petition, and issue number 3 was whether the election petition was barred by limitation.

10. The aforesaid preliminary issue no.3 has been decided by the learned Additional District Judge by means of the impugned order dated 04.11.2025, holding that the election petitioner has stated that there was a delay of 17 days in filing the election petition, which had been admitted on the date of its filing. The learned Additional District Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of **Improvement Trust, Ludhiana Vs. Ujagar Singh and others:** (2010) 6 SCC 786, wherein it has been held that ordinarily, applications seeking condonation of delay under Section 5 of the Limitation Act should be allowed and the matters should be decided on its merits; that the court should not adopt a technical approach, rather, it should adopt a liberal approach while deciding an application under Section 5 of the Limitation Act. However, this case related to condonation of delay in filing a first appeal before the District Judge and the question whether Section 5 of the Limitation Act applies to election petitions, was not involved in this case.

11. Reliance has also been placed upon a decision of the Hon'ble Supreme Court in the case of **Abdul Ghafoor and Others Vs. State of Bihar**: A.I.R. 2012 Supreme Court 640, wherein the Hon'ble Supreme Court has held that the court should not adopt a hyper technical approach, but this matter related to condonation of delay in filing a criminal revision under Section 397 read with Section 401 Cr.P.C. and it also did not involve the question whether Section 5 of the Limitation Act applies to the election petitions.

12. The learned Additional District Judge held that the election petition had been filed with reasonable promptness. Section 151 of the Civil Procedure Code confers inherent powers on the court. Therefore, the learned Additional District Judge chose not to adopt a technical approach and allowed the application under Section 5 of the Limitation Act purportedly, 'in the interest of justice'.

13. Thereafter the petitioner prepared a petition challenging the order dated 04.11.2025 and while the same could be processed by the Registry of this court and be placed before this court for hearing, the petitioner filed an application for adjournment of the election petition due to the aforesaid reason. However, the trial court passed an order stating that the petitioner (respondent in the election petition) may advance submissions and further added that he declined to advance submissions.

14. On 15.11.2025, the petitioner again sought adjournment for 10 days, but this request was declined by the trial court and a judgment and order was passed allowing the election petition.

15. Assailing the validity of the impugned order dated 04.11.2025, Sri J. N. Mathur Senior Advocate has submitted that the provisions of Section 5 of the Limitation Act do not apply to an election petition filed under Section 20 Municipalities Act 1916. The learned counsel for the petitioner has relied upon the judgments in the cases of **K.V. Rao Vs. B.N. Reddi**: 1968 SCC OnLine SC 285, **Hukumdev Narain Yadav Vs. Lalit Narain Mishra**: (1974) 2 SCC 133, **Hari Shanker Tripathi Vs. Shiv Harish**: (1976) 1 SCC 897, **Lachhman Das Arora Vs. Ganeshi Lal**: (1999) 8 SCC 532, **Suman Devi Vs. Manisha Devi**: (2018) 9 SCC 808, **Maneka Sanjay Gandhi Vs. Rambhual Nishad**: 2024 SCC OnLine All 4203, **Sharda Devi Dinesh Chaudhary Vs. State of U.P.**: (2012) SCC OnLine All 4160, **Jay Prakash and another Vs. Anjula Singh Mathur and another**: 2024 (3) All LJ 794, **Mahendra Vs. State of U.P. and others**: (2021) 4 AWC 4008 and **Heera Devi Vs. Additional District Judge and others**: (2011) Law Suit (All) 63.

16. Relying upon the judgment in the case of **Consolidated Engineering Enterprises Vs. Principal Secretary Irrigation Department and Others**: (2008) 7 SCC 169, wherein it was held that Section 3 and section 29(2) of the Limitation Act do not apply to tribunals, but the same apply to courts, Dr. L.P. Mishra, has submitted that while deciding the election petition, the learned Additional District Judge was acting as a Court and the provisions of Section 5 of the Limitation Act would apply to the election petition filed before a Court.

17. As per Dr. Mishra, as the U.P. Municipalities Act is a special law and it provides 30 days limitation period for filing

an election petition, the provisions contained in Sections 4 to 24, including Section 5 of the Limitation Act, shall apply, as it is not expressly excluded by any provision of the Municipalities Act.

18. Dr. L. P. Mishra has invited attention of this Court to the provision contained in Article 243-Z G (b) of the Constitution of India, which reads as follows: -

243ZG. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution,--

* * *

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

He has submitted that Article 243 ZG (b) uses the word 'authority' and not 'tribunal' and, therefore, the learned Additional District Judge while deciding the election petition is acting as an authority. He has submitted that the word 'authority' includes within its ambit courts, tribunals, and prescribed authorities.

19. Chapter XIV-A of the Constitution of India deals with Tribunals. It has only two Articles - Articles 323-A and 323-B, which read as follows: -

"323-A. Administrative Tribunals. - (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and

conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of Article 371-D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy

disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

323-B. Tribunals for other matters.-(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:-

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in Article 31-A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Article 329 and Article 329-A;

(g) production, procurement, supply and distribution of foodstuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) rent, its regulation and control and tenancy issues including the

right, title and interest of landlords and tenants;

(i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;

(j) any matter incidental to any of the matters specified in sub-clauses (a) to (i).

(3) A law made under clause (1) may-

(a) provide for the establishment of a hierarchy of tribunals;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

(e) provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as the appropriate Legislature may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(4) The provisions of this article shall have effect notwithstanding anything

in any other provision of this Constitution or in any other law for the time being in force.

Explanation.-In this article, "appropriate Legislature", in relation to any matter, means Parliament or, as the case may be, a State Legislature competent to make laws with respect to such matter in accordance with the provisions of Part XI."

He has submitted that Article 323-B deals with establishment of Tribunals by legislation. The District Judge deciding an election petition is not mentioned as a tribunal in Article 323B and, therefore, it is not a Tribunal and it is a Court.

20. Dr. Mishra has also submitted that although Section 23 of the Municipalities Act provides that procedure provided in the Civil Procedure Code in regard to suits shall, so far as it is not inconsistent with the Municipalities Act or any Rule and so far as it can be made applicable, be followed in the hearing of the hearing of election petitions, but it does not provide that an election petition shall be treated as a suit.

21. Dr. L. P. Mishra has also submitted that after passing of the judgment dated 15.11.2025, the District Magistrate, Ambedkar Nagar has issued an office order dated 19.11.2025 stating that consequent to the Election Petition having been allowed, office of Chairman, Nagar Panchayat Ashrafpur has become vacant, and he has appointed the Additional SDM, Akbarpur, as administrator of the Nagar Panchayat.

22. Dr. Mishra has drawn attention of the Court to Section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887, which provides that there shall be the following

classes of civil courts under the Act, namely:

- (1) The Court of the District Judge;
- (2) The Court of the Additional Judge;
- (3) The Court of the Subordinate Judge; and
- (4) The Court of the Munsif.

23. Firstly I proceed to examine whether the District Judge deciding an election petition is a Court or not. For doing so, it would be appropriate to have a look at the relevant parts of Sections 20, 22 and 23 of the U. P. Municipalities Act, 1916, which provide as follows: -

"20. Form and presentation of election petitions. - (1) An election petition shall be presented within 30 days after the day of which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set for the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the dates and place of the commission of each such practice.

* * *

- (5) The petition shall be presented to the District Judge exercising jurisdiction in the area in which the

municipality, to which the election petition relates, is situate:

* * *

22. *Hearing of election petition. - (1) An election petition not complying with the provisions of Section 20 or upon which the requisite court-fee has not been paid at the time of presentation or with in such further time not exceeding fourteen days as the District Judge, as the case may be, may have granted, shall be rejected by such Judge.*

(2) An election petition not rejected under sub-section (1) shall be heard by the District Judge.

23. *Procedure.- Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Civil Procedure Code (Act V of 1908) in regard to suits, shall, so far as it is not inconsistent with this Act or any rule and so far it can be made applicable, be followed in the hearing of election petitions: Provided that, -*

* * *

Provided that in computing the period of limitation the provision of sub-section (2) of Section 12 of the Limitation Act, 1963 shall apply."

(Emphasis added)

24. It is relevant to note that the Municipalities Act originally provided for filing the election petition before the 'Court', but the word 'Court' was substituted by the phrase 'District Judge' by U.P. Act No. 17 of 1982.

25. In **Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker**: (1995) 5 SCC 5, the appellate authority constituted

under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 had dismissed the appeal as barred by time and it took the view that being not a court but a persona designata it has no power to condone the delay in filing appeal by invoking the provisions contained in Section 5 of the Limitation Act, 1963. Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 provides as follows: -

"18. *Appeal.- (1)(a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.*

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation.- The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the

tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 20. "

The Government of Kerala in exercise of its power under Section 18(1) has issued a notification conferring on District Judges the powers of appellate authority for the purpose of Kerala Rent Act. The appellate authority, namely the District Judge, took the view that since he was a *persona designata*, he could not resort to Section 5 of the Limitation Act for condoning the delay in filing appeal before him. The question before the Hon'ble Supreme Court was whether the District Judge was a *persona designata* or a Court. The Hon'ble Supreme Court referred to various precedents on the point and held that: -

"...It is now well settled that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The scheme of the Act to which we have referred earlier contraindicates such appellate authority to be a persona designata. It is clear that the appellate authority constituted under Section 18(1) has to decide lis between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. Such an authority is constituted by designation as the District Judge of the district having jurisdiction

over the area over which the said Act has been extended. It becomes obvious that even though the District Judge concerned might retire or get transferred or may otherwise cease to hold the office of the District Judge his successor-in-office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function as an appellate authority under Section 18. If the District Judge was constituted as an appellate authority being a persona designata or as a named person being the appellate authority as assumed in the present case, such a consequence, on the scheme of the Act would not follow. In this connection, it is useful to refer to a decision of this Court in the case of Central Talkies Ltd. v. Dwarka Prasad [AIR 1961 SC 606] . In that case Hidayatullah, J. speaking for the Court had to consider whether Additional District Magistrate empowered under Section 10(2) of Criminal Procedure Code to exercise powers of District Magistrate was a persona designata. Repelling the contention that he was a persona designata the learned Judge made the following pertinent observations:

"...A persona designata is 'a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character'. (See Osborn's Concise Law Dictionary, 4th Edn., p. 253). In the words of Schwabe, C.J. in Parthasaradhi Naidu v. Koteswara Rao [AIR 1924 Mad 561 (FB)] , personae designatae are persons selected to act in their private capacity and not in their capacity as Judges'. The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers

equal to himself for the purposes of the Eviction Act. The decision of Sapru, J. in the Allahabad case, with respect, was erroneous."

Applying the said test to the facts of the present case it becomes obvious that appellate authorities as constituted under Section 18 of the Rent Act being the District Judges they constituted a class and cannot be considered to be persona designata..."

The Hon'ble Supreme Court further held that: -

"8. Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Government notification noted earlier. These District Judges have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent Control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this Court. We may refer to one of them, in the case of Thakur Jugul Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd. [AIR 1967 SC 1494] In that case this Court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of

the Bihar and Orissa Cooperative Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a Division Bench of this Court speaking through Mitter, J. placed reliance amongst others on the observations found in the case of Brajnandan Sinha v. Jyoti Narain [AIR 1956 SC 66] wherein it was observed as under:

"It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

Reliance was also placed on another decision of this court in the case of Virindar Kumar Satyawadi v. State of Punjab [(1955) 2 SCR 1013 : AIR 1956 SC 153] . Following observations found (at SCR p. 1018) therein were pressed in service:

"It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial

tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court."

When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the appellate authority constituted under Section 18 of the Rent Act, it becomes obvious that all the aforesaid essential trappings to constitute such an authority as a court are found to be present. In fact, Mr Nariman, learned counsel for respondent also fairly stated that these appellate authorities would be courts and would not be persona designata. But in his submission as they are not civil courts constituted and functioning under the Civil Procedure Code as such, they are outside the sweep of Section 29(2) of the Limitation Act. It is therefore, necessary for us to turn to the aforesaid provision of the Limitation Act. It reads as under:

"29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.

(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law."

26. **Mukri Gopalan** (Supra) has been overruled on the point of applicability of the Limitation Act to Tribunals in **Consolidated Engineering Enterprises Vs. Principal Secretary Irrigation Department and Others**: (2008) 7 SCC 169, but the ratio laid down in this case regarding the difference in Courts and persona designata still holds the field.

27. In **LIC v. Nandini J. Shah**: (2018) 15 SCC 356, the seminal question was whether the order passed by the City Civil Court in exercise of power under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as an Appellate Officer, is in the capacity of a

civil court or persona designata? The Hon'ble Supreme Court noted that Sub-section (1) of Section 9 postulates that an appeal shall lie from every order of the Estate Officer, passed under the Act, to an Appellate Officer. The District Judge of the district in which the public premises are situated or such other judicial officer in that district of not less than 10 years' standing as the District Judge is to be designated for that purpose. The Hon'ble Supreme Court held that: -

"35. ...The first part of the provision does suggest that the appeal shall lie to an Appellate Officer, however, it does not follow therefrom that the Appellate Officer is persona designata. Something more is required to hold so. Had it been a case of designating a person by name as an Appellate Officer, the concomitant would be entirely different. However, when the Appellate Officer is either the District Judge of the district or any another judicial officer in that district possessing necessary qualification who could be designated by the District Judge, the question of such investiture of power of an appellate authority in the District Judge or Designated Judge would by no standards acquire the colour or for that matter trappings of persona designata. In the first place, the power to be exercised by the Appellate Officer in terms of Section 9 is a judicial power of the State which is quite distinct from the executive power of the State. Secondly, the District Judge or designated judicial officer exercises judicial authority within his jurisdiction. Thirdly, as the Act predicates the Appellate Officer is to be a District Judge or judicial officer, it is indicative of the fact of a pre-existing authority exercising judicial power of the State. Fourthly, the District Judge is the creature of Section 5 of the

Maharashtra Civil Courts Act, 1869, who presides over a District Court invariably consisting of more than one Judge in the district concerned. The District Court exercises original and appellate jurisdiction by virtue of Sections 7 and 8 respectively, of the 1869 Act and is the principal court of original civil jurisdiction in the district within the meaning of CPC, as per Section 7 of that Act. As per Section 8 of the Act of 1869, the District Court is the court of appeal from all decrees and orders passed by the subordinate courts from which an appeal lies under any law for the time being in force.

* * *

37. On the similar lines, the Bombay City Civil Court has been constituted under Section 3 of the Bombay City Civil Court Act, 1948, with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within Greater Bombay except a suit or proceedings which are cognizable by the High Court referred to therein and by the Small Cause Court. Section 7 of this Act envisages that when the City Civil Court consists of more than one Judge, each of the Judges may exercise all or any of the powers conferred on the court by the said Act or any other law for the time being in force. Clause (b) of Section 7 stipulates that the State Government may appoint any one of the Judges to be the Principal Judge and any two other Judges to be called the Additional Principal Judges. The Principal Judge has been given authority to make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges thereof. In other words, the District Judge or the Principal Judge exercises judicial power of the State

and is an authority having its own hierarchy of superior and inferior courts, the law of procedure according to which it would dispose of matters coming before it depending on its nature and jurisdiction exercised by it, acting in judicial manner. The District Judge or Principal Judge of the City Civil Court is the officer presiding over the court and derives his description from the nomenclature of the court. Even if the District Judge/Principal Judge of the City Civil Court might retire or get transferred, his successor-in-office can pick up the thread of the proceedings under Section 9 of the 1971 Act from the stage where it was left by his predecessor and can function as an appellate authority. The District Judge/Principal Judge of the City Civil Court and other judicial officers of these courts possessing necessary qualifications constitute a class and cannot be considered as persona designata. The Appellate Officer, therefore, has to function as a court and his decision is final in terms of Section 10 of the 1971 Act. The legislative intent behind providing an appeal under Section 9 before the Appellate Officer to be the District Judge of the District Court concerned in which the public premises are situated or such other judicial officer in that district possessing necessary qualification to be designated by the District Judge for that purpose, is indicative of the fact that the power to be exercised by the Appellate Officer is not in his capacity as persona designata but as a judicial officer of the pre-existing court.

* * *

47. Notably, the expression "Appellate Officer" has not been defined in the 1971 Act, unlike the definition of "Estate Officer" contained in Section 2(b) of that Act. The Appellate Officer cannot be considered as a statutory authority, as

defined in the dictionary clause in Section 2(fa) of the 1971 Act. In Thakur Das [Thakur Das v. State of M.P., (1978) 1 SCC 27], in para 9, while analysing the cleavage of opinion of the High Courts, it is noticed that the expression "judicial authority" would comprehend the Additional Sessions Judge or the Sessions Judge could transfer such appeal pending before him to the Additional Sessions Judge which was a pointer to the fact that he was not a persona designata. Even in respect of the appeal under Section 9 of the 1971 Act, the Principal Judge of the City Civil Court or District Judge is competent to hear the appeal himself or designate some other judicial officer within his jurisdiction possessing requisite qualification. It will be useful to advert to Section 7 of the City Civil Courts Act and Sections 3, 5 and 7 of the Maharashtra Civil Courts Act. It is implicit in Section 9 read with the provisions of the Acts constituting the District Judiciary that the head of the district judiciary is the District Judge or Principal Judge of the City Civil Court and Section 9 of the 1971 Act makes it explicit, by investing authority in the District Judge or Principal Judge of the City Civil Court, to designate any other judicial officer within his jurisdiction possessing essential qualifications, to hear such appeals. This is a clear departure from the appointment of a District Judge as a persona designata. The Additional District Judge or judicial officer possessing essential qualification, therefore, is not an inferior Appellate Officer within the meaning of Section 9 of the 1971 Act. In our opinion, there is enough indication in Section 9 of the 1971 Act to spell out the legislative intent that the remedy of appeal before the Appellate Officer is not before a persona designata but a pre-existing judicial authority in the district concerned.

58. In other words, the Appellate Officer while exercising power under Section 9 of the 1971 Act, does not act as a persona designata but in his capacity as a pre-existing judicial authority in the district (being a District Judge or judicial officer possessing essential qualification designated by the District Judge). Being part of the district judiciary, the judge acts as a court and the order passed by him will be an order of the subordinate court against which remedy under Article 227 of the Constitution of India can be availed on the matters delineated for exercise of such jurisdiction."

28. The Municipalities Act originally provided for filing the election petition before the 'Court', but the word 'Court' was substituted by the phrase 'District Judge' by U.P. Act No. 17 of 1982. As per Section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887, the District Judge is a Civil Court. While deciding an election petition, the District Judge has all the powers of a Civil Court. Section 23 of the Municipalities Act provides that while deciding an election petition the District Judge shall follow the procedure provided in the Civil Procedure Code in regard to suits, so far as it is not inconsistent with the Municipalities Act or any rule and so far as it can be made applicable, be followed in the hearing of election petitions. There is no reason justifying to hold that while deciding an election petition, the District Judge does not act as a Court and it acts as a tribunal or a persona designata.

29. In view of the foregoing discussion, I am of the considered view that while deciding an election petition, the District Judge acts as a 'Court'.

30. The second question to be decided

is whether the provisions of Section 5 of the Limitation Act would apply to the election petitions in view of the provision contained in Section 29 (2) of the Limitation Act, which provides as follows:

-

"29. Savings.-

(1)...

(2). *Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."*

31. Dr. L. P. Mishra has submitted that an election petition filed under the Municipalities Act is not a suit and it is termed as a petition, which would fall in the category of applications. He has submitted that as the District Judge deciding an election petition acts as a court, as per Section 29 (2) of the Limitation Act, the provisions of Section 5 would apply to the election petition filed before it.

32. Although an election petition is not a suit, Section 23 of the Municipalities Act provides that except so far as may be otherwise provided by the Act or by any rule, the procedure provided in the Civil Procedure Code (Act V of 1908) in regard to suits, shall, so far as it is not inconsistent with this Act or any rule and so far it can be

made applicable, be followed in the hearing of election petitions. The Proviso appended to Section 23 of the Municipalities Act specifically provides that the provisions of sub-section (2) of Section 12 of the Limitation Act shall apply in computing the period of limitation.

33. In **K.V. Rao v. B.N. Reddi**: 1968 SCC OnLine SC 285, while dealing with the issue of condonation of delay in filing an election petition under the Representation of the People Act, 1951, Hon'ble Supreme Court held that: -

*"12. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment : the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the **Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.**"*

(Emphasis added)

34. In **Hukumdev Narain Yadav v. Lalit Narain Mishra**: (1974) 2 SCC 133, the Hon'ble Supreme Court was again dealing with the issue of condonation of delay in filing an election petition under the Representation of the People Act, 1951 and it held that "the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay."

35. In **Lachhman Das Arora v. Ganeshi Lal**: (1999) 8 SCC 532, the Hon'ble Supreme Court held that: -

"7....No period for filing of an election petition is prescribed under the Indian Limitation Act. The Act insofar as it relates to presentation and trial of election disputes is a complete code and a special law. The scheme of the special law shows that the provisions of Sections 4 to 24 of the Indian Limitation Act do not apply. If an election petition is not filed within the prescribed period of forty-five days, Section 86(1) of the Act, which provides that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is straightaway attracted."

36. All the aforesaid judgments have been followed by the Hon'ble Supreme Court in **Suman Devi v. Manisha Devi**: (2018) 9 SCC 808 and by a coordinate Bench of this Court in **Maneka Sanjay Gandhi v. Rambhual Nishad**: 2024 SCC OnLine All 4203. As the aforesaid judgments deal with condonation of delay in filing election petitions under the Representation of the People Act, 1951, but the relevant provisions contained in the

Representation of the People Act, 1951 are similar to those contained in the Municipalities Act. Therefore, the principle of law that the provisions contained in Section 5 of the Limitation Act would not apply to the election petitions filed under the Representation of the People Act, will also apply to the election petitions filed under the Municipalities Act, 1916.

37. The aforesaid view is fortified by the fact that the proviso appended to Section 23 (2) of the Municipalities Act provides that the provision contained in Section 12 (2) of the Limitation Act would apply to the election petitions filed under this Act. When the legislature has specifically provided for application of a particular provision of the Limitation Act and has not made the other provisions applicable to it, Section 5 of the Limitation Act would not apply to the election petitions filed under the Municipalities Act.

38. Although an election petition filed under Section 20 of the Municipalities Act is not a suit, it is an original proceeding which has to be decided in the manner provided for decision of suits. Section 5 of the Limitation Act does not apply to suits. For this reason also, Section 5 of the Limitation Act would not apply to filing of election petitions under the Municipalities Act, 1916.

39. In view of the foregoing discussion, I am of the considered view that the provisions of Section 5 of the Limitation Act would not apply to an election petition filed under Section 20 of the Municipalities Act. The impugned order dated 04.11.2025, passed by the learned Additional District Judge, allowing the application under Section 5 of the Limitation Act is unsustainable in law and

the same is set aside. The judgment and order dated 15.11.2025 allowing the election petition is also unsustainable in law as being barred by the limitation period; the election petition was liable to be dismissed.

40. Accordingly, the petition is **allowed**. The impugned order dated 04.11.2025, passed by learned Additional District Judge (F.T.C.-I), Ambedkar Nagar in Election Petition No.4 of 2023 is set aside. Consequently the judgment and order dated 15.11.2025 passed in the aforesaid case is also set aside and the election petition is dismissed. All necessary consequences shall follow. It goes without saying that the office order dated 19.11.2025 issued by the District Magistrate, Ambedkar Nagar, appointing an administrator as the office of the Chairman, Nagar Panchayat, had fallen vacant consequent to the election petition being allowed, would ipso facto stand nullified consequent to the dismissal of the election petition and consequently the petitioner shall be entitled to continue as Chairperson of Nagar Panchayat concerned.

(2025) 12 ILRA 670
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.12.2025

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Writ C No. 19818 of 2017

Smt Raziya Kahtoon	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Counsel for the Petitioner:
 Ratnesh Singh Tomar, Surya Prakash

Counsel for the Respondents:

C S.C.

ISSUE FOR CONSIDERATION

- (i) Whether, in proceedings under Section 47-A of the Indian Stamp Act, 1899, it is incumbent upon the Collector to inspect the property after due notice to the parties to the instrument in terms of Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997; and
- (ii) Whether any inspection report not conducted in accordance with Rule 7(3)(c) of the Rules of 1997 could validly form the basis of an order for recovery of alleged deficient stamp duty.

HEADNOTE

Constitution of India, Art. 226 – Indian Stamp Act, 1899, Ss. 47-A, 33 & 56(1) – U.P. Stamp (Valuation of Property) Rules, 1997, R. 7(3)(c) – Determination of market value – Deficiency of stamp duty – Mandatory requirement of inspection after due notice – Ex parte spot inspection report – Reliance on Naib-Tehsildar/Sub-Registrar report – Burden of proof on State – Comparable sale – Potentiality and nature of land to be assessed on date of execution of instrument – Future use or presumed commercial potential – Irrelevant considerations – “Reason to believe” – Subjective satisfaction of Collector to be founded on material – Recovery of registration fee – No statutory power under Stamp Act

HELD:

The value of the land, in so far as it relates to the Indian Stamp Act, 1899, can be determined only with reference to the date on which the document was executed and any subsequent change in the nature or use of the land which may result in the enhancement of the market value of the property cannot be taken into account. The market value of the land is not liable to be determined with reference to the use to which a buyer intends to put it in future, and the market value of the property is to be determined with reference to its character on the date of execution of the instrument. The potential of the land is to be assessed on the date of execution of the instrument itself, and the

nature of use is relatable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of execution of the instrument itself by referring to exemplar or comparable sale instances it may be relevant and germane to determine the true market value.

The Indian Stamp Act, 1899 does not provide Collector to order recovery of any deficiency in the payment of registration fee and, in the absence of statutory provision, the Collector could not pass any order for recovery of deficiency of registration fee in proceedings under the Stamp Act.

The registering officer, after registration of the document, can refer the same for adjudication before the Collector if the subject matter of the instrument is found prima facie undervalued and there are reasons to believe that the same has been done deliberately; the expression reason to believe is not synonymous with the subjective satisfaction of the officer and the satisfaction must be based on objective satisfaction arrived at reasonably and on material available on record; enquiry by the Registering Authority is a pre-condition for making reference to the Collector.

The report of the Registrar/Up-Mahanirikshak Nibandhan is only for the purposes of initiation of proceedings under Section 47-A of the Act and cannot be read as evidence, and the burden to prove that the market value of the property has not correctly been disclosed in the instrument is on the department, which must be supported by exemplars or comparable sale deed of any property in the vicinity.

In the present case, no notice was served to the petitioner as contemplated under Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997 before carrying out the inspection, and the Collector passed the impugned order determining deficiency in stamp duty merely relying upon the report submitted by the Naib-Tehsildar without any basis or proof, without considering any oral or

documentary evidence. The impugned orders do not refer to any document nor any documentary evidence in the form of comparable sale deed of any property in the vicinity of the subject matter of the instrument to indicate that the value of the property comprised in the instrument was higher than disclosed in the sale-deed, and no other material was brought on record to show that the subject matter of instrument is commercial in nature. Impugned orders were set aside and a writ of mandamus was issued to refund the amount deposited, with simple interest at the rate of 6 per cent per annum in case of default. The matter was not remanded, as valuation under the Stamp Act can be determined only with reference to the date on which the document was executed and any subsequent inspection would be of no use under law for determination of stamp duty on the date of execution of the sale deed.*(Paras 34, 41-43, 48, 35-36, 32, 30-31, 47, 50-54) (E-5)*

CASE LAW CITED

Ram Gopal v. State of U.P., 2009 (7) ADJ 185 (LB);
 Ram Khelawan @ Bachcha v. State of U.P., 2005 (98) RD 511;
 Ajay Agarwal v. Commissioner, 2023 (2) ADJ 561 (LB);
 Reena Gupta v. State of U.P., (2020) 2 ADJ 162;
 Smt. Leela Devi Shah v. State of U.P., (2014) 125 RD 297;
 Smt. Pushpa Sareen v. State of U.P., (2015) 3 ADJ 136;
 State of U.P. v. Ambush Tandon, (2012) 5 SCC 566;
 Sumati Nath Jain v. State of U.P., 2016 (2) ADJ 533 (DB);
 Haroon Ahmad v. State of U.P., 2012 (115) RD 803;
 Sunil Jaiswal v. State of U.P., 2015 SCC OnLine All 5904;
 Neeraj Jain v. State of U.P., (2015) 11 SCC 437;
 Chief Revenue Controlling Officer v. P. Babu, 2025 SCC OnLine SC 42;
 Ganesh Chandra Agarwal versus State of U.P. & others (Writ-C No. 11531 of 1996, decided on 15.09.2010)

Mohali Club, Mohali versus State of Punjab, AIR 2011 P&H 23 ;
 G. Karmegam versus The Joint Sub-Registrar, Madurai, 2007 SCC Online Mad 960;
 Vijay Kumar and another Versus Commissioner, Meerut Division and Anr., AIR 2008 All 176;
 Ratna Shankar Dwivedi versus State of U.P and others AIR 2012 ALL 100;
 M/s. Maya Food And Vanaspati Ltd. Co. versus Chief Controlling Revenue Authority (Board of Revenue) Allahabad; 1990 (90) RD 57

List of Acts

Constitution of India;
 Indian Stamp Act, 1899;
 U.P. Stamp (Valuation of Property) Rules, 1997;
 U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keyword

Deficient stamp duty; Ex parte inspection; Rule 7(3)(c); Due notice; Market value; Comparable sale; Potentiality of land; Future use; Reason to believe; Burden of proof; Penalty; Registration fee; Independent application of mind; Perversity; Mandatory procedure.

CASE ARISING FROM

Challenge to the order dated 04.02.2016 passed by the Collector, Barabanki in Case under Section 47-A/33 of the Indian Stamp Act, 1899, and the revisional order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division in Case under Section 56(1) of the Indian Stamp Act, 1899.

Appearances for Parties

Advs For Petitioner: Ratnesh Singh Tomar; Surya Prakash
 Advs For Respondents: C.S.C.; Abhishek Kumar Pandey; Suresh Chandra Kushwaha; Mohd. Kasim

(Delivered by Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Shri Surya Prakash & Shri Arsh Bugga, learned counsels for petitioner; Shri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel along

with Shri Suresh Chandra Kushwaha and Shri Mohd. Kasim, learned Standing Counsels for the State, are present.

2. By means of the present writ petition, the petitioner has assailed the order dated 04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 under Section 47A / 33 of the Indian Stamp Act, 1899 and the order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, under Section 56(1) of the Indian Stamp Act, 1899, inter alia, praying for the following reliefs:

"(i). Issue any writ, order or direction in the nature of certiorari for quashing of the impugned orders dated 04.02.2016 & 24.05.2017 contained as annexure no.1 & 2 to this petition.

(ii). Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to refund the deposited amount along with interest in pursuance of the impugned orders.

(iii). Issue such other order or direction which this Hon'ble Court may deem just and proper of the case."

4. The relevant facts of the case, in brief, as have culled out from the pleadings available on record are that the petitioner purchased half portion of the plot of land having Gata No. 2311 measuring half (1/2) of the area 0.349 Hectare from one, Sri. Maneesh Kumar, on 24.06.2013. The boundary of plot no. 2311 is given as: East: Land of Hospital, West: Pond, North: Land of Mateen and others, South: Deva to Kurshi Road.

5. It is pleaded by the petitioner that at the time of registration of the Sale-Deed in

respect of the aforesaid plot of land, the petitioner paid stamp duty @ Rs. 46,00,000/- (Rs. Forty Six Lacs only) per hectare. She also paid 150% excess cost as the land was within 100 meters from the residential area and is adjoining to the village. Thus, total value of the land as calculated was Rs. 20,53,000/- (Rs. Twenty Lacs Fifty Three Thousand only). Further, being a lady, the petitioner paid 4% stamp duty on the amount of Rs. 10,00,000/- (Rs. Ten Lacs only) and 5% stamp duty on the rest of the amount, accordingly, the total stamp duty paid was Rs. 92,650/- (Rs. Ninety Thousand Six Hundred and Fifty only).

6. The Sub Registrar Fatehpur, based on a spot inspection, submitted its Report dated 20.08.2013 before the Assistant I.G. Stamp mentioning therein some deficiency of stamp duty. Accordingly, on the strength of the said Report, a case under section 47A / 33 of The Indian Stamp Act was registered as Case No. 42/(2013-14). Consequently, notice was issued to the petitioner, however, it is alleged in the writ petition that the same was never served upon the petitioner. The learned Collector, Barabanki (opposite party no.3) finally passed the order dated 28.07.2014 against the petitioner.

7. The Collector, Barabanki (opposite party no.3) vide the aforesaid order dated 28.07.2014 held that the plot of land is situated at Kursi Road and at present a saw-machine / Aara machine is stalled in the southern side of the plot of land. Further, some shops also exist on the south side road and a Primary Health Center is located in the eastern side of the said plot. As per the report, no agricultural activity was found on the spot, although, as per the Sale-Deed the plot of land was purchased

by the petitioner as agricultural land but in view of the spot inspection report, stamp duty at commercial rate is liable to be determined. Accordingly, the Collector (opposite party no.3) vide order dated 28.07.2014 imposed penalty of Rs. 1,00,000/- (Rs. One Lac only) against the petitioner by holding deficiency of stamp duty amounting to Rs. 4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) along with simple interest @ 1.5% per month with effect from the date of execution of the sale deed i.e. 24.06.2013, to be recovered from the petitioner.

8. It has been pleaded on behalf of the petitioner that it was only after receipt of Recovery Certificate dated 30.08.2014, the petitioner came to know about the aforesaid order dated 28.07.2014 passed by the Collector, Barabanki (opposite party no. 3). Thereafter, she filed an application for recall of the said order dated 28.07.2014 along with an application for condonation of delay stating therein that neither any notice was ever served upon her nor she had any information about the said proceedings and prayed therein that the said ex-parte order dated 28.07.2014 is liable to be recalled and for hearing of the Case No. 42/(2013-14) afresh after due opportunity of hearing. The Collector (opposite party no.3) vide order dated 17.10.2014 recalled the order dated 28.07.2014 with the condition of the deposit of 25% amount of the stamp duty.

9. It is stated in paragraph 8 of the Writ Petition that in compliance of the order dated 17.10.2014, the petitioner deposited Rs. 1,00,000/- (Rs. One Lac only). against penalty and Rs. 32,250/- (Rs. Thirty Two Thousand Two Hundred and

Fifty only) against stamp duty on 26.11.2014.

10. During the course of proceedings, the Collector (opposite party no.3) sought a report from the Sub-Divisional Magistrate, Fatehpur which was submitted on 26.03.2015 on the basis of the report submitted by the Naib-Tehsildar, Kursi on 25.02.2015.

11. As per the report dated 25.02.2015 annexed as Annexure No.7 to the writ petition, the Naib-Tehsildar, Kursi, Fatehpur conducted an inspection and found a Primary Health Center and an Aara Machine on the remaining half portion of Gata No.2311, appurtenant to the plot of land/ subject matter of instrument. It is also mentioned in the said report that the plot of land has not been declared non-agricultural under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 and no construction was found over the same, at the time of inspection.

12. Taking into consideration the aforesaid report dated 26.03.2015, the Collector (opposite party no.3) passed the impugned order dated 04.02.2016. Aggrieved by the said order, the petitioner preferred Revision before the Court of learned Deputy Commissioner, Faizabad Division, Faizabad (opposite party no.2), under Section 56(1) of the Indian Stamp Act, 1899. The said revision came to be registered as Revision No. C 2016040000510. The learned Revisional Court vide the impugned order dated 24.05.2017, found no case for interference in the order dated 04.02.2016 passed by the Collector (opposite party no. 3), and dismissed the said revision being devoid of merit.

13. The contention of the learned counsel for the petitioner is that the report dated 20.08.2013 submitted by the Sub Registrar was made only on the basis of an ex-parte inspection. Moreover, the Sub Registrar, without any basis, proof or document and in the most arbitrary manner, calculated the estimated value of Aara Machine to be of Rs. 2,00,000/- (Rs. Two Lacs only); the value of trees standing on the northern side of the land as Rs. 1,20,000/- (Rs. One Lakh Twenty Thousand only) and the value of land to be Rs. 1,06,30,000/- (Rs. One Crore Six Lacs and Thirty Thousand only), which is totally hypothetical rather unbelievable and as such cannot be the basis for ascertaining the value of the land.

14. It is stated on behalf of the petitioner that she has already deposited Rs. 1,32,250/- (Rs. One Lac Thirty Two Thousand Two Hundred and Fifty only) in compliance of the order dated 17.10.2014 passed by the Collector (opposite party no.3) and the rest of the amount of Rs. 50,750/- (Rs. Fifty Thousand Seven Hundred and Fifty only) was deposited after the final order passed by the Collector (opposite party no.3).

15. Further, it is contended by the learned counsel for the petitioner that the report submitted by the Sub Divisional Officer, Fatehpur dated 26.03.2015 is in utter disregard to Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997. He submitted that the Collector (opposite party no.3) never inspected the property nor issued any notice to the concerned parties, i.e. seller and purchaser and arbitrarily imposed / determined deficiency in stamp duty. It has been asserted on behalf of the petitioner that determination of deficiency in stamp duty without making any spot

inspection or without recording the statement of any public officer / authority or in the absence of cogent evidence / material, in violation of the provisions of Rule 7(3)(c) of the Rules of 1997 renders the same as illegal and unsustainable under law being dehors of relevant rules.

16. It is also argued on behalf of the petitioner that the nature of the land is recorded as agricultural in the revenue records and has never been declared as non-agricultural under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. The name of the petitioner was entered in the revenue records vide order dated 24.02.2016 passed by the competent Revenue Court, and the penalty imposed by the authority holding deficiency in stamp duty, presuming future potentiality of the land to be commercial is a clear violation of the settled law on the subject. It has been categorically stated by the learned counsel for the petitioner that the plot of land has never been used for commercial purposes by the petitioner. The same reflects the arbitrariness and the non-application of mind by the respondent authorities while passing the impugned orders.

17. It is also submitted that the petitioner herself sold the property in question to one Babu son of Nanhey through registered Sale-Deed dated 16.03.2016 and consequently his name has been mutated in the revenue records vide order dated 13.05.2016.

18. It is argued on behalf of the petitioner that the authorities have committed patent illegality in treating the land as commercial only for the reason that the land in question is situated near the Primary Health Center, Powerhouse and some shops constructed at the southern side

of the same. He further argued that the report of the Sub Divisional Officer, Fatehpur provides that on the other half (1/2) portion of the said Gata No. 2311, an Aara machine is found stalled but nowhere it has been stated that the same was found in running condition. Therefore, the valuation of the Aara machine; the valuation of the trees planted at the northern side is totally baseless and the allegation of evasion of stamp duty amounting to Rs. 4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) is arbitrary, without any proof and is bad in law being liable to be set aside.

19. It is very categorically argued on behalf of the petitioner that the petitioner has not violated or breached any Rule. She paid the entire stamp duty as per the then 'circle rate' duly fixed by the competent authority and as such the impugned order passed based on the presumption of future use of the plot of land for commercial purpose is totally arbitrary and illegal. It is further submitted that in the present case, it is not the subject matter of instrument on which Aara machine was found stalled but on the adjoining piece of land.

20. Per contra, the learned Counsel appearing for the State-respondents submitted that the order dated 04.02.2016 passed by the Collector (opposite party no.3) and the order dated 24.05.2017 passed by the Deputy Commissioner (opposite party no.2), were passed after taking into account the reports based on the spot inspection that the existing nature of the subject matter of instrument is non-agricultural rather commercial. Therefore, the impugned orders do not suffer from any illegality or perversity. To elaborate his contention, the learned counsel for the

State-respondents submitted that petitioner purchased the plot of land as agricultural with the intention to evade the stamp duty as the said plot of land is of commercial potential. Thus, the petitioner has violated section 27 of the Indian Stamp Act, 1899. It is further submitted by the learned Counsel appearing for the State-respondents that only after one and a half (1^{1/2}) month of the execution of the sale-deed, a spot inspection was carried out by the Sub Registrar, Fatehpur, Barabanki on 13.08.2013 and it was found that there was no agricultural activity on Gata No. 2311 or the land adjacent to it. Rather, the abovementioned 'Ara Machine' was found operational showing commercial activities within the boundary of the said Gata No. 2311. Moreover, on the adjacent plot, a Primary Health Centre, powerhouse, road and shops on the southern side were found constructed.

21. It is further submitted on behalf of the respondents that the petitioner filed a copy of the Khatauni in support of her case. However, just to conceal the usage of the land, no documents such as Khasra etc. were produced by the petitioner before the authorities in the said proceeding. It is also submitted that since no legal partition has been carried out on the said Gata No. 2311/0.349 Hectares, the petitioner is the co-tenure holder of half of the whole Rakba.

22. It is further submitted by the learned counsel for the State-respondents that half (1/2) portion of the land having Gata No. 2311 ad-measuring 0.349 Hectares, which comes to around 0.1745 Hectares or 1745 square meters, when calculated as per the effective commercial rate of Rs. 6000/- per square meter comes to around Rs. 1,04,70,000/- (Rs. One Crore

Four Lacs Seventy Thousand only); while the estimated value of the 'Ara Machine' as Rs. 2,00,000/- and the estimated value of trees standing on the northern side of the land as Rs. 1,20,000/- (Rs. One Lac Twenty Thousand only) are added to Rs. 3,20,000/- (Rs. Three Lacs Twenty Thousand only) and thereafter the half (1/2) amount, which comes to Rs. 1,60,000/- (Rs. One Lac Sixty Thousand only) is further added to the price of the land. In this way, the total comes to around Rs. 1,06,30,000/- (Rs. One Crore Six Lacs Thirty Thousand only) which is the correct valuation of the non-agricultural land that was purchased by the petitioner. The total stamp duty payable on the said land is Rs. 5,21,500/- (Rs. Five Lacs Twenty One Thousand Five Hundred only), whereas merely Rs. 92,650/- (Ninety Two Thousand Six Hundred and Fifty only) as stamp duty has been paid by the petitioner. Therefore, prima facie evasion of stamp duty amounting to Rs. 4,28,850/- (Rs. Four Lacs Twenty Eight Thousand Eight Hundred and Fifty only) has been found to have been committed by the petitioner and further a penalty amounting to Rs. 1,00,000/- (Rs. One Lac only) has been imposed against the petitioner vide the impugned Order passed by the District Magistrate along with simple interest @ 1.5% per month from the date of execution of the sale deed and in spite of the fact that as per the report submitted the Sub Registrar, Fatehpur on the basis of spot inspection, non-agricultural and commercial activities were found on the plot of land as an 'Ara Machine' was found operational at the Gata No.2311.

23. It is contended on behalf of the State-respondent that the conversion of the land as per Section 142 and Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 does not have any

bearing regarding the determination of market value of a land under the Indian Stamp Act and the valuation of the subject matter of the instrument shall not be in any way influenced by the provisions of the said Act of 1950. In support of his contention, he has placed reliance upon the judgments passed by this Court in the cases of **Haroon Ahmad & Ors. versus State of U.P.**, reported in **2012(115) R.D. 803** and **Sunil Jaiswal and Others versus State of Uttar Pradesh and Others**; reported in **2015 SCC OnLine All 5904**.

24. Learned counsel appearing on behalf of the State-respondents has also placed reliance upon the judgment passed by this Court in the case of **Ganesh Chandra Agarwal versus State of U.P. & others** (Writ-C No. 11531 of 1996, decided on 15.09.2010), wherein a co-ordinate Bench of this Court has held that it is not only use of the land on the date of registration which could have been taken into consideration while determination of market value, but the potentiality of land could also be taken into consideration as relevant factor for determination of correct market value of land.

25. Having heard the rival contentions of the learned counsels for the parties and having perused the material available on record, the issue for consideration before this Court is whether the impugned orders dated 04.02.2016 and 24.05.2017 passed by the Collector, Barabanki (opposite part no.3) and the Deputy Commissioner (Stamp) (opposite party no. 2), Faizabad Division respectively, whereby the instrument was found deficient in payment of stamp duty and the penalty imposed upon the petitioner are sustainable in law or the same suffers from material irregularity warranting interference by this Court in

exercise of its powers under Article 226 of the Constitution of India.

26. Before entering into the merits of the case, it would be apt to see whether for the proceeding under Section 47-A of the Indian Stamp Act, is it incumbent upon the Collector to inspect the property after due notice to the parties to the instrument. Further, whether any inspection report which has not been conducted in accordance with the provisions of Rule 7 (3) (c) of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, can form the basis of an order for recovery of deficient stamp duty?

27. For ready reference, Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997, is extracted hereinbelow:

"Rule 7. (3): The Collector may-

a. Call for any information or record from any public office, officer or authority under the Government or a local authority;

b. Examine and record the statement of any public officer or authority under the Government or the local authority; and

c. Inspect the property after due notice to the parties to the instrument."

28. A Coordinate Bench of this Court in the case of **Ram Gopal versus State of U.P. and others**, reported in **2009(7) ADJ 185 (LB)**, has observed that,

"13. ..The Uttar Pradesh Stamp Valuation of Property Rules, 1997 particularly Rule 7 provides the procedure on receipt of a reference or when suo motu action is proposed under Section 47-A of the Stamp Act. The Rule 7(2) (c) provides

that the Collector may inspect the property after due notice to parties to the instrument. The complete reading of the aforesaid rule clearly indicates that while deciding the proceedings under Section 47-A of the Stamp Act the Collector or its authority are required to make an inspection after due notice to the parties to the instrument. The proceeding under Section 47-A of the Stamp Act shall not be decided merely placing reliance on the ex parte report of the Tehsildar or any authority for that purpose. In the present case the Tehsildar's report dated 3.5.2001 does not disclose as to whether any notice was given to the petitioner before inspection of the land in question by the Tehsildar. Rather it clearly shows that it was an ex parte report. Hence the order dated 26.7.2001 was passed in violation of Rule 7(2) (c) of the U.P. Stamp Valuation of Property Rule, 1997."

(emphasis supplied by this Court)

29. Further, in the case of **Ram Khelawan @ Bachcha versus State of U.P. and another**; reported in **2005 (98) RD 511**, this Court also held that,

"25. It has been found in several cases like the present one that the entire basis of determination of market value for the purpose of stamp duty is ex-parte report of Tehsildar or other officer. Ex- parte inspection report may be relevant for initiating the proceedings under section 47-A of Stamp Act. However, for deciding the case no reliance can be placed upon the said report After initiation of the case inspection is to be made by the Collector or authority hearing the case after due notice to the parties to the instrument as provided under Rule-7(3)(c) of the Rules of 1997. Moreover, in the inspection report distance

of the property from other residential or commercial properties and road must be shown and wherever possible sketch map must also be annexed along with the report so that correct valuation may be ascertained with reasoned certainty."

(emphasis supplied by this Court)

30. In the instant case, from the perusal of the pleadings on record, it is evident that no 'notice' was served to the petitioner before carrying out the inspection and the order dated 28.07.2014 was passed on the basis of an ex-parte inspection report. However, the said order was recalled vide order dated 17.10.2014. Subsequently, inspection report dated 25.02.2015 was obtained from Naib Tehsildar, Kurshi. Although, the case of the State-respondents is that the said inspection was carried out after due information to the counsel for the petitioner but there is nothing on record to establish that any 'notice' was issued to the petitioner. In any case, the 'notice' to the petitioner as contemplated under Rule 7(3) of the U.P. Stamp (Valuation of Property) Rules, 1997, is lacking in the present case.

31. Now coming to the other aspect of the matter that has been assailed by means of in the present writ petition is that the Collector (opposite party no. 3) before passing the impugned order dated 04.02.2016, determining deficiency in Stamp duty has not considered any oral or documentary evidence and, has passed the impugned order without any basis or proof by merely relying upon the report submitted by the Niab-Tehsildar. Thus, the said impugned order is in contravention to the provisions of section 47-A (3) of the Indian Stamp Act. This Court in the case of **Ajay Agarwal versus Commissioner,**

reported in **2023 (2) ADJ 561 (LB)** observed that;

"18. The provisions of Section 47A (3) of the Act clearly prescribed that prior to passing an order in terms of the aforesaid provision, the Collector has to satisfy himself, which in fact would mean that he has to record his subjective satisfaction with regard to the correctness of market value of the property. Furthermore he is also required to record reasons to believe that market value of such property has not been truly set forth in the instrument, whereafter he is also required to determine the market value of his property and duty payable thereon. Clearly the Collector in exercise of power under Section 47 A(3) of the Act as such is required not to rely only on the spot inspection report but also to record his subjective satisfaction with regard to under valuation of the instrument of transfer. As such while passing orders under Section 47 of the Act, Collector cannot rely only on the post inspection report."

32. A co-ordinate Bench of this Court in the case of **Reena Gupta versus State of U.P. and others;** reported in **(2020) 2 ADJ 162** has held that the burden of proving that the market value of the property is more than that disclosed in the Sale-Deed is to be discharged by the State. From perusal of the record, it is evident that the State has failed to discharge the said burden as there is no document in the form of comparable sale deed of any property in the vicinity to indicate that the value of the property comprised in the instrument is higher than the value that has been disclosed in the sale-deed.

33. Similar view has been taken by the co-ordinate Bench of this Court in the case

of **Smt. Leela Devi Shah versus State of U.P. and others**; reported in **(2014) 125 RD 297**, wherein this Court observed as under,

"5. The deficiency in stamp duty has been determined on the basis of the report of Up-Mahanirikshak Nibandhan dated 27.10.2006 without taking into aid of any other independent evidence for the purposes of determining market value of the property and consequently deficiency in stamp duty. The burden to prove that the market value of the property has not correctly been disclosed in the instrument is on the department who asserts that there is deficiency in stamp duty.

6. In the absence of any material to prove that the market value disclosed in the instrument is incorrect or on the lower side, the authorities below could not have determined the market value on the basis of report of Up-Mahanirikashak Nibandhan. It has been settled by various decisions by this Court that the report of the Registrar/ Up-Mahanirikshak Nibandhan is only for the purposes of initiation of proceedings under Section 47-A of the Act and cannot be read as evidence.

7. Thus, in the absence of any evidence to prove that the market value of the property in question has not correctly been shown, the authorities below have manifestly erred in law in simply relying upon the aforesaid report of Up-Mahanirikshak Nibandhan and determining the market value of the property in question."

34. From the perusal of the impugned order dated 04.02.2016, it emerges that the Collector (opposite part no. 3), on the basis of the spot inspection report submitted by the Naib Tehsildar, Kursi to the Sub Divisional Magistrate, Fatehpur has drawn

inference that the subject matter of instrument has not been purchased by the petitioner for the agricultural purposes but with the commercial point of view, the same is not sustainable in the light of law laid down by the Full Bench of this Court in the case of **Smt. Pushpa Sareen versus State of U.P. & others; reported in (2015) 3 ADJ 136**, wherein it has been held that the nature of use is relatable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where however the potential of the land can be assessed on the date of execution of the instrument itself by referring to exemplar or comparable sale instances which may be relevant and germane to determine the true market value. The relevant paragraph of the aforesaid judgement is quoted herein below,

"27. The fact that the land was put to a particular use, for instance, a commercial purpose at a later point in time, may not be a relevant criterion for deciding the value for the purpose of Stamp Duty, as held by the Supreme Court in State of U.P. v. Ambush Tandon, 2012 (5) SCC 566. This is because the nature of the use is relatable to the date of purchase, which is relevant for the purpose of computing the Stamp Duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous Sale Deeds in respect of the adjacent areas that would have a bearing on the market value of the

property under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property that is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land, which would be taken into consideration in a price agreed upon between a vendor and a purchaser."

35. It is settled in law that the registering officer, after registration of the document, can refer the same for adjudication before the Collector, if it finds the subject matter of instrument prima facie undervalued and has reasons to believe that the same has been done deliberately. Such a reference is not a mechanical act, but the Registering Authority should have basis for coming to the conclusion of prima facie undervaluation of the property. It is incumbent upon the Registering Authority to ensure that the process of section 47-A (1) does not work as a mechanical tool of oppression nor as a matter of routine, without application of mind as to the existence of any material or reason to believe that there exists malafide intention to evade payment of proper stamp duty. It goes without saying that the belief must be held in good faith. Further, there must be a rational, relevant and strong foundation for the formation of the belief. The expression 'reason to believe' means some material on the basis of which the competent authority can re-open the proceeding. In any case, the satisfaction of the concerned authority is necessary in terms of material available on record. In the case of **Mohali Club, Mohali versus State of Punjab, reported in AIR 2011 P&H 23**, a co-ordinate bench of the Punjab and Haryana High Court has held that the expression 'reason to believe'

is not synonymous with the subjective satisfaction of the officer. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably.

36. The Hon'ble Supreme Court in the case of **Chief Revenue Controlling Officer cum Inspector General of Registration and Others versus P. Babu** reported in **2025 SCC Online SC 42** has been pleased to hold that under section 47-A(1) and under section 47-A(3) of the Indian Stamp Act, if the registering authority has reasons to believe that the instrument of conveyance did not reflect the correct market value of the property, then the registering authority has the power to refer the same to the Collector for determination of market value of the property and the Collector, on reference, under section 47-A(1), may determine the market value of such property in accordance with the procedure prescribed. Enquiry by the Registering Authority is a pre-condition for making reference to the Collector for determination of market value of the property after providing reasonable opportunity of hearing to the parties. When the Registering Authority finds that the value set forth in an instrument was less than the determined minimum value, then the Registering Authority is empowered to refer the instrument to the Collector for determination of market value of the property and the Stamp Duty payable thereon. The Hon'ble Apex Court has observed that when both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide regarding the market value of the property, by the expression 'reason to believe', then, whether it reflects the subjective satisfaction of the authorities

concerned or it reflects the objective determination of the market value of the property? What is meant by 'reason to believe' is the issue that warrants consideration. In any case, availability of material is the foundation or the basis for any authority to arrive at any decision whatsoever. The basis of a thing is that on which it stands and on the failure of which it falls.

37. While dealing with the similar issue, the Hon'ble Full Bench of the Madras High Court in the case of **G. Karmegam versus The Joint Sub-Registrar, Madurai**, reported in **2007 SCC Online Mad 960** held that the Collector is the prescribed authority to determine the market value of the property after affording reasonable opportunity of hearing to the parties. The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he provides reason in support of his conclusion for undervaluation however short that may be. In order to reach a conclusion, there is no bar on the Registering Officer to gather information from other sources including official or public record. It was also held that when the Collector exercises powers under sub-sections (2) and (3) of Section 47A of the Indian Stamp Act, he/she shall be deemed to be a quasi-judicial authority. The Collector has been conferred with such power by the statute. The detailed procedure prescribed in the relevant rules evidently portrays that the Collector's decision is relatable and verifiable by the material on evidence, which he brings into record, on making an enquiry after hearing the parties concerned.

38. At this stage, it would be relevant to refer to the observations made by this Court in the case of **Vijay Kumar and**

another Versus Commissioner, Meerut Division and Anr., reported in **AIR 2008 All 176** and the same is reproduced herein below,

"The sine qua non for invoking provisions of Section 47A (3) of the Act is that the Collector has reason to believe, that the stamp duty has not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the prescribed stamp duty as prescribed by the Collector has been paid, the burden to prove that the market value is more than the minimum as prescribed by the Collector under the rules, is upon the Collector. The report of the Sub- Registrar or Tehsildar itself is not sufficient to discharge that burden."

39. Further, in the case of **Vijay Kumar (Supra)** the Court also explained the expression '**market value**' as,

"The 'market value' means what a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going in the vicinity and potentiality of the land."

(emphasis supplied by this Court)

40. Again, in the case of **Ratna Shankar Dwivedi versus State of U.P and others**; reported in **AIR 2012 ALL 100**, this Court held that,

"The term "market value" has not been defined under the Act. However there are some precedents laying down certain guidelines as to how and in what manner a market value would be determined. The consensus opinion is that the market value of any property is the price which the

property would fetch or would have fetched if sold in the open market."

(emphasis supplied by this Court)

41. It is trite in law that the nature of the property being commercial, residential or agricultural is not the sole determinant for the 'market value' of the property. In other words, in a particular case, nature of land and its current use may not be the sole factor to assess the market value of the same. Rather, the prevalent rates at which the properties adjacent to the subject matter of instrument are being sold and purchased shall also be taken into consideration for determining the market value of the said property. Further, evidence of bona fide sales between prudent vendor and prudent vendee of land, situated near-about land possessing same or similar advantageous features would furnish basis to determine the market value. The Hon'ble Supreme Court in the case of **Neeraj Jain versus State of U.P. and others (Civil Appeal No. 8286 of 2014, reported in (2015) 11 SCC 437**, observed that the Court should require State Government to put forth the material on record that there has been a change of use or there are other contemporaneous sale deeds in respect of adjacent area as the market value has been increased or there has been change in agricultural land to the urban agglomeration and such other ancillary aspect.

42. In the case of **M/s. Maya Food And Vanaspati Ltd. Co. versus Chief Controlling Revenue Authority (Board of Revenue) Allahabad**; reported in **1990 (90) RD 57**, this Court held that the market value of the land for the purpose of payment of stamp duty cannot be determined with reference to its future use

or the intended use to which it is likely to be put by the purchaser.

43. In so far as the argument of the learned counsel for the petitioner that the finding recorded by the Collector (opposite party no. 3) in the impugned order, whereby the Collector (opposite party no. 3) solely relied upon the report of the Sub Divisional Officer is incorrect in as much as the same provides that since the inspection report does not reflect any agricultural activity over the plot in land is indicative of the fact that the plot of land which is the subject matter of instrument was purchased for commercial purposes and not for agricultural purposes. The said finding that the property comprised in the Sale-Deed has been purchased by the petitioner for commercial purposes, is unsustainable in the light of the observations recorded by the Division Bench of this Court in the case of **Sumati Nath Jain versus State of U.P. and another, reported in 2016 (2) ADJ 533 (DB)**. The relevant part of the judgment is extracted hereinbelow,

"16. Section 47-A (3) as a plain reading of the provision would indicate comes into operation if the Collector has before him material which may lead him to believe that the market value of the property comprised in an instrument has not been truthfully disclosed. In the present case the Collector proceeded in the matter solely on the basis of the report of the Sub Registrar dated 7 February 2012. This report doubted the valuation of the property on the ground that in the area abutting it, various residential houses had come up and that Greater NOIDA had become a development hub. Bearing in mind the location of the plot and its likely use, the Sub Registrar opined, it would be

inappropriate to value the property at agricultural rates. We find that the very bedrock upon which the opinion of the Sub Registrar based his report was faulty and could not have consequently formed the basis for further action under section 47-A (3).

17. We may note that on the date of execution of the instrument the land was admittedly recorded as agricultural. In fact the Khasra of the property remained unchanged throughout and continued to represent the land as recorded for agricultural purposes. The respondents were in our opinion wholly unjustified in initiating proceedings based on an unsubstantiated assumption that the property in future was likely to be put to non-agricultural use.

18. The perceived or presumed use to which a buyer may put the property in the future can never be the basis for adjudging its value or determining the stamp duty payable. The Act, we may note is a fiscal statute. The taxable event with which it concerns itself is the execution of an instrument which is chargeable to duty. The levy under the statute gets attracted the moment an instrument is executed. These propositions clearly flow from a plain reading of the definition of the words "chargeable", "executed" and "instrument" as carried in the Act. In the case of an instrument which creates rights in respect of property and upon which duty is payable on the market value of the property comprised therein, since the tax liability gets fastened immediately upon execution it must necessarily be quantified on the date of execution. The levy of tax or its quantum cannot be left to depend upon hypothetical or imponderable facets or factors. The value of the property comprised in an instrument has to be adjudged bearing in mind its character and potentiality as on the

date of execution of the instrument. For all the aforesaid reasons we fail to find the existence of the essential jurisdictional facts which may have warranted the invocation of the powers conferred by section 47-A (3). We are therefore of the firm opinion that the initiation of proceedings as well as the impugned order based upon a presumed future use of the property for residential purposes was wholly without jurisdiction and clearly unsustainable. Dealing with this aspect of the matter and after noticing the consistent line of precedent on the subject the Division Bench in Smt. Vijaya Jain observed:

"This Court on more than one occasion has held that the market value of the land is not liable to be determined with reference to the use to which a buyer intends to put it in future. The market value of the property is to be determined with reference to its character on the date of execution of the instrument and its potentiality as on that date."

XXX XXX XXX

The above principles of law enunciated in the aforementioned judgments have been consistently followed by this Court. We however find that the order of the Collector relies upon no evidence which would support imposition of residential rates on a property which was stated to be agricultural on the date of execution of the instrument."

44. So far as the effect of declaration / notification of the land under Section 142 and 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, is concerned, the said issue has been dealt with by this Court in the case of **Haroon Ahmad** (supra) and

Sunil Jaiswal & Others (supra), wherein it has been held that the non-issuance of the notification of a property under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 cannot be the basis for questioning the determination of the market value of land. Section 143 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 is for a different purpose and cannot control the determination of the market value under the Indian Stamp Act, 1899.

45. There is no doubt that the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 encompasses different object and cannot be applied for the purpose of determination of the value of the land insofar it relates to Indian Stamp Act. Such determination is not controlled in any manner by the provisions of U.P. Zamindari Abolition and Land Reforms Act 1950. Notification under Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 can at best be one of the factors for consideration at the time of determination of the market value under the Indian Stamp Act and relevant Rules as prescribed under the U.P. Stamp (Valuation of Property) Rules, 1997.

46. In the case of **Wasi Ur Rehman and another versus Commissioner, Muradabad Division and others**; reported in **2015 SCC OnLine All 5680**, a co-ordinate Bench of this Court held that,

"Though entry in the revenue record regarding the nature of the property may be relevant but cannot be the sole factor in determining the market value. Market value is dependent upon other factors viz. change of user in adjacent area or change of agricultural land to urban agglomeration or if the properties were being sold and bought at commercial rate

then for the purposes of stamp duty market value of the property would be the same as that of the property bought at commercial rate, irrespective of the entry in the revenue record."

47. From all that is discussed herein above, this court finds that the Collector (opposite party no.3) and the Deputy Commissioner (opposite party no.2) have passed the impugned orders without correctly appreciating the well-settled law. The aforementioned Authorities while holding that the plot of land was purchased by the petitioner with the intention to use it for commercial purpose, did not find any substance being unsupported by any documentary evidence or material which could establish that the property comprised in Sale-Deed was being used for other than agriculture purpose at the time of execution of the instrument. Presumption of usage of subject matter of instrument in future for some commercial purposes cannot be the ground of invocation of the provisions of the Indian Stamp Act for alleged deficiency in stamp duty. The Collector even could not cite any exemplar to show that the properties adjacent or around the subject matter of instrument have been sold or purchased at the commercial rate. Thus, the findings on the basis of which the impugned deficiency of stamp duty has been determined is unsustainable.

48. Further, in view of the fact that the Indian Stamp Act, 1899 does not provide Collector (opposite party no.3) to order recovery of any deficiency in the payment of 'Registration fee' and in the absence of any statutory provision the Collector could not have passed any order for recovery of 'deficiency of registration fee' in the proceedings instated under the Indian Stamp Act, 1899.

49. Moreover, it is well-settled that penalty should not to be imposed mechanically. The authorities must apply their mind to the facts and circumstances of each case. In the present case, the Revisional Authority has committed error by affirming the order of the Collector (opposite party no.3) without independently applying its mind to the facts and circumstances of the case and without addressing the specific grounds raised by the petitioner in the revision. The order dated 24.05.2017 passed by the Deputy Commissioner (opposite party no.2) does not reflect any consideration of the issues involved. The Deputy Commissioner (opposite party no.2) has simply dittoed that order of the Collector (opposite party no.3) in passing the impugned order dated 24.05.2017 and the same does not stand to reason.

50. In view of the deliberations and observations made hereinabove, this Court is of the considered opinion that the impugned orders dated 04.02.2016 and 24.05.2017 suffer from serious perversity, being based merely on an ex parte spot inspection report having no support of any credible material. Value of the land has to be determined on the basis of the constructive material available before the authorities; which is completely lacking in the present case. The impugned orders are based on irrelevant presumptions and on erroneous appreciation of facts. Further, the authorities have failed to comply with the mandatory requirements of Rule 7 of the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997 as the impugned order was passed without 'notice' upon the petitioner in the manner as provided under the Rules of 1997 and without appreciation of any oral or documentary evidence by the Collector.

51. Moreover, as has been discussed in the preceding paragraphs, the commercial value of the subject matter of instrument has to be determined on the basis of the constructive material available before the authorities, the same is completely lacking in the present case. Treating the property as commercial merely on the basis of the report showing certain commercial activities around the subject matter of the instrument is not sufficient to treat the nature of the land as commercial, unless it is proved that its nature has undergone a change. The potential of the land is to be assessed on the date of execution of the instrument itself. From perusal of the record, it is evident that the impugned orders do not refer to any document even any documentary evidence in the form of comparable sale deed of any property in the vicinity of the subject matter of the instrument to indicate that the value of the property comprised in the instrument is higher than disclosed in the sale-deed. No other material has been brought on record to show that the subject matter of instrument is commercial in nature. It is not in dispute that at the time of the execution of the Sale-Deed, the nature of the subject matter of instrument was agricultural and in the absence of any material otherwise, the same cannot be treated as commercial. The market value of the land is required to be judged on the nature and use of the land existing on the date of purchase of the land in question and the authorities are not required to judge the use of the land which could be put to a different use in future. It is clear that the deficiency of stamp can neither be determined on the value of the future use of the property nor it can be leveled on the ground that the property can fetch good market value. Further, no material has been referred in the impugned orders to fortify the subjective satisfaction

which would constitute 'reason to believe' regarding the evasion of stamp duty on the part of the petitioner.

52. Taking into consideration the factual matrix of the case in hand and the law on the subject as discussed herein above, the impugned order dated 04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 and the judgment and order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, are not sustainable in the eyes of law and are liable to be set-aside.

53. In view of the fact that the procedure in passing the impugned orders has been found violative of the relevant rules including Rule 7(3)(c) of the U.P. Stamp (Valuation of Property) Rules, 1997, therefore, this Court is of the considered opinion that no useful purpose would be served in remanding the matter to the authorities to pass fresh order regarding the determination of the stamp duty in respect of the instrument which was executed way back in the year 2013. The law is well settled that the value of the land in so far as it relates to Indian Stamp Act, 1899, can be determined only with reference to the date on which the document was executed and that any subsequent change in the nature or use of the land which may result in the enhancement of the market value of the property can not be taken into account. As such, if any inspection is carried out in the year 2025 or thereafter, the same would be of no use under law for the purpose of determination of the stamp duty on the date of the execution of the sale-deed executed on 24.06.2013.

54. Accordingly, the writ petition succeeds. The impugned order dated

04.02.2016 passed by the Collector, Barabanki in Case No. D20140412001297 and the judgment and order dated 24.05.2017 passed by the Deputy Commissioner, Faizabad Division, Faizabad in Case No. C2016040000510, are set-aside. A direction in the nature of Mandamus is issued to the Collector, Barabanki (opposite party no.3) to refund the amount deposited by the petitioner during the pendency of the present litigation pursuant to the impugned order, within one month from the date of production of a certified copy of this order, before it. It is hereby provided that if the amount is not refunded within the aforesaid period, the petitioner shall be entitled of simple interest @ 6 per cent per annum from the date of its deposit till the date of actual refund.

55. The writ petition is **allowed**. No order as to cost.

(2025) 12 ILRA 687
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.12.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE VIVEK KUMAR SINGH, J.

Writ C No. 23888 of 2024

Ashish Kumar Agarwal ...Petitioner
Versus
I.O.C. Ltd. & Ors. ...Respondents

Counsel for the Petitioner:
 Nitin Sharma

Counsel for the Respondents:
 Anand Tiwari

Issue for Consideration

The matter pertains to the eligibility criteria for the allotment of retail outlet dealerships and the legal distinction between preliminary and final decrees in land partition suits. The main issue was whether an applicant for Oil marketing company dealership fulfills land eligibility requirements under clause 4(vi)(a) of the selection brochure if they submit a preliminary decree of partition instead of a final decree or the consent of all co-sharers at the time of application.

Headnotes

Constitution of India,1950-Article 226-U.P. Revenue Code,2006-Section 116, 117 & U.P. Revenue Code Rules, 2016-Rule 108, 109-A preliminary decree merely declares the shares of the parties-A final decree is required to separate the property by metes and bounds and correct records of rights-The court held that for the purpose of contractual eligibility with an Oil corporation, "ownership" or "firm offer" must be established via a final decree or unanimous co-sharer consent existing on the date of application-Subsequent legal developments cannot retroactively validate an ineligible application-writ petition dismissed.(Para 13 to 21) (E-6)

Held

The court held that a preliminary decree is insufficient to establish exclusive possession or title for a specific plot. Since the final decree did not exist on the application date and consent from all co-sharers was missing, the lease deed was deemed invalid under Clause 4(vi)(a) of the Brochure.

Case law Cited

Rahal Singh Vs. Indian Oil Corporation Ltd. & 3 Others, Amarjeet Vs Union of India & 3 Others-referred to.

List of Acts

U.P. Revenue Code,2006, U.P. Revenue Code Rules, 2016

List of Keywords

Retail Outlet Dealership, Indian Oil Corporation, Land Eligibility, Co-sharer Consent, Preliminary

Decree, Final Decree, Partition Suit, Lease Deed Validity, Metes and Bounds.

Case Arising From

Civil Jurisdiction-WRIT-C No. – 23888 of 2024

Ashish Kumar Agarwal Vs. Indian Oil Corporation Ltd. & 2 Others

From the Judgment and Order dated 01.12.2025 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner:-

Nitin Sharma

Adv. for Respondent:-

Anand Tiwari

(Delivered by Hon'ble Neeraj Tiwari, J.)

1. Heard Shri Nitin Sharma, learned counsel for the petitioner and Shri Anand Tiwari, learned counsel for the respondents.

2. Present petition has been filed seeking following relief:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the Order dated 28.06.2024 (Annexure No. 1 of the writ petition), passed by respondent no 2 & Order dated 15.04.2024 (Annexure No. 2 of the writ petition) passed by Respondent No. 2, rejecting the candidature of the Petitioner for selection of dealership of retail outlet in pursuance of advertisement dated 28.06.2023.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to accept the piece of land/plot situated at Village Mubarakpur Hardas, Tehsil Najibabad, District Bijnor (duly enumerated in the lease deed dated 25.07.2023) offered by the petitioner for establishment of retail outlet.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to issue letter of Intent and letter of agreement in favour of the petitioner, in pursuance of the provisional selection letter dated 08.12.2023 within the stipulated time period as fixed by the Hon'ble Court. "

3. Submission of the learned counsel for the petitioner is that the respondent no.1-Indian Oil Corporation Limited (hereinafter referred to as the "Oil Corporation") has issued an advertisement dated 28.06.2023 inviting application for setting up a retail outlet dealership at location, namely, village Mubarkhpur, Hardas Tehsil Najibabad, District Bijnor. Pursuant to said advertisement, petitioner submitted an application fulfilling all the requisite qualifications on 16.10.2023. After considering the application of the petitioner, it was rejected on 15.04.2024 on the ground that alongwith the application, petitioner has not annexed the lease deed of all the co-sharers of the land, so offered. Against the same, petitioner has also preferred representation, which was also rejected by the respondent no.2 vide order dated 28.06.2024 on the same ground. Learned counsel for the petitioner submitted that the site in question is situated in the part of land of Bhism Singh and as such, the petitioner had got the lease deed executed in its favour by Bhism Singh only. Thereafter, Bhism Singh has filed partition suit No. 3786 of 2023 under Section 116 of U.P. Revenue Code, 2006 (hereinafter referred to as Code, 2006) and a preliminary decree dated 23.09.2023 was prepared. He further submitted that petitioner has submitted the application for allotment of retail outlet dealership in the State of Uttar Pradesh on 16.10.2023 along with preliminary decree dated 23.09.2023,

that decree was confirmed vide order dated 15.02.2024 passed by Sub Divisional Magistrate(Tehsil level) Judicial, Mandal Moradabad, Najibabad in Case No. 3786 of 2023(Bhism Singh Vs. Hemraj and Others). Final decree was put in force with effect from 23.09.2023 and defect has now been cured prior to date of application , therefore, rejection of the petitioner's application is bad and is not sustainable in the eye of law.

4. Per contra, Shri Anand Tiwari, learned counsel for the respondents submitted that Clause 4(vi) (a) of the Brochure of selection of retail outlet dealership is very clear, which provides that on the date of filing of the application, lease deed of every co-sharer is required and in the present case, undisputedly only one co-sharer, namely, Bhism Singh has executed the lease deed, therefore, the condition of clause 4(vi)(a) has not been fulfilled. He has also submitted that based on preliminary decree no retail outlet can be granted to the petitioner as this is not the final decree and also subsequent position of land may be altered or changed at the time of preparation of final decree, therefore, petitioner has not fulfilled the condition so required in the Brochure. Hence, the respondents have rightly rejected the application of the petitioner.

5. In support of his contention, learned counsel for the respondents has relied upon judgments of this Court given in Writ C No. 7354 of 2024 (**Rahul Singh Vs. Indian Oil Corporation Ltd. And 3 Others**), decided on 06.03.2024 and Writ C No. 11586 of 2024 (**Amarjeet Vs. Union of India And 3 Others**), decided on 06.05.2024.

6. We have considered the submission advanced by learned counsel for the parties,

perused the records and the judgments relied upon.

7. The issue before the Court is as to whether, in terms of Clause 4(vi)(a) of the Brochure for selection, petitioner is fulfilling the requirement of land or not.

8. For the ready reference, Clause 4(vi) of the Brochure is being quoted hereinbelow: "

(vi) *Land (Applicable to all categories): The applicants would be classified into three groups as mentioned below based on the land offered or land not offered by them in the application form: -*

Group - 1: Applicants having suitable piece of land in the advertised location/area either by way of ownership / long term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group - 2: Applicants having Firm Offer for a suitable piece of land for purchase or long- term lease for a period of minimum 19 years 11 months or as advertised by the OMC.

Group-3: Applicants who have not offered land in the application. Only applicable for locations advertised under SC/ST category.

Applications under Group - 3 would be processed/advised to offer land (Annexure - D) only in case no eligible applicant is found or no applicant get selected under Group-1& Group-2. In case land offered by all the applicants under Group 1 & Group 2 is found not suitable/not meeting requirements, then these applicant/s under Group - 1 & Group - 2 along with applicants under Group - 3 (who did not offer land along with application) would be advised by the OMCs to provide suitable land in the

advertised location / stretch, within a period of 90 days from the date of issuance of intimation letter to them through SMS/e-mail. In case the applicant fails to provide suitable land within the prescribed period, or the land provided is found not meeting the laid down criteria, the application would be rejected.

The other conditions with respect to offering of land are as under: -

(a) The land should be available with the applicant as on the date of application and should have minimum lease of 19 years and 11 months (as advertised by respective oil company) from the date or after the date of advertisement but not later than the date of application. If the offered land is on Long-term lease and there are multiple owners, then lease deed should be executed by all co-owners of the offered plot. In case lease deed is not executed by all co-owners; such lease deed shall be treated as invalid."

9. From the perusal of the aforesaid clause, it is apparently clear that if the land, lease deed of which has been annexed along with application form is not covered under the Category of Group-I of Clause 4(vi) of the Brochure, then it is required on the part of the applicant to submit the consent of other co-sharers in terms of Clause 4(vi)a, which undisputedly has not been filed along with application and the defence of the petitioner is that, he had filed preliminary decree dated 23.09.2023, which was later on confirmed vide order dated 15.02.2025 w.e.f. 23.09.2023.

10. To adjudicate the controversy, now coming to the provision of Section 116 of Code, 2006, under which the partition suit was filed. Section 116 of the Code, 2006 provides for filing of partition suit and further, Section 117 of the Code, 2006

provides for procedure so adopted for the partition suit. Sections 116 and 117 are being quoted hereinbelow:

"116 Suit for division of holding-

(1) A bhumidhar may sue for the division of the holding of which he is a co-sharer. (2) In every such suit, the Court may also divide the trees, wells and other improvements existing on such holding but where such division is not possible, the trees, wells and other improvements aforesaid and valuation thereof shall be divided and adjusted in the manner prescribed. (3) One suit may be instituted for the division of more holdings than one where all the parties to the suit other than the Gram Panchayat are, jointly interested in each of the holdings. (4) to every suit under this section, the Gram Panchayat concerned shall be made a party."

117 Duty of Court in suits for division of holding-*(1) In every suit for division of holding under section 116 the Court of Assistant Collector shall-*

(a) follow such procedure as may be prescribed;

(b) apportion the land revenue payable in respect of each such division.

(2) A division of holding referred to in section 116 shall not affect the joint liability of the tenure-holders thereof in respect of the land revenue payable before the date of the final decree."

11. Rule 108 and 109 of U.P. Revenue Code Rules, 2016(hereinafter, referred to as, 'Rules, 2016') are also relevant under which, the procedure is given to decide the suit filed under Sections 116 and 117 of Code, 2006. Rules 108 and 109 of Rules, 2016 are being quoted hereinbelow:

"108. Suit for division for several holdings[Section 116]-Where the suit

relates to the division of more than one holding, the particulars specified in rule 107 shall be mentioned in the plaint in respect of all such holdings.

109. Preliminary and Final decrees[Section 117]-(1) If the plaint referred to in rule 107 or rule 108 is in order, it shall be registered as a suit and the defendants shall be called upon to file their written statements. The suit shall then be decided according to the provisions of the Code of Civil Procedure, 1908.

(2) Before making a division the court shall- (a) determine separately the share of the plaintiff and each of the other co-tenure holders ;

(b) record which, if any, of the co-tenure holders wish to remain joint ; and (c) make valuation of the holding (or holdings) in accordance with the circle rate fixed by the Collector applicable to each plot in the holding.

(3) If the suit is decreed, the Court shall pass a preliminary decree declaring the share of the plaintiff.

(4) After the preparation of preliminary decree the Sub Divisional Officer shall get the Kurra prepared through the Lekhpal.

(5) The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles-

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) *Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;*

(f) *If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and*

(g) *If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly.*

(6) *When the report regarding Kurra is submitted by the Lekhpal, the objection shall be invited thereon and thereafter the appropriate order shall be passed by the Sub Divisional Officer after affording opportunity of hearing to the parties and considering the objection, if any, filed against the report submitted by the Lekhpal.*

(7) *If the report and Kurra is confirmed by the Sub Divisional Officer, the final decree shall follow it.*

(8) *At the stage of the final decree, the Court shall-*

(a) *Separate the share of the plaintiff from that of the defendant by metes and bounds.*

(b) *Place on record a map showing in different colours the properties given to plaintiff as distinct from those given to the defendant.*

(c) *Apportion the land revenue payable by the parties.*

(d) *Direct the record of rights and map to be corrected accordingly. "*

(9) *If, for adjusting the equities between the parties, payment of compensation regarding trees, wells or other 73 improvements becomes necessary, the revenue Court concerned may also pass necessary orders at the stage of final decree.*

(10) *The Sub-Divisional Officer shall make an endeavour to decide the suit within the period of six months and if the suit is not decided within such period, the reason shall be recorded. "*

12.. From the perusal of the aforesaid provisions, it is apparently clear that if the suit is decreed and preliminary decree is prepared, at the stage of final decree, the court shall separate the share of plaintiffs from the defendants by metes and bounds, place on record a map showing in different colours the properties given to plaintiff as distinct from those given to the defendant, apportion of the land revenue payable by the parties and direct the record of rights and map to be corrected accordingly.

13. Now, coming to the present case. It is undisputed that at the time of submission of application i.e. 16.10.2023, preliminary decree dated 23.9.2023 was prepared, which was not final in terms of Sections 116 & 117 of the Code, 2006 read with Rule 108 & 109 of Rules 2016 and at the stage of preparation of final decree, location of the land may be changed. Preliminary decree was confirmed as final decree vide order dated 15.2.2024 passed by the Sub Divisional Magistrate. Therefore, on the date of filing of submission of application, petitioner is having no final document with regard to land so offered for establishment of retail outlet.

14. "Oil Corporation? after granting the allotment letter invest a huge amount in installation of retail outlet and in case of change of location of land after installation, may suffer huge financial loss, therefore, the provision has been made to present the land absolutely undisputed having the consent of all share holders. Therefore, in light of such facts, once the final decree is not prepared in terms of Rule 109 of Rules, 2016, land cannot said to be fulfilling the norms so required under Clause 4(iv)(a) of the Brochure.

15. Similar issue came up before this Court in **Rahul Singh(Supra)**. Relevant paragraphs of the said judgment are being quoted hereinbelow;

"9. In view of the above, we find that the Brochure stipulates amongst others two contingencies (discussed here namely), one where the land may be owned by a person other than the applicant or his family members, second, where the land may be owned by the applicant alongwith others or others alongwith his family members or both. Considering the present facts land is owned by third parties to the exclusion of the applicant and his family members. That situation is dealt with in terms of Clause 4 (vi) (a).

10. The situation were the land may be owned by the applicant either in his own name or alongwith his family members and/or other persons has been dealt with in Clause 4 (vi) (m) under situations 1, 2 and 3 dealt with in the tabular chart under the heading ?GROUP I? appearing in that Clause.

11. Then, without reference to Clause (a), (m) or any Sub-Clause of Clause 4 (vi) of the Brochure, Note-3 thereto only provides- wherever consent letter is required, it may be submitted on form Appendix III.

12. As noted above, in the present facts, the land offered in the allotment is not owned by the petitioner/applicant or the petitioner/applicant alongwith his family members or by the petitioner/applicant alongwith other owners and his family members. Therefore, Clause 4 (vi) (m) would not apply to the present facts.

13. On the contrary, the only Clause applicable to such facts would be Clause 4 (vi) (a). That Clause clearly stipulates that the land offered for allotment should be available to the applicant on the date of submission of his application against a long term lease executed by "all co-owners". The consequence of non execution of such lease deed is also provided in the said Clause. Thus it has been stipulated, in case such lease deed is not executed by all co-owners, the same shall be invalid. Once invalid that ineligibility attaches to the application submitted by the petitioner on the date of submission of his application.

14. For the purpose of application of the said Clause the requirement remains- execution of lease deed by all co-owners, therefore, consent letters cannot fulfil that stipulation. In face of the consequences of invalidity of the lease deed having been specified, there survives no occasion to consider if the defect in such application could ever been cured, after its submission.

15. Consequentially, the method of curing the defect considered under Note-3 (noted above) would remain confined to the cases falling under Clause 4 (vi) (m), only.

16. For the reasons noted above, we conclude, the petitioner?s case would remain covered by Clause 4 (vi) (a) of the Brochure. It is admitted that the lease deed relied by the petitioner was not executed by

all co-owners before the date of submission of the application. Therefore, there is no error on the part of the respondent in rejecting the application submitted by the petitioner. "

16. In this case referred hereinabove, consent of co-sharers was not available, therefore, Court has held that land documents along with application cannot be treated to be fulfilling the norms as required Clause 4(vi)(a) of the Brochure for selection.

17. Almost with the similar facts to the present case, this issue again came up before this Court in *Amarjeet* (Supra) and the Court has taken the similar view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

"13. Insofar as the present facts are concerned, it is not the case of the petitioner that the plot no. 965 (entire) was in the exclusive ownership of the Mahendra Singh. The petitioner admits that there were co-sharers in that plot along with Mahendra Singh. At the same time, the Brochure required lease deed to be executed by all co-sharers of the plot being offered for allotment. Also, there can be no dispute to the fact that the above eligibility condition was to be met on the date of application i.e. 25.9.2023. Therefore, the rights of Mahendra Singh in plot no. 965, are to be seen on the date of filing of the application dated 25.9.2023, only. Subsequent developments or change of circumstances would have no bearing on the rights being claimed by the petitioner. In any case, they may not alter the eligibility requirement that has been enforced under the Brochure.

14. Tested on that principle, while the petitioner claims existence of a

compromise reached prior to the eligibility date 25.9.2023 as acknowledged in the order dated 11.2.2023 passed by Assistant Consolidation Officer, at the same time, it is the own case of the petitioner that the said order was erroneous to the extent it failed to fully recognize the compromise in entirety and it failed to recognize the partition by metes and bounds that had taken place between the parties to that dispute. Therefore, the petitioner appealed against that order before Settlement Officer, Consolidation and was successful in that appeal to the extent the Settlement Officer, Consolidation vide his order dated 20.12.2023 clearly provided for preparation of the 'Kurra' in terms of settlement/compromise reached between the parties, both as to the shares as also to the exact allocation of the apportioned shares.

15. Though the said order dated 20.12.2023 may relate back inter parties (to the dispute before the Consolidation authorities), and no other right may be claimed by the co-sharers, yet, IOCL was a stranger to that dispute. It may not have acted upon it. It could only recognize the rights of the parties as were seen to exist i.e. were adjudicated on the date of the application i.e. 25.9.2023. What transpired thereafter may not alter the status of eligibility conditions. The exact allocation of the apportioned shares not enforced on that date - by metes and bounds, no benefit may be drawn against the I.O.C.L., by the subsequent events arising from the appeal filed by Mahendra Singh being allowed. To that extent, Clause 4(vi)(a) of the Brochure is specific and consequence of its non-compliance is also unequivocally clear. It was for the petitioner to act accordingly, and offer non-litigious land, as stipulated, in the Brochure.

16. To the extent the order of the Settlement Officer, Consolidation dated 20.12.2023 did not exist on the date of

eligibility claimed and there was no 'Kurra' prepared, the partition by metes and bounds was not visible to I.O.C.L. Merely because there may not survive any dispute between Mahendra Singh and his co-sharers on the strength of some private partition held, in absence of public recognition granted in law, either through the order of the Settlement Officer, Consolidation, and/or through appropriate revenue entries, the IOCL may have remained within its rights not to recognize and/or act on such developments as may have involved alteration of its own position viz-a-viz the proposed Retail Outlet.

17. In matters of contract, the Writ Court may leave it open to the contracting parties to act in the manner they may deem fit. Insofar as the action of the IOCL is not seen to be plainly arbitrary and/or unreasoned, we are not inclined to offer any interference under Article 226 of the Constitution of India to reverse the commercial decision of the IOCL - to not enter into the contract with the petitioner.

18. In view of that reason arising, we are not inclined to act on the otherwise sustainable ground of challenge that the order impugned is non-speaking. Intervention if made, on that count would only result in an academic exercise.

19. In view of the above, writ petition lacks merit and is accordingly dismissed. No order as to costs."

18. This matter is more identical to the present dispute in which date of filing of application is 25.9.2023 whereas an order was passed by the Assistant Consolidation Officer on 11.2.2023, the basis of fulfilling the land norms. Ultimately, the status of said land was finalized vide order dated 20.12.2023 for preparation of Kurra in terms of settlement and compromise earlier agreed between the parties on 11.2.2023, but Court

has held that it was finalized only after date of application on 25.9.2023, therefore, same cannot be taken into account for allotment of retail outlet and accordingly dismissed the petition.

19. The controversy involved hereinabove is identical controversy to the present case, therefore, ratio of law of this judgment referred hereinabove shall also be applicable in the present case.

20. Therefore, in light of facts of the case, provisions of law and judgment of this Court, Court is of the firm view that in case of joint ownership of land, consents of all co-sharers are required and further to establish the partition preliminary decree is not sufficient and a final decree is required along with application in terms of Sections 116 & 117 of the Code, 2006 read with Rule 108 & 109 of Rules 2016. The Court finds no infirmity or illegality in the impugned order and is liable to be dismissed.

21. Writ Petition lacks merit and is hereby **dismissed**. No order as to costs.

(2025) 12 ILRA 695
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.12.2025

BEFORE

**THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Writ C No. 41243 of 2025

Gangaram Mishra	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

Issue for Consideration

The primary issue is whether a writ petition under Article 226 of the Constitution of India is maintainable against orders passed in mutation

proceedings when a civil suit involving the same title dispute is already pending.

Adv.for Respondent:-
Ashutosh Pandey, C.S.C

Headnotes

Constitution of India,1950-Article 226-U.P. Revenue Code,2006-Sections 34, 35, 35(2), 39, 210-The court followed the principles established in the Kalawati case-mutation proceedings are purely for fiscal purposes and do not create or extinguish substantive property rights-writ petitions under Article 226 are generally not maintainable against mutation orders because an efficacious remedy (a civil title suit) is available-Revenue entries have no evidentiary value regarding ownership and are always subject to the final decision of a competent civil court-writ petition dismissed.(Para 6 to 11) (E-6)

Held

The court refused to interfere because the disputes involves complex questions of Hindu undivided family law and the validity of a will, which require a full trial with evidence not a summary writ hearing.

Case law Cited

Smt. Kalawati Vs The Board of Revenue-referred to.

List of Acts

Constitution of India,1950, U.P. Revenue Code,2006

List of Keywords

Mutation proceedings, Summary jurisdiction, fiscal purpose, title disputes, registered sale deed, registered will.

Case Arising from

Civil Jurisdiction- WRIT-C No. – 41243 of 2025

Gangaram Mishra Vs.State of U.P. & 6 Ors

From the Judgment and Order dated 19.12.2025 of the High Court of Judicature at Allahabad.

Appearances for parties

Adv, for Petitioner:-
Ram Prakash

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Ram Prakash Pandey, learned counsel for the petitioner, Sri J N Maurya, learned Chief Standing Counsel appearing along with Sri Dinesh Kumar Tiwari, for the State-respondents and Sri Puneet Kumar Upadhyay, holding brief of Sri Ashutosh Pandey, learned counsel appearing for respondent no.6.

2. The present petition has been filed under Article 226 of the Constitution of India, challenging the orders dated 18.10.2021 and 05.02.2024 passed by the Tehsildar/Respondent no.5, Tehsil Bhanpur, District Basti, in Case No.00335/2016 (Sushila vs. Gangaram), under Section 34 of the U P Revenue Code, 2006, the appellate order dated 18.07.2024 passed by the Sub-Divisional Magistrate/Respondent no. 4, Bhanpur, in Case No. 603/2024 (Gangaram Mishra vs. Smt. Sushila Devi and others) under Section 35 (2) of the Code, 2006, and the revisional order dated 04.10.2025 passed by the Additional Commissioner (Administration)/Respondent no. 3, Basti Region, in Case No. 1052/2024 (Gangaram Mishra vs. Sushila Devi) under Section 210 of the Code, 2006.

3. The dispute pertains to agricultural land situated at Village Chhitirgavan, Tehsil Bhanpur, District Basti, which is admittedly joint family property. The factual background of the case, as reflected from the pleadings, is set out hereinbelow:

3.1 On 25.07.2016, the petitioner's brother, Tulsi Ram is stated to have

executed a registered sale deed in favour of respondent no.6, Sushila Devi. The petitioner claims that the transfer was made in excess of the vendor's undivided share and without prior partition.

3.2 On the same date, the petitioner's mother is stated to have executed a registered Will in favour of the petitioner. Mutation proceedings were thereafter initiated on the basis of the sale deed.

3.3 By order dated 18.10.2021, mutation was allowed in favour of respondent no.6. The petitioner filed a recall application and objections. Subsequently, by order dated 05.02.2024, the Tehsildar reaffirmed the mutation entry.

3.4 The appeal preferred by the petitioner under Section 35(2) of the Code was dismissed on 18.07.2024, and the revision under Section 210 of the Code was dismissed on 04.10.2025.

3.5 Original Suit No.18 of 2017, filed by the petitioner and his mother seeking adjudication of title and challenging the sale deed, is pending before the Civil Judge (Senior Division), Basti.

4. Counsel for the petitioner submits that the mutation orders are illegal as the sale deed was executed beyond the share of the transferor and without partition, and that the authorities failed to consider the Will and objections raised by the petitioner.

5. Counsel for the State-respondents and also counsel appearing for the private respondent contend that the impugned orders arise out of mutation proceedings which are summary in nature, do not decide title, and that the petitioner has an efficacious remedy before the civil court

where the title dispute is already pending. It is further submitted that in the suit, the application seeking interim injunction has been rejected.

6. The legal position regarding the nature, scope and maintainability of writ petitions challenging orders passed in mutation proceedings under the Code, 2006 stands authoritatively settled by this Court in *Smt. Kalawati v. The Board of Revenue*², which has been followed consistently in subsequent decisions.

7. The principles laid down in *Kalawati* case (*supra*) may be restated as follows:

7.1 Summary and fiscal character of mutation proceedings: Proceedings under Sections 34 and 35 of the U.P. Revenue Code, 2006 are purely summary in nature, undertaken for fiscal purposes such as updating revenue records and facilitating land revenue collection. They neither create, confer, extinguish nor determine substantive rights or title to property. Mutation entries do not constitute title documents or operate as deeds of conveyance.

7.2. No presumptive or evidentiary value on title: Entries made pursuant to mutation proceedings have no presumptive value whatsoever on questions of ownership, title or proprietary rights. Such entries are always subject to challenge and final adjudication by a competent civil or revenue court. Section 39 of the U.P. Revenue Code, 2006 expressly stipulates that no order or entry under mutation proceedings shall debar any person from establishing his rights in a suit or other legal proceeding.

7.3 Writ jurisdiction ordinarily not invocable: This Court has held that writ petitions under Article 226 challenging mutation orders are generally not entertainable, as the petitioner has an efficacious alternative remedy by instituting a civil suit for declaration of title, permanent prohibitory injunction and consequential reliefs. The extraordinary writ jurisdiction is not to be exercised as a court of appeal to re-appreciate evidence, correct errors of fact or law, or interfere in summary fiscal proceedings. Judicial restraint is imperative to maintain the distinction between revenue record updation and substantive title adjudication.

7.4 Exceptions for writ interference: Despite the general bar, writ jurisdiction may be exercised in exceptional circumstances where any of the following conditions is demonstrably satisfied:

(i) *the order or proceedings are wholly without jurisdiction;*

(ii) *rights or title already adjudicated by a competent civil court are ignored, varied or contradicted;*

(iii) *mutation directed not solely on basis of possession but on substantive merits of title or succession claims;*

(iv) *rights purportedly created in the mutation order in violation of express statutory provisions;*

(v) *order obtained through fraud, collusion, fabrication or material misrepresentation;*

(vi) *patent jurisdictional error, excess of jurisdiction or gross abuse of authority;*

(vii) *violation of principles of natural justice, such as non-issuance of notice or denial of hearing.*

8. These principles have been reiterated and applied in a series of subsequent decisions, underscoring that writ interference against mutation orders is warranted only in rare and exceptional cases to prevent manifest injustice or jurisdictional excesses.

9. Applying the aforesaid principles enunciated in the case of Smt. Kalawati (supra) to the facts of the present case, it would be noticed that:

(a) Core dispute is one of title not essential for writ adjudication: The petitioner's primary grievance concerns the validity of the registered sale deed dated 25.07.2016 (allegedly executed by Tulsi Ram beyond his undivided share in joint family property without partition), the competing claim under the mother's Will dated 25.07.2016, and determination of respective shares in the joint family property. These raise complex questions of title, succession, Hindu undivided family law, validity of conveyance, and evidentiary appreciation, which are quintessentially fit for detailed trial before a civil court and wholly inappropriate for summary interference in writ jurisdiction.

(b) Impugned orders purely fiscal, no title declaration: A perusal of the impugned orders reveals that they merely direct mutation/entry of name of respondent no.6 in revenue records on the basis of prima facie consideration of the registered sale deed and possession, strictly for fiscal purposes under Sections 34 of the Code, 2006. No conclusive or substantive declaration of title, ownership or proprietary rights has been made by any authority.

(c) None of the seven exceptions laid down in the Kalawati case, are attracted: The petitioner has failed to

demonstrate satisfaction of any recognized exception justifying writ interference:

(i) *No jurisdictional defect: The Tehsildar, SDM and Additional Commissioner were duly seized of jurisdiction under Sections 34, 35 (2) and 210 of the Code, 2006 to entertain and decide mutation matters.*

(ii) *No prior civil court decree ignored: There exists no prior judgment or decree of any competent civil court declaring title in favour of the petitioner that stands contradicted.*

(iii) *Mutation based on possession and sale deed, not title merits: The orders rest on possession evidenced by the registered sale deed, without entering into substantive adjudication of shares, partition or Will validity.*

(iv) *No statutory violation: No mandatory statutory safeguard has been breached in the mutation process.*

(v) *No fraud or misrepresentation pleaded/proved: There is no specific averment, much less material evidence, of fraud, collusion, fabrication of documents or material misrepresentation vitiating the orders.*

(vi) *No jurisdictional error/excess/abuse: The record discloses no patent lack, excess or abuse of jurisdiction; authorities acted within competence.*

(vii) *Natural justice duly observed: Notices were issued to parties at every stage, objections/recall applications entertained, documentary evidence (sale deed, Will, etc.) considered, and opportunities of hearing afforded before all the authorities.*

(d) *Efficacious civil remedy available and pending: Original Suit No. 18/2017 challenging the sale deed, seeking title declaration and ancillary reliefs is*

admittedly pending adjudication before the Civil Judge (Senior Division), Basti. The rejection of interim injunction therein further confirms that title merits necessitate full-dressed trial with evidence. Section 39 of the U.P. Revenue Code, 2006 unequivocally protects the petitioner's right to establish title in the suit, uninfluenced by mutation findings.

(e) *Writ interference would undermine settled principles: Entertaining this petition would circumvent the pending civil suit, multiply proceedings, and erode the fiscal/summary nature of mutation as emphasized in the Kalawati (supra). Any apprehension that mutation entries may prejudice the civil court is baseless, as revenue records enjoy no evidentiary weight on title, and civil courts decide independently per law.*

10. Taking into view the exposition of the legal position with regard to the summary nature of mutation proceedings in the case of Kalawati (supra), the complete absence of any exceptional circumstance wherein a writ petition may be entertained, and the availability of efficacious alternative remedy before the competent civil court, this Court is not inclined to exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution in the facts of the case.

11. The writ petition is **dismissed** as being not entertainable.

12. It is, however, clarified that the petitioner shall be at liberty to pursue Original Suit No.18 of 2017, stated to be pending before the civil court, or institute any other appropriate legal proceedings for declaration of title/rights and consequential reliefs before the competent court/authority; any such civil or revenue

court/authority shall independently adjudicate the matter strictly on merits in accordance with law, wholly uninfluenced by the impugned mutation orders (being purely fiscal in nature) or any observation contained herein; and all rights, contentions and pleas of the parties on merits are expressly kept open.

(2025) 12 ILRA 700
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.12.2025

BEFORE

**THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Writ C No. 43026 of 2025

Mohammad Khalid Ameer ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for consideration

The matter involves a challenge to a demarcation order and subsequent dismissal of appeals, where a petitioner a recorded tenure-holder of a plot adjoining the land being measured was denied notice and a hearing during the boundary determination process.

Headnotes

Constitution of India,1950-Article 226-U.P. Revenue Code,2006, U.P. Revenue Code Rules 2016-Rule 22(2)- Rule 22(2) is a mandatory provision-Tenure-holders of contiguous plots are necessary parties to demarcation proceedings-Failure to provide them notice strikes at the root of the proceedings and constitute a breach of audi alteram partem-the rejection of the recall application on "hyper-technical grounds" was contrary to established law(Tarkeshwar Vs. State of U.P.)-The petitioner as an adjoining holder was entitled to notice under Rule 22-writ petition allowed.(Para 9 to 23) (E-6)

Held

The court set aside the orders of the Sub divisional magistrate and Additional commissioner. The matter was remitted to the Sub-divisional magistrate to conduct fresh proceedings under section 24 after providing due notice and opportunity to all interested parties within three months.

Case law Cited

Tarkeshwar & 2 Ors Vs State of U.P. & 5 Ors, Grindlays Bank Ltd. Vs Central Government Industrial Tribunal, Kapra Mazdoor Ekta Union Vs Birla Cotton Spinning & Weaving Mills Ltd.-referred to.

List of Acts

U.P. Revenue Code,2006, U.P. Revenue Code Rules 2016

List of Keywords

Demarcation, Adjoining tenure holder, mandatory notice, audi alteram partem, natural justice procedural recall, ex-parte order, summary inquiry

Case Arising from

Civil Jurisdiction- WRIT-C No. – 43026 of 2025

Mohammad Khalid Ameer Vs. State of U.P. & 9 Ors

From the Judgment and Order dated 19.12.2025 of the High Court of Judicature at Allahabad.

Appearances for parties

Advs. for Petitioner:-

Arpit Malviya , Awadhesh Kumar Malviya

Advs. for Respondent:

Bhupendra Kumar Tripathi, C.S.C, Dharmendra Kumar, Shahbaz Ahmad Khan Shailendra Kumar

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Awadhesh Kumar Malviya, learned counsel for the petitioner, Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents and Sri Dharmendra

Kumar, learned counsel appearing for the private respondent nos.6 to 10.

2. The petitioner contends that he is a tenure-holder of the adjoining Plot No. 2566, while the demarcation proceedings in respect of Plot No. 2565 were carried out ex parte against him. The Revenue Inspector is stated to have submitted a report dated 06.04.2023 without conducting any spot inspection or issuing notice to the petitioner. Relying solely on the said report, the Sub-Divisional Magistrate passed an ex parte order dated 02.06.2023.

3. Upon acquiring knowledge of the ex parte order, the petitioner filed a recall application dated 06.06.2023, which is stated to have been rejected on 19.12.2023 on hyper-technical grounds, without adjudicating his objections on merits.

4. Aggrieved thereby, the petitioner preferred two appeals - Appeal No. 2903 of 2023 against the order dated 02.06.2023, and Appeal No. 2904 of 2023 against the rejection of the recall application. Both appeals were dismissed by the Additional Commissioner, Varanasi Region, vide common order dated 06.11.2025.

5. The petitioner asserts that being tenure-holder of a contiguous plot, he was entitled to notice and opportunity of hearing prior to any demarcation order under Section 24 of the U P Revenue Code, 20061 read with Rule 22 of the U.P. Revenue Code Rules, 20162. The impugned orders, passed without such notice, stand vitiated for breach of natural justice.

6. It is contended that the demarcation having been conducted in violation of the mandatory provision of Rule 22 of the

Rules, 2016, which requires notice to tenure-holders of contiguous plots, the entire proceedings and resulting orders stand vitiated for breach of audi alteram partem, an integral limb of the principles of natural justice enshrined under Article 14 of the Constitution.

7. Learned counsel for the petitioner further points out that proceedings under Section 28 of the Code for correction of the revenue map concerning the same plot are pending before the competent authority and remain protected by an interim order. Thus, permitting the ex parte demarcation to operate would create inconsistency between two contemporaneous revenue proceedings.

8. Learned counsel for the State respondents and for the private respondents do not dispute the ex parte nature of the Section 24 proceedings, nor the petitioner's entitlement, as an adjoining tenure-holder, to notice and hearing under Rule 22.

9. Section 24 of the Code empowers the Sub-Divisional Officer to decide boundary disputes through summary inquiry. However, Rule 22(2) of the Rules mandates that tenure-holders of adjoining or contiguous plots be issued notice and given an opportunity of hearing before determination. Failure in this regard amounts to violation of audi alteram partem, which forms an integral component of Article 14 of the Constitution.

10. This procedural safeguard ensures fairness and transparency in boundary determination. Land boundaries have direct bearing on proprietary and possessory rights; thus, ignoring the participation of adjoining tenure-holders fundamentally undermines the legitimacy of such a

demarcation. It is a well-settled proposition that violation of a mandatory procedural requirement, designed to ensure fairness, results in illegality rather than a mere irregularity.

11. The rationale underlying Rule 22 resonates with the constitutional requirement of *audi alteram partem*, meaning "hear the other side." The principles of natural justice are not mere formality but a substantive guarantee that no one shall be condemned unheard. The doctrine underscores that every administrative or quasi-judicial authority exercising statutory power must provide affected persons with a fair chance of representation before passing any order that may prejudice their rights. The absence of notice and opportunity to the petitioner, an adjoining tenure-holder, therefore strikes at the very root of the proceedings.

12. The next question is whether, in the absence of an express provision for recall under the Code, the Sub-Divisional Officer was competent to recall an *ex parte* demarcation order when the petitioner approached him immediately upon knowledge of such order. This issue stands squarely answered by this Court in **Tarkeshwar and 2 Others v. State of U.P. and 5 Others**. The Court held that while there may not exist an express statutory provision for recall under Section 24, such power inheres in every judicial or quasi-judicial authority to correct its own procedural errors when the order impugned has resulted in denial of opportunity. This power, described as procedural recall, is distinct from a review on merits as contemplated under Section 24 (4).

13. The principle of procedural recall received authoritative elucidation in

Grindlays Bank Ltd. v. Central Government Industrial Tribunal, wherein the Supreme Court held that even in the absence of specific statutory authority, a tribunal has the inherent power to recall an *ex parte* award if an affected party establishes that it was deprived of an opportunity of hearing. The Court reasoned that such recall does not amount to review but is rather an exercise of correcting a procedural defect *ex debito justitiae* in discharge of a duty owed to justice itself.

14. Similarly, in **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd.**, the Supreme Court reiterated that a tribunal or court retains the jurisdiction to recall an order that has been passed in violation of natural justice so long as it continues to be seized of the matter, and is not rendered *functus officio*. Such a power exists to prevent miscarriage of justice resulting from procedural errors.

15. The aforesaid principles were comprehensively applied by this Court in **Tarkeshwar** (supra), while construing Section 24 of the U.P. Revenue Code, 2006 and Rule 22 of the Rules framed thereunder. It was held that tenure-holders of contiguous plots are necessary parties to demarcation proceedings, and non-service of notice upon them vitiates the entire exercise. It was further observed that where an *ex parte* demarcation order has been passed without notice, the affected tenure-holder is entitled to seek recall, and the authority concerned is not powerless to entertain such application. The failure to entertain or allow such procedural recall would perpetuate injustice and frustrate the very object of fair adjudication contemplated by the Code.

16. In the present case, the admitted facts disclose a clear violation of Rule 22.

The Sub-Divisional Officer proceeded to determine the boundary dispute without issuing notice or affording hearing to the petitioner, a recorded holder of the adjoining plot. The resultant demarcation thereby suffers from a procedural illegality of a fundamental character. The plea of natural justice cannot be brushed aside on the ground that subsequent appellate remedies exist, for the violation is not curable by appeal; it vitiates the proceeding itself.

17. Applying the above principles, it must be held that the demarcation proceedings culminating in the order dated 02.06.2023 suffered from a foundational procedural illegality. The petitioner, though a necessary party under Rule 22, was denied notice and opportunity of hearing, thereby offending audi alteram partem and the mandate of the Rules. Such violation goes to the root of the jurisdiction exercised and renders the resultant order legally vulnerable.

18. Once the petitioner, upon gaining knowledge, moved a recall application dated 06.06.2023 specifically alleging denial of notice, the Sub-Divisional Officer was duty bound, in the light of **Tarkeshwar** (supra), to examine that grievance as a matter of procedural recall and to correct the error ex debito justitiae. The rejection of the recall application on hyper technical grounds, without addressing the core plea of violation of Rule 22 and natural justice, is contrary to the law declared in **Tarkeshwar** (supra) and cannot be sustained.

19. The appellate authority, in turn, failed to appreciate that the defect was not a mere irregularity curable in appeal, but a structural breach of a mandatory procedural

safeguard that vitiated the entire proceedings. By affirming the ex parte demarcation without curing the Rule 22 violation or recognising the maintainability and scope of procedural recall as declared in **Tarkeshwar** (supra), the Commissioner's order dated 06.11.2025 is equally rendered unsustainable in law.

20. The impugned orders are, therefore, set aside.

21. The matter is remitted to Respondent No. 4 (Sub-Divisional Officer) to conduct fresh proceedings under Section 24 of the U.P. Revenue Code, 2006, after issuing due notice and opportunity of hearing to the petitioner and all other interested parties.

22. The Sub-Divisional Officer shall conclude the proceedings expeditiously, preferably within a period of three months from the date of production of a certified copy of this order, provided there is no legal impediment. The parties are directed to cooperate fully in the said proceedings.

23. The writ petition stands **allowed** in the terms indicated above.

(2025) 12 ILRA 703
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.12.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1001378 of 2000

Ram Kumar		...Petitioner
	Versus	
Narain & Ors.		...Respondents

Counsel for the Petitioner:

R.P. Pandey, G.P. Pandey, Rajeev Kumar Tripathi

Counsel for the Respondents:

C S.C., Dharmendra Singh Gaur, K.N. Shukla, Rahul Mishra, Shiv Kumar Mishra

Issue for consideration

The matter pertains to dispute concerned to the succession of agricultural land following the death of an issueless landholder, where the petitioner claims title through adoption. the primary issue is whether the appellate and revisional courts could legally set aside a mutation order by treating a registered adoption deed as "suspicious".

Headnotes

Constitution of India,1950-Article 226-The Hindu Adoptions and Maintenance Act,1956-Section 16-Land Revenue Act, section 34-registered adoption deed carries a statutory presumption of validity under section 16 of the Hindu Adoptions and maintenance act-Such a deed cannot be discarded as "suspicious" based on mere assumptions or minor witness contradictions in summary mutation proceedings-Any challenge to the validity of a registered adoption must be established through independent proceedings by the party seeking to disprove it-Writ petition allowed.(Para 15 to 28) (E-6)

Held

The court held that most of the facts narrated by the witnesses are in resemblance and same cannot be ignored while coming to conclusion that the adoption deed is suspicious in nature, therefore, the impugned orders are liable to be set aside.

Case law Cited

Laxmibai (Dead) Through LRs & Anr. Vs Bhagwantbuva (Dead) Through LRs & Ors [(2013) 4 Supreme Court Cases 97], Mst Deu & Ors Vs Laxmi Narayan & Ors [(1998) 9 Supreme Court Case 701], State of U.P. Vs Board of Revenue[C.M.W.P. No. 30386 of 1991]-referred to.

List of Acts

Constitution of India,1950, The Hindu Adoptions and Maintenance Act,1956, Land Revenue Act.

List of Keywords

Registered adoption deed, Presumption, mutation proceedings, burden of proof, succession, reasoned order

Case Arising from

Civil Jurisdiction- WRIT-C No. – 1001378 of 2000

Ram Kumar Vs. Narain & Ors

From the Judgment and Order dated 02.12.2025 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Petitioner:-

R.P.Pandey, G.P.Pandey, Rajeev Kumar Tripathi

Advs. for Respondent:-

C.S.C., Dharmendra Singh Gaur, K.N Shukla, Rahul Mishra, Shiv Kumar Mishra

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Rajeev Kumar Tripathi, learned counsel for the petitioner, Sri Shiv Kumar Mishra and Sri Rahul Mishra, learned counsel for legal heirs of respondent No.1 and Sri Divesh Mishra, learned Standing Counsel for respondent Nos.4, 5 and 6.

2. By means of the present writ petition, the petitioner has prayed as under :-

"(i) to issue writ of certiorari quashing order Annexure No.1 dated 8.12.96 passed by opposite party No. 4 which is perverse order and has been passed having no primary and secondary evidence on record.

(ii) to issue writ of Mandamus directing opposite parties No. 1 to 3 not to interfere in the peaceful possession of the petitioner, the land in dispute.

(iii) to issue of writ of certiorari quashing Annexure No.2 passed by opp. party No. 5 which is illegal and to set aside order Annexures No. 1 and 2 and to confirm the order Annexure No. 3 passed by trial Court after examining the primary and secondary evidence on record.

(iv) ..."

3. Factual matrix of the case is that agricultural land of gata No. 3/0.2870 Hectare situate in Village Surjana Khurd, 52/0.4700 Hectare situate in Village Gharua, 142/1.5500 Hectare, 152/468/0.1090 Hectare, 152/0.2800 Hectare, 156/0.4820 Hectare, 163/0.2100 Hectare situate in Village Sarai Jagna, Tehsil of all villages Kaiserganj, District Bahraich was ancestral land of petitioner. Gayadeen has three sons namely Samay Deen, Narain, Ram Asrey.

4. Since Ram Asray was issueless and as such when the petitioner was minor of 4 years old, he was adopted by Ram Asrey after necessary Hindu rituals and customs from their natural father and mother Sri Samay Deen and Smt. Dhanpata and an adoption deed was duly executed and registered on 8.2.1982.

5. After death of Sri Ram Asrey son of Gaya Deen, petitioner succeeded all the movable and immovable properties including the share of his adoptive father Sri Ram Asrey in the agricultural land as per aforesaid adoption and as such a mutation application on behalf of petitioner through his natural father was filed. An objection against the mutation application was filed by father of opposite party nos. 1/1 and 1/2 on 15.7.1987.

6. The original adoption deed was filed on behalf of petitioner and same got

proved alongwith possession of the petitioner upon the land in dispute by examining Smt. Dhanpata, natural mother and marginal witnesses Ganga Ram son of Sanehi alongwith Brijlal son of Madho, Village Pradhan Jagdev Singh son of Raghuraj Singh and Shiv Sahay (the Priest who carried out the rituals of adoption) and thereby case of petitioner for mutation was proved. On behalf of objector opposite party no. 1 (deceased) got himself examined and also examined his witnesses Jogi son of Parmeshwar and Ayodhya Prasad son of Ram Asrey.

7. By finding the adoption deed and possession of the petitioner proved and by finding that objector could not be able to rebut the evidences adduced on behalf of petitioner and also could not be able to prove his possession upon the share in the land left behind by Ram Asrey son of Gaya Deen, the Naib Tehsildar, Kaiserganj, District Bahraich passed an order of mutation in favour of petitioner in respect of land in dispute as stated aforesaid and situated in 3 different villages on 18.8.1992.

8. The Sub Divisional Officer, Kaiserganj allowed the 3 appeals filed by opposite party No.1 through a common judgment and order by ignoring the findings recorded by the mutation court and the evidence on record that too by giving quite perverse finding and thereby the order of mutation dated 18.08.1992 was set aside and names of Samay Deen and Narain being the brothers of deceased Khatedar Ram Asrey was directed to be recorded in the revenue records vide order dated 17.9.1993.

9. It is submitted by learned counsel for the petitioner that against the order

passed in three appeals, three different revisions were filed on behalf of petitioner in the court of Commissioner, Faizabad Division, Faizabad, who, by completely ignoring the presumptions attached with the registered adoption deed in terms of Section 16 of the Hindu Adoption and Maintenance Act and also by ignoring the illegality, irregularity and perversity committed by appellate court, dismissed all three Revisions by passing a common order dated 8.12.1999.

10. Submission of learned counsel for the petitioner is that if there was any grievance against the adoption deed duly registered, the respondents would have filed statutory proceeding, challenging the adoption deed registered and due to non challenging the adoption deed, the finding recorded by the appellate court and revisional court, showing assumption of doubt, is perverse in nature and the orders passed are not sustainable in the eyes of law.

11. Next submission is that no reasons have been recorded in coming to the conclusion that adoption deed is suspicious in nature. He submits that reasons are heartbeat of conclusion and without reasons, the order becomes lifeless, therefore, due to non-recording of reasons in coming to the conclusion that the adoption deed is suspicious in nature, is wholly illegal and devoid of merit.

12. Learned counsel for the petitioner submits that Section 16 of the Hindu Adoption and Maintenance Act clearly provides that whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the

person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

13. In the light of the aforesaid provision, submission of learned counsel for the petitioner is that the adoption deed has never been disproved by any competent court of law, therefore, suspicion on the adoption deed is wholly misconceived and erroneous in nature, therefore, the orders passed are not sustainable in law and are liable to be set aside. In support of his submission, he placed reliance upon the following judgments :-

(i) Laxmibai (Dead) Through LRs & another Vs. Bhagwantbuva (Dead) Through LRs & others [(2013) 4 Supreme Court Cases 97]. Relevant paragraphs 28 to 33 are being quoted below :-

"28. In S.T. Krishnappa v. Shivakumar this Court observed that the adoption deed" must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely to appoint an heir, must be clearly established.

29. In L. Debi Prasad v. Tribeni Devi(SCC p. 681, para 8) this Court held that the giving and receiving are absolutely necessary to the validity of an adoption. All that is required is that the natural father be asked by the adoptive parent to give his son in adoption, and that the boy be handed over and taken for this purpose.

30. Furthermore, in Deu v. Laxmi Narayan, the presumption of registered documents under Section 16 of the Act was

discussed. It was held that in view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. It was further held, that in view of Section 16 it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings.

31. Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the respondent-defendants have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e registered adoption deed. Undoubtedly, the natural parents had signed along with 7 witnesses and not at the place where the executants could sign. But it is not a case where there were no witnesses except the executants. Instead of two witnesses, seven attesting witnesses put their signatures.

32. In Atluri Brahmanandam v. Anne Si Bapuji the Court held: (SCC pp.468-70, paras 10 & 13)

"10. The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW 1, the respondent. We have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to the validity of the same. Therefore, the said registered adoption deed went un rebutted

and unchallenged. We have already referred to the recitals in the said document which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father.

13. ... Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption."(emphasis added)

33. The appellate courts could therefore, not have drawn any adverse inference against the appellant-plaintiffs on the basis of a mere technicality, to the effect that the natural parents of the adoptive child had acted as witnesses, and not as executors of the document. Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption is brought before the court. This aspect must be considered taking note of various other attending circumstances i.e evidence regarding the religious ceremony (giving and taking of the child), as the same is a sine qua non for valid adoption."

(ii) Mst. Deu & others Vs. Laxmi Narayan & others [(1998) 9 Supreme Court Cases 701]. Relevant paragraphs 2 and 3 are being quoted below :-

"2. Once the respondent filed an application for substitution and produced a registered deed of adoption, the trial court should have substituted him in place of Smt

Phulla on being satisfied that the conditions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 had been complied with. Section 16 of the Act reads as follows:

"16. Presumption as to registered documents relating to adoption.--Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

3. In view of Section 16 aforesaid whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the persons mentioned therein, the court shall presume that the adoption has been made in compliance with the provisions of the said Act unless and until it is disproved. According to us, it was not open to the defendants of the said suit for partition to collaterally challenge the said registered deed of partition. In view of Section 16 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceeding. The High Court was fully justified in directing that the respondent be substituted in place of Smt Phulla on the basis of the registered deed of adoption produced before the court."

14. Per-contra, learned counsel for legal heirs of respondent No.1 raised preliminary objection in regard to maintainability of writ petition and placed reliance upon a judgment rendered in the case of **State of U.P. Vs. Board of**

Revenue [C.M.W.P. No.30386 of 1991]. Relevant paragraph 7 is being quoted below :-

"7. A bare perusal of the impugned order indicates that writ petition arises out of the mutation proceedings under Sec. 34 of the Act, and in the said proceedings right of the parties are not decided rather mutation proceedings are fiscal in nature. Consequently, I am of the opinion that the petitioner if so advised may seek his or its remedy before competent court by filing a regular suit or initiating some other proceedings."

15. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the judgments relied upon by the parties.

16. Against the order passed in three appeals, three different revisions were filed on behalf of petitioner in the court of Commissioner, Faizabad Division, Faizabad, who, by completely ignoring the presumptions attached with the registered adoption deed in terms of Section 16 of the Hindu Adoption and Maintenance Act and also by ignoring the illegality, irregularity and perversity committed by appellate court, dismissed all three Revisions by passing a common order dated 8.12.1999, therefore, the order suffers from apparent illegality and is liable to be set aside.

17. If there was any grievance against the adoption deed duly registered, the respondents would have filed statutory proceeding, challenging the adoption deed registered and due to non challenging the adoption deed, the finding recorded by the appellate court and revisional court, showing assumption of doubt, is perverse

in nature and the orders passed are not sustainable in the eyes of law.

18. No reasons have been recorded in coming to the conclusion that adoption deed is suspicious in nature. Reasons are the heartbeat of any conclusion and without reasons, the order becomes lifeless, therefore, due to non-recording of reasons in coming to the conclusion that the adoption deed is suspicious in nature, is wholly illegal and devoid of merit.

19. Section 16 of the Hindu Adoption and Maintenance Act clearly provides that whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

20. The adoption deed must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely to appoint an heir, must be clearly established. The giving and receiving are absolutely necessary to the validity of an adoption. All that is required is that the natural father be asked by the adoptive parent to give his son in adoption, and that the boy be handed over and taken for this purpose.

21. In view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said

adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. In view of Section 16, it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings. In the case in hand, no independent proceeding took place for challenging the adoption deed and without recording reasons, both the courts below on the basis of assumption, have come to the conclusion that the adoption deed is suspicious in nature. In view the aforesaid, the impugned orders are unjustified and non-sustainable in the eyes of law, thus, the same are liable to be set aside by this Court.

22. The deed of adoption was produced in evidence and the same was duly proved by leading evidence of the witness. I have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the respondents either to the legality of the said document or to the validity of the same, therefore, the said adoption deed went un rebutted and unchallenged.

23. Since the aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption. The assumption drawn by both the courts below that the adoption deed is suspicious, does not record reasons, therefore, the order is bad in law and liable to be set aside.

24. The appellate court could therefore, not have drawn any adverse inference against the petitioner on the basis

of a mere technicality, to the effect that the natural parents of the adoptive child had acted as witnesses, and not as executors of the document. Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption is brought before the court. This aspect must be considered taking note of various other attending circumstances i.e evidence regarding the religious ceremony (giving and taking of the child), as the same is a sine qua non for valid adoption.

25. The judgment referred by the respondent No.1 is in regard to the maintainability of the writ petition that the writ petition arises out of a mutation proceeding under Section 34 of the Act and in the said proceeding the rights of parties are not decided rather mutation proceedings are fiscal in nature.

26. The present writ petition has been filed challenging the order passed by the appellate court as well as order passed in the revision, therefore, it cannot be said that the order of mutation passed under Section 34 is under challenge, therefore, the judgment relied upon by learned counsel for respondent No.1 is not applicable to the facts and circumstances of the present case. The impugned orders have been passed in total disregard of the settled proposition of law, therefore, the same are liable to be set aside by this Court. The appellate court as well as revisional court have passed the orders based on assumption, without recording reasons and only on the basis of contradiction in the statement give by the witnesses, it cannot be presumed that the adoption deed is suspicious in nature.

27. Most of the facts narrated by the witnesses are in resemblance and same cannot be ignored while coming to the conclusion that the adoption deed is suspicious in nature, therefore, the impugned orders are wholly unjustified, unreasoned and are liable to be set aside.

28. In view of the reasons recorded above, the impugned orders dated 8.12.1996 (Annexure-1) and 8.5.2000 (Annexure-2) are hereby quashed. The writ petition succeeds and is **allowed**.

29. No order as to costs.

(2025) 12 ILRA 710
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.12.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1004228 of 2006

Ram Kumar **...Petitioner**
Versus
State of U.P. & Ors. **...Respondents**

Issue for Consideration

The case involves the cancellation of a land lease/grant originally allotted to the petitioner's father in 1959 for agricultural purpose. The dispute specifically concerns land governed under the U.P. Bhoodan Yagna Act, 1952. The main issue before the court was whether an Additional Collector has the legal authority to cancel a grant when Section 15-A of the Bhoodan Yagana Act, 1952 specifically empowers the Collector to inquire into and cancel such grants.

Headnotes

Constitution of India, 1950-Article 226- U.P. Bhoodan Yagna Act, 1952-Sections 14, 15, 15-A- U.P. Zamindari Abolition and Land Reforms Act, 1950-198(4)-Statutory

jurisdiction- under Section 15-A of the Act 1952, the power to inquire into a grant and cancel it on grounds of irregularity, misrepresentation, or fraud is vested exclusively in the Collector-An order for the cancellation of a land grant passed by an Additional Collector is wholly without jurisdiction-Writ petition allowed.(Para 12 to 17)

Held

The court confirmed the Additional Collector had no jurisdiction to pass the cancellation order. The court set aside the orders dated 5 January 1985, 17 August 2001 and June 29, 2006. The matter was remanded to the District collector, who is directed to hear the case afresh, providing all parties a proper opportunity to be heard, and pass a decision within six months. (E-6)

Case law Cited

Prabhu Vs Additional Collector, Sant Ravidas Nagar & Others [2008] 2 ALJ (NOC) 256 (ALL.).-referred to.

List of Acts

U.P. Bhoodan Yagna Act, 1952, U.P. Zamindari Abolition and Land Reforms Act, 1950

List of Keywords

Bhoodan Yagna Act, Cancellation of Lease, Jurisdiction, Additional Collector, Principles of Natural Justice, Ex-parte Order, Mutation, Non-joinder of Parties.

Case Arising from

Civil Jurisdiction-WRIT-C No. – 1004228 of 2006

Ram Kumar Vs. State of U.P. Through Collector Sultanpur & Others

From the Judgment and Order dated 10.12.2025 of the High Court of Judicature at Allahabad.

Appearances for parties

Adv. for Petitioner:-

Girish Chandra Sinha

Adv. for Respondent:-

C.S.C., R.N.Gupta

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri G.C. Sinha, learned counsel for the petitioner and Sri Divesh Mishra, learned Standing Counsel for the State-respondent.

2. Facts in nutshell are that the father of the petitioner was allotted some land for agricultural purpose in the year 1959. His name was mutated in revenue records and consolidation proceeding started in the village. The number of plots allotted to the petitioner's father were changed by new numbers. The area of the plots have also been changed by the consolidation authorities as per the spot position in the year 1982. The consolidation proceeding concluded and akar patra 45 was submitted to the Collector in which name of the father of the petitioner was recorded as Bhumidhar in the year 1989. Father of the petitioner died in the year 1998.

3. The petitioner got information during the course of his mutation proceeding that an order for cancellation of the lease granted to his father was passed on 5.1.1985 and the Tehsil authorities are proceeding to incorporate the order. The name of the father of the petitioner was deleted from the records on the basis of the order dated 5.1.1985 on 22.11.2000. An application was moved by the petitioner for setting aside the ex-parte order dated 5.1.1985, in which the respondent No.1 filed his objection on 27.11.2000. Thereafter, the respondent No.2 rejected the application of the petitioner vide order dated 17.8.2001. The petitioner preferred revision before the respondent No.3, which has also been dismissed vide order dated 29.6.2006.

4. The present writ petition has been filed challenging the order of the Additional Collector dated 17.8.2001 and

order dated 29.6.2006, passed by respondent Nos.2 and 3 contained as Annexures 2 and 3 respectively inasmuch as order dated 5.1.1985 (Annexure-1), passed by the respondent No.2.

5. Submission of learned counsel for the petitioner is that the Additional Collector has passed the order under U.P. Bhoodan Yagna Act, 1952. Under Section 15-A thereof, it has been provided that the Collector may of his own motion and shall on the report of the committee or on the application of any person aggrieved by the grant of any land made under Section 14, whether before or after the commencement of the U.P. Bhoodan Yagna (Amendment) Act, 1975, inquire into such grant, and if he is satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud, he may cancel the grant.

6. Learned counsel for the petitioner submits that the order was passed by the Additional Collector for which he was not authorized. Only the Collector can pass the order under the said Act, therefore, the order is wholly without jurisdiction. He submits that the order was passed by the Additional Collector in an ex parte proceeding without giving proper opportunity of hearing to the petitioner, therefore, the order is in violation of principles of natural justice. Next submission is that the revisional court has also not taken into consideration that the order is ex parte in nature and has been passed by the authority who was having no jurisdiction to pass the order.

7. Next submission of learned counsel for the petitioner is that grant was given in favour of father of the petitioner in the year 1959 and in the consolidation proceeding,

the name of petitioner's father was mutated and final publication under Section 52 was made and akar patra-45 was prepared wherein the name of the petitioners' father was present. He further submitted that after a long spell of time, proceeding was initiated against the father of the petitioner and vide order dated 5.1.1985, the lease granted was cancelled after 26 years and incorporated after 37 years. In support of the submission advanced, he placed reliance upon a judgment in the case of **Prabhu Vs. Additional Collector, Sant Ravidas Nagar and others [(2008) 2 ALJ (NOC) 256(ALL.)]**. Relevant paragraphs 2 to 7 are being quoted below:-

"2. The dispute in the instant case relates to plot No. 899. Petitioner claimed that the said plot was allotted by Gaon Sabha to him on 20.5.1964. However, for mutation of his name in the revenue records over the said plot on the basis of said patta, Petitioner filed application in 1989, i.e., after 25 years of alleged allotment. His application was allowed by Tehsildar and his name was mutated. Thereafter, in 1991, Respondent No. 4, Mata Saran instituted Case No. 444/326/222 of 1991 by filing application against Petitioner before Additional Collector, Sant Ravidas Nagar, u/s 198 (4) of U.P.Z.A. and L.R. Act, for cancellation of patta. Additional Collector through the order dated 24.9.1998 allowed the application and cancelled the patta. Against the said order Petitioner filed Revision No. 57 of 1998. Commissioner, Vindhyachal Division, Mirzapur dismissed the revision on 23.3.2001. Through this writ petition order of the Additional Collector dated 24.9.1998 has been challenged. It is strange that no prayer for setting aside order of revisional court dated 23.3.2001 has been made.

3. *The case of Respondent No. 4 Mata Saran who filed application for cancellation of patta was that over the plot in dispute his house Verandah, courtyard etc. was situate and apart from him other persons of the village were also having their houses. It was also stated that Petitioner's house was also situate over portion of plot in dispute.*

4. *Both the courts below doubted the factum of grant of patta in favour of the Petitioner. It was further held that patta was also illegal. They also observed that meanwhile consolidation had intervened and during consolidation no objection was filed by the Petitioner. They also took into consideration the undue delay of 25 years on the part of the petitioner to apply for mutation.*

5. *Under Section 198 (4) of the Act application for cancellation of patta may be filed. However, if a case is taken that patta was in fact never granted then such question cannot be decided in proceedings u/s 198 (4) of the Act. For cancellation of patta, proceedings after 25 years may not be maintainable. However, the Supreme Court in U.P. State Sugar Corporation Ltd. Vs. Dy. Director of Consolidation and Others, , has held that jurisdiction to grant patta may be seen in consolidation proceedings or regular suit also and proceedings u/s 198 (4) of the Act are not the only remedy for cancellation of patta. The fact as to whether patta was granted or not can be adjudged only in regular suit.*

6. *If Respondent No. 4 or any other person asserts that he has got his abadi/house over part of land in dispute then the said fact has to be decided by some court.*

7. *Accordingly, writ petition is disposed of with the liberty to Respondent No. 4 and/or any other person who may be*

having his abadi/ house over any portion of plot No. 899 to file regular suit for declaration and injunction etc. If such a suit is filed then the same shall be decided without being influenced by mutation order passed by the Tehsildar or orders dated 24.9.1998 and 23.3.2001, passed by Additional Collector and Commissioner on the application of Respondent No. 4. In the suit factum as well as validity of patta shall be adjudged, if such pleas are raised. It is needless to add that alongwith suit application for temporary injunction may also be filed."

8. Per-contra, learned Standing Counsel submits that in pursuance to the notice, the father of the petitioner appeared in the matter and filed his Vakalatnama, but thereafter, he did not appear, therefore, it cannot be said that the order is in violation of principles of natural justice.

9. In rebuttal, in paragraphs 23, 24 and 25 of the writ petition, it has specifically been stated that in pursuance to the notice, the father of the petitioner did not appear in the matter nor has filed Vakalatnama on his behalf and no counter affidavit has been filed, replying to the statement of fact made in the aforesaid paragraphs, therefore, it is admitted that the father of the petitioner did not appear nor has filed Vakalatnama in the matter, therefore, the order is ex parte and without giving proper opportunity of hearing to the father of the petitioner or to the petitioner.

10. Learned Standing Counsel further submits Bhoodan Yagna Samiti is not party to the writ petition, therefore, the writ petition is liable to be dismissed for non-joinder of necessary parties.

11. After having heard the rival submissions advanced by learned counsel for the parties, I perused the material on

record as well as the law report cited by petitioner's counsel.

12. On perusal of the order passed by the Additional Collector, it is evident that the proceeding was initiated under Bhoodan Yagna Act, 1952/ Section 198 (4) of U.P. Zamindari Abolition and Land Reforms Act. In the order it has been recorded that the notice was served upon the father of the petitioner and in pursuance thereof, he filed in power in the matter, therefore, he was aware about the proceeding of cancellation of lease granted in his favour.

13. In view of the fact narrated in paragraphs 23, 24 and 25, the above finding recorded is wholly perverse, incorrect and not acceptable in the eyes of law. Merely relying on the statement of D.G.C.(Civil), the finding has returned on the basis of incorrect statement of fact, in fact, the father of the petitioner was not afforded proper opportunity of hearing in passing the impugned order dated 5.1.1985, therefore, he was having no knowledge of the aforesaid order. It only came in the knowledge of the petitioner when his father died in the year 1998 and he initiated mutation proceeding for mutation of his name on the place of his father. Then, he was informed that lease granted to father of the petitioner has been cancelled in the year 1985 and proceeding was initiated to delete the name of father of the petitioner from the revenue records. The Additional Collector initiated proceeding under the U.P. Bhoodan Yagna Act, 1952 and has proceeded to pass the order under the said proceeding.

14. The finding of the revisional court is otherwise that the order passed by the Additional Collector is just and valid and

he has rightly rejected the application of the petitioner, being time barred as well as the finding has returned that U.P. Bhoodan Yagna Act, 1952 is not applicable to the case of the petitioner and thereafter, proceeded to pass the order, dismissed the revision without considering the fact that the order is ex parte in nature and order has been passed by the authority who was having no jurisdiction in the matter.

15. The order passed by the respondent No.2 is wholly without jurisdiction in view of provision contained under Section 15 of the U.P. Bhoodan Yagna Act, 1952, wherein the Collector is empowered to pass the order under the aforesaid Act and due to non consideration of aforesaid aspect of the matter, the revisional court has committed manifest error of law in passing the order.

16. The argument advanced by learned Standing Counsel that the order is not in violation of principles of natural justice in view of the fact that notice was issued to the father of the petitioner who has filed his power in the matter. In view of the fact narrated in paragraphs 23, 24 and 25 of the writ petition, this statement of fact is devoid of merit, in fact the recital made in the aforesaid paragraphs has not been denied by filing counter affidavit, therefore, the objection of learned Standing Counsel is not acceptable in the eyes of law. His next submission that Bhoodan Yagna Committee has not been made party, therefore, the petition is liable to be dismissed due to non-joinder of necessary parties, in this regard, it is held that finding has returned in the order of the revisional court that the land does not relate under U.P. Bhoodan Yagna Yojna and respondent No.2 (Additional Collector) and Additional Commissioner, who have passed the

impugned orders have been made party to the writ petition, therefore, necessary parties have been impleaded in the array of parties of the respondents, thus, this argument of the learned Standing Counsel is also rejected in view of the aforesaid reasons.

17. In view of the foregoing discussion and reasons recorded above, the impugned orders dated 5.1.1985, 17.8.2001 and 29.6.2006 are hereby set aside. The writ petition succeeds and is **allowed**.

18. However, District Collector is directed to hear the matter after giving opportunity of hearing to the parties and may pass appropriate orders in accordance with law within a period of six months from the date of production of certified copy of this order.

19. No order as to costs.

(2025) 12 ILRA 715
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.12.2025

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1005010 of 2006
 With connected cases

**Central Institute of Medicinal & Aromatic
 Plants & Ors. ...Petitioners**

Versus

Sri Rishi Dev Mishra & Ors. ...Respondents

Counsel for the Petitioner:

Asit Kumar Chaturvedi, Dharmendra Kumar
 Dixit

Counsel for the Respondents:

Mata Prasad Yadav

Issue for Consideration

Matter pertains to the challenge to the "common award dated 15th September, 2005" passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur, holding that "Central Institute of Medicinal & Aromatic Plants, Lucknow is an 'Industry' within the meaning of provision 2(j) of Industrial Disputes Act, 1947", and whether CIMAP, "being a purely research and scientific organization functioning under the Council of Scientific and Industrial Research", falls within the definition of "industry" under S. 2(j) of the Industrial Disputes Act, 1947. (Paras 1, 11-13, 17-19)

Headnotes

Industrial Disputes Act, 1947 - S. 2(j) - Definition of 'Industry' - Research Organizations - Central Institute of Medicinal and Aromatic Plants is purely a research organization and not engaged in any trade, business, or commercial activities" and therefore "does not satisfy the test of being an 'Industry'" under S. 2(j) of the Industrial Disputes Act, 1947 - Administrative Tribunals Act, 1985 - S. 14(2) - Jurisdiction - The funds of the Institute are derived entirely from grants made available by the Department of Science & Technology, Government of India" and that CSIR and its institutes are governed by the Administrative Tribunals Act, 1985 pursuant to Notification dated 31.10.1986 issued under S. 14(2) of the said Act - Respondents supported the award contending that the petitioners "fall within the definition of the term 'Industry' as provided under Section 2(j) of the Industrial Dispute Act, 1947 - Court examined Ss. 2(j) and 2(k) of the Industrial Disputes Act, 1947 and noted that the definition of "industry" under the Central and U.P. Acts is "one and the same" - Reliance was placed on Physical Research Laboratory v. K.G. Sharma, wherein the Supreme Court held that an institution engaged in research "cannot be described as an economic venture or a commercial enterprise" and "is not an industry". (Paras-3,4,9,11-17)

Held: CIMAP, Lucknow, being a Society controlled by the Central Government is primarily engaged in scientific research concerning medicinal and aromatic plants - The object of the institute is not to carry on trade or business or to earn profit, but to carry out research in the national interest and for public welfare - The activity undertaken by C.I.M.A.P. is thus academic and scientific in nature and cannot be equated with any commercial or industrial venture - A research institute is not an industry within the meaning of the Industrial Dispute Act, 1947 as well as Uttar Pradesh Industrial Dispute Act, 1947 - The Central Institute of Medicinal and Aromatic Plants, Lucknow does not fall within the definition of 'Industry' under S. 2(j) of the Industrial Disputes Act, 1947 - Impugned award dated 15th September, 2005 was set aside and all the writ petitions are allowed except the writ petitions filed by individuals, which were dismissed. (Paras 17 – 20) (E-7)

Case Law Cited

Physical Research Laboratory v. K.G. Sharma, (1997) 4 SCC 257; Prem Chandra v. Presiding Officer, Industrial Tribunal, Lucknow (U.P.), decided on 20.01.2020

List of Acts

Industrial Disputes Act, 1947; U.P. Industrial Disputes Act, 1947; Administrative Tribunals Act, 1985; Societies Registration Act, 1860; Constitution of India; Article 226.

List of Keywords

Industry; purely a research organization; scientific research; trade or business; commercial or industrial venture; public welfare; Administrative Tribunals Act, 1985; Council of Scientific and Industrial Research; Section 2(j).

Case Arising From

ORIGINAL JURISDICTION: Common award dated 15.09.2005 passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur in Industrial Dispute Case No.149 of 1998 and connected cases.

Appearances for Parties

Advs. for the Appellant / Petitioners:

Asit Kumar Chaturvedi
Dharmendra Kumar Dixit

Advs. for the Respondents:

Mata Prasad Yadav

(Delivered by Hon'ble Irshad Ali, J.)

1. By means of the present writ petition, the petitioners are challenging the validity of the common award dated 15th September, 2005 given by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur (respondent no.2) in Industrial Dispute Case No.149 of 1998 (Rishidev Mishra v. Director, Central Institute of Medicinal & Aromatic Plants, Lucknow) and Industrial Dispute Case Nos.151/98, 145/98, 148/98, 154/98, 152/98, 153/98, 150/98, 146/98, 144/98, 147/98, 126/98, 122/98, 99/98, 119/98, 120/98, 123/98 and 124/98 and published by the Government of India, Ministry of Labour (respondent no.3) through Notification dated 22nd September, 2005 and sent by the Secretary, central Government Industrial Tribunal-cum-Labour Court, Kanpur, through letter dated 6th December, 2005 as far as it relates to the Central Institute of Medicinal & Aromatic Plants, Lucknow, a constituent/ Institute of Council of Scientific and Industrial Research, New Delhi, a society registered under Societies Registration Act, 1860 is an 'Industry' within the meaning of provision 2(j) of Industrial Disputes Act, 1947.

2. The bunch of the writ petition involves common questions of facta and law, hence with the consent of parties, writ petitions are decided by the present common judgment.

2. Factual matrix of the case is that the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur, respondent no.2,

passed a common award dated 15.09.2005 in ID case No.149 of 1998 (Rishidev Mishra v. Director, Central Institute of Medicinal & Aromatic Plants, Lucknow) and Industrial Dispute Case Nos.151/98, 145/98, 148/98, 154/98, 152/98, 153/98, 150/98, 146/98, 144/98, 147/98, 126/98, 122/98, 99/98, 119/98, 120/98, 123/98 and 124/98 as far as it relates to the Central Institute of Medicinal & Aromatic Plants, Lucknow a constituent/ Institute of Council of Scientific and Industrial research, New Delhi, a society registered under Societies Registration Act, 1860 is an 'industry' within the meaning of provision 2(j) of Industrial Disputes Act, 1947.

The respondent no.1 raised conciliation proceedings before the Regional Labour Commissioner (Central), Kanpur under the provisions of Industrial Tribunal Act, 1947 with respect to alleged disengagement of their employment with Central Institute of Medicinal and Aromatic Plants, Lucknow/ Council of Scientific and Industrial Research, New Delhi impleading there in the Director/ Central Institute of Medicinal and Aromatic Plants, Lucknow and not M/s Vikas Security Guards Services, Lucknow. The conciliation proceedings failed resulting which the Regional Labour commissioner (North) Kanpur submitted failure report to the respondent no.3.

After the submission of the conciliation failure report, the matter was referred to the Central Government Industrial Tribunal-cum- Labour Court/ Kanpur by the respondent no.3 through letter dated 21.04.1998. The respondent no.1 filed the claim application date 16.09.1998, replication to the written statement dated 25.05.199, application dated 17.09.2001 for filing 2 documents and Oath administered by the Presiding Officer to the deponent dated 12.09.2001

before the Presiding Officer, Central Government, Industrial Tribunal-cum-Labour Court, Kanpur.

The petitioners filed written statements dated 29.10.1998, stating therein various issues including that the provisions of Industrial Dispute Act, 1947 are not applicable upon the CSIR, New Delhi or its constituent institutes including CIMAP, Lucknow as it is not an 'Industry' and also filed list of documents on behalf of CIMAP, Lucknow in June, 2000, application on behalf of Central Institute of Medicinal & Aromatic Plants, Lucknow for framing of additional issue was filed on 29.8.2000.

The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur passed the orders dated 13.2.2001. The statement of Shri Rishi Dev Misra was recorded on 12.09.2001 and the affidavit in evidence on behalf of Central Institute of Medicinal & Aromatic Plants, Lucknow was also filed on 04.06.2002.

The petitioners filed writ petition no.1676 of 2002 (S/S) (Central Institute of Medicinal & Aromatic Plants, Lucknow & others v. Rishi Devi Misra & another) which is still pending consideration.

The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur decided the Adjudication Case No.149 of 1998 (Rishi Dev Mishra v. Director, Central Institute of Medicinal & Aromatic Plants, Lucknow), through a common award dated 15th September, 2005 without considering the evidences available on record on merits as well as on the question of 'industry'.

The respondent no.2 award dated 15th September, 2005 was considered at various levels in CIMAP, Lucknow and CSIR, New Delhi and ultimately decision was communicated through letters dated

14.02.2006 and 26.04.2006 that the award dated 15th September, 2005 be challenged before this Court through a writ petition under Article 226 of the Constitution of India.

3. Learned counsel for the petitioners submitted that the Central Institute of Medicinal and Aromatic Plants is purely a research organization and not engaged in any trade, business, or commercial activities and its primary function is to undertake scientific research with a view to promoting the welfare of people preserving natural resources and minimizing the undesirable effects of industrial and agricultural activities. In this view of the matter, he submitted that it does not satisfy the test of being an 'Industry' as contemplated under Section 2(j) of the Industrial Disputes Act, 1947 or Section 2(k) of the U.P. Industrial Disputes Act, 1947.

4. Learned counsel for the petitioners next submitted that the funds of the Institute are derived entirely from grants made available by the Department of Science & Technology, Government of India. The Council of Scientific and Industrial Research and its constituent institutes are under administrative control of the Central Government. By virtue of the notification dated 31.10.1986 issued under Section 14(2) of the Administrative Tribunals Act, 1985, the Council of Scientific and Industrial Research, New Delhi has been brought within the purview of the said Act. Consequently, all service matters pertaining to employees of CSIR and its institutes, including CIMAP are governed by the provisions of the Administrative Tribunals Act, 1985 and not by the Industrial Disputes Act, 1947.

5. Learned counsel for the petitioners next submitted that the Central Institute of Medicinal & Aromatic Plants, Lucknow/ Council of Scientific and Industrial Research, New Delhi cannot be termed as an 'Industry' in any case either practically or legally in favour of the organization.

6. Learned counsel for the petitioners next submitted that the respondent nos.2 and 3 have no jurisdiction to adjudicate upon the matter as it is applying the provisions of the Industrial Disputes Act, 1947 which is not applicable upon the Department of Science & Technology, Government of India, nor upon the council of Scientific & Industrial Research, New Delhi/ Central Institute of Medicinal & Aromatic Plants, Lucknow.

7. Learned counsel for the petitioners next submitted that only the Administrative Tribunal Act, 1985 is applicable on the petitioners since the Central Institute of Medicinal & Aromatic Plants, Lucknow is a constituent Unit of Council of Scientific & Industrial Research, New Delhi and the Council of Scientific & Industrial Research, New Delhi has been notified under the Administrative Tribunal Act, 1985.

8. In support of his submissions, learned counsel for the petitioner has placed reliance upon the following judgments:

(i) *Physical Research Laboratory v. K.G. Sharma* (1997) 4 SCC 257

(ii) *Prem Chandra v. Presiding Officer, Industrial Tribunal, Lucknow* (U.P.) decided on 20.1.2020.

9. Per contra, learned counsel for the respondents supported the impugned order

and stated that the petitioners fall within the definition of the term 'Industry' as provided under Section 2(j) of the Industrial Dispute Act, 1947.

10. I have considered the submissions advanced by learned counsel for the parties and perused the material available on record as well as case-law cited by learned counsel for the petitioners.

11. To resolve the controversy involved in the present writ petition, Section 2(j) and Section 2(k) of the Industrial Disputes Act, 1947 reads as under:

"2(j) 'industry' means any business, trade undertaking, manufacturer or calling of employers and includes any calling, service, employment, handicraft, or industry occupation or avocation of workmen.

2(k) 'Industry' means any business, trade, undertaking, manufacturer or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

12. Perusal of the aforesaid sections reveals that the definition of 'industry' in the Industrial Dispute Act, 1947 and Uttar Pradesh Industrial Dispute Act, 1947 is one and the same.

13. Learned counsel for the petitioner relied on judgment rendered (supra) operative portion of which are quoted here-in-below:

"13. It is nobody's case that PRL is engaged in an activity which can be called business trade or manufacturer. Neither from the nature of its organization

nor from the nature and character of the activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

14. Perusal of the above-extracted judgment reveals that the Hon'ble Supreme while considering the issue that whether the 'Physical Research Laboratory' is an industry, gave opinion that that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood.

15. Learned counsel also relied upon the judgment dated 20.01.2020, wherein while relying on the judgment rendered in

the case of **Physical Research Laboratory (supra)** a coordinate Bench of this Court held that a national research institution of Council for Scientific & Industrial Research i.e. CSIR-Central Drug Research Institute, Lucknow is not an industry under Section 2(k) of Uttar Pradesh Industrial Dispute Act, 1947 (U.P. Act No.XXXVIII of 1947) while upholding the Award dated 8.7.1997 of the Industrial Tribunal (II) Lucknow.

16. I have examined the material on record in the light of case-laws cited by learned counsel for the petitioners.

17. On examination, it is found that Central Institute of Medicinal & Aromatic Plants, Lucknow ; CSIR- Indian Institute of Toxicology Research, Lucknow; CSIR-National Botanical Research Institute, Lucknow which has been notified under Section 14(2) of the Administrative Tribunal Act, 1985 through Notification No.R-11018/16/86-At dated 31.10.1986 being a Society controlled by the Central Government is primarily engaged in scientific research concerning medicinal and aromatic plants. The object of the institute is not to carry on trade or business or to earn profit, but to carry out research in the national interest and for public welfare. The activity undertaken by C.I.M.A.P. is thus academic and scientific in nature and cannot be equated with any commercial or industrial venture. In this view of the matter, the judgment rendered in the case of **Physical Research Laboratory (supra)** vide which this Hon'ble Supreme Court clarified that institutions engaged solely in research or educational functions, devoid of commercial or economic character, cannot be treated as 'industry' squarely covers to the present facts and circumstances of the present case.

18. It is settled principle of law that a research institute is not an industry within the meaning of the Industrial Dispute Act, 1947 as well as Uttar Pradesh Industrial Dispute Act, 1947. The other legal and factual issues may not be decided keeping in view of the aforesaid settled principle of law.

19. Considering in totalities of facts and circumstances of the case, this Court is of the opinion that the Central Institute of Medicinal and Aromatic Plants, Lucknow being a purely research and scientific organization functioning under the Council of Scientific and Industrial Research does not fall within the definition of 'Industry' under Section 2(j) of the Industrial Disputes Act, 1947.

20. In the result, all the writ petitions are **allowed**, except Writ-C No.1004654 of 2005 (Shiv Narain Singh and another v. Presiding Officer, labour Court, U.P., Lucknow and another), Writ-C No.1000938 of 2006 (Rishi Deo Mishra and 4 others v. Presiding Officer, Central Govt. Industrial Trib. And Anr.), Writ-C No.1000940 of 2006 (Hari Shanker Dubey and 3 Ors. v. Presiding Officer Cental Govt. Industrial Trib. And Anr.) and Writ-A No.8817 of 1992 (Rajendra Mishra v. Industrial Tribunal), being filed by the petitioners in individual capacity, which are hereby **dismissed**.

(2025) 12 ILRA 720

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Matters Under Article 227 No. 7111 of 2025

**Lko. Development Authority ...Petitioner
Versus**

Mrs. Nirupama Singh & Anr.

...Respondents

Issue for Consideration

Issue pertains to whether, in exercise of its supervisory jurisdiction under article 227 of Constitution of India, interference was warranted with the order dated 30.07.2025 passed by National Consumer Disputes Redressal Commission rejecting the petitioner/Lucknow Development Authority's application for condonation of an inordinate delay of 544 days in filing the consumer appeal, particularly when the petitioner had taken self-contradictory stands on oath regarding the cause of delay, failed to furnish a credible, bona fide and sufficient explanation, and when the National Commission had exercised its discretion in conformity with the settled principles governing condonation of delay under the law of limitation and the object of expeditious adjudication under the Consumer Protection Act.

Headnotes

Limitation Act, 1963 - s. 5 -The petitioner, Lucknow Development Authority, invoked the supervisory jurisdiction of High Court under article 227 of Constitution to assail the order dated 30.07.2025 passed by National Consumer Disputes Redressal Commission, New Delhi, whereby its application seeking condonation of an inordinate delay of 544 days in filing a consumer appeal against the judgment of State Consumer Commission dated 23.11.2023 was rejected - Before the National Commission, the petitioner attributed the delay to the alleged failure of its counsel to inform it of State Commission's judgment and to internal administrative processing, whereas the record revealed that the impugned order had been received by the Authority on 06.12.2023 - In the petition before the High Court, the petitioner took a different stand by asserting that knowledge of judgment was acquired on 14.12.2023 and that the delay was occasioned by mandatory procedural approvals within the Authority - The National Commission, finding the explanation unsatisfactory and inconsistent, declined to condone the delay, observing that such indulgence would defeat the object of expeditious consumer adjudication, which led to the filing of instant petition.

Held: The plea taken by Lucknow Development Authority (LDA) that delay in filing the appeal by it was attributable to the multiple lengthy compulsory procedural stages to which it is subject to by virtue of it being a statutory authority, fails to make out a reasonable explanation for the inordinate delay caused in filing the appeal against the impugned order dated 23.11.2023 - The record before the National Commission shows that the order dated 23.11.2023 was received by the appellant on 06.12.2023 whereas before High court, the petitioner has pleaded that the order dated 23.11.2023 came to notice of the LDA on 14.12.2023 - Therefore, the plea taken before High Court that the delay occurred because the petitioner's Advocate had not informed about the order dated 23.11.2023, is false - When it is apparent on the face of the record that the petitioner has not approached High Court with clean hands and has made statements which are contrary to the statements made on oath earlier, it is apparent that the petitioner has not been able to give a sufficient explanation for the inordinate delay of 544 days in filing the appeal and it is merely trying to create an excuse for condonation of delay - Thus, petition lacks merit and it is accordingly, dismissed. [Paras 16, 19, 21] (E-13)

Case Law Cited

Brijesh Kumar and others v. State of Haryana and others, **2014 (11) SCC 351**; Lingeswaran v. Thirunagalingam, **2022 SCC OnLine SC 2233**; Thirunagalingam v. Lingeswaran, **2025 SCC OnLine SC 1093**; Basawaraj v. Land Acquisition Officer, **(2013) 14 SCC 81**; Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy, **(2013) 12 SCC 649**; Sheo Raj Singh (Deceased) Through Lrs. v. Union of India, **2023 SCC OnLine SC 1278**; Postmaster General v. Living Media India Ltd., **(2012) 3 SCC 563**; Rajneesh Kumar v. Ved Prakash, **2024 SCC OnLine SC 3380** - referred to

List of Acts

Limitation Act, 1963

List of Keywords

Petition under Article 227 of Constitution of India; Condonation of delay; Inordinate delay; Sufficient explanation; Application u/s 5 of Limitation Act; Consumer appeal; Consumer

Protection Act; National Consumer Disputes Redressal Commission; State Commission; Statutory authority; Affidavit on oath; Self-contradictory statements, Personal knowledge; Receipt of order; Administrative processing; Mandatory provision; Lack of bona fides; Dishonest intention; Negligence; Inaction; Unclean hands; Discretionary relief; Reasonable explanation; Judicial discretion; Dismissal of petition.

Case Arising From

ORIGINAL JURISDICTION: Matters Under Article 227 No. - 7111 of 2025

From the Judgment and Order dated 30.07.2025, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No.NC/FA/342/2025

Appearances for Parties

Adv. for the Petitioner:
Ratnesh Chandra

Adv. for the Respondent:
Nil

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Ratnesh Chandra, the learned counsel for the petitioner Lucknow Development Authority and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioner has challenged the validity of an order dated 30.07.2025, passed by the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No.NC/FA/342/2025 titled Lucknow Development Authority Vs. Mrs. Nirupma Singh and another, whereby the petitioner's application for condonation of delay bearing IA-No.8181 of 2025 seeking condonation of delay of 544 days in filing the appeal, has been rejected.

3. In the application for condonation of delay the appellant had pleaded that “*the*

State Commission had passed its judgment on 23.11.2023 by imposing heavy amount to be paid to the respondent. Due to mistake the learned counsel for the appellant after passing of impugned judgment did not inform to the appellant authority about passing of impugned judgment by the Hon'ble State Commission and due to which timely proceeding could not be done in the aforesaid matter for filing of present appeal against the impugned judgment and order. As soon as the learned counsel had informed to the authority about passing of impugned judgment, the appellant authority had processed the matter for obtaining permission from authorities for filing the appeal in the aforesaid matter. It is submitted that long time was spent in processing the file and obtaining appropriate permission from the concerned authorities. As soon as the permission was obtained, the vakalatnama was issued in favour of concerned Advocate for filing appeal before this Hon'ble Commission. After issue of vakalatnama the records/ file of aforesaid matter was handed over to the advocate, thereafter the above appeal was drafted and same is being filed today before this Hon'ble Commission”.

4. The application for condonation of delay was supported by an affidavit of Sri. Atul Krishna Singh, who is presently posted as Deputy Secretary in Lucknow Development Authority, who verified the aforesaid averments to be true and correct to the best of his knowledge and belief.

5. The National Commission recorded in the impugned order that a perusal of the record shows that the State Commission had passed the impugned order on 23.11.2023. A copy of the order was received by the appellant on 06.12.2023

and the appeal has been filed on 02.07.2025. The grounds mentioned for the delay are not convincing enough to condone the delay. Being a consumer dispute such condonation would defeat the purpose of Consumer Protection Act. The National Commission has relied upon the judgment of Hon'ble Supreme Court in the cases of **Brijesh Kumar and others Vs. State of Haryana and others**: 2014 (11) SCC 351, in which the Hon'ble Supreme Court held that: -

“10. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

6. The National Commission has also relied upon the judgment in the case of **Lingeswaran v. Thirunagalingam**: 2022 SCC OnLine SC 2233, wherein it was held that: -

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest

there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5.1. In the case of **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under:

“The law of limitation is founded on public policy. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

7. The aforesaid judgment has been followed in **Thirunagalingam v. Lingeswaran**: 2025 SCC OnLine SC 1093.

8. Before this court the petitioner has pleaded in para 26 of the petition that *“it was for the first time came to the notice of the LDA on 14/12/2023, that the judgment dated 23/11/2023 has been rendered by the State Commission and no sooner the said fact came to the notice of LDA, immediately the process of filing the appeal was initiated and the delay in filing the appeal occurred due to the fact that, being a statutory authority, the Petitioner is mandatorily required to route the proposal for filing the appeal through multiple administrative divisions, including legal, technical and financial branches, for scrutiny, opinion, approval and sanction at various levels of hierarchy. The movement of the file through these compulsory procedural stages, which is beyond the control of deponent, consumed considerable time and thereby occasioned unavoidable delay in instituting the appeal”*.

9. The affidavit in support of the Writ Petition has been filed by Sri. Atul Krishna Singh, Deputy Secretary in Lucknow Development Authority, who has verified the above quoted averments made in paragraph 26 of the petition to be true to the personal knowledge. It is significant to note that the same deponent had filed the affidavit in support of the application for condonation of delay in filing the appeal before the National Consumer Disputes Redressal Commission stating that the learned counsel for the Lucknow Development Authority had not informed the Authority about the judgment passed by the State Commission due to which the appeal

against the impugned judgment could not be filed within time.

10. From the aforesaid facts it is clear that the petitioner Lucknow Development Authority has been taking self contradictory stands for the same matter at different stages. In the application filed under Section 5 of Limitation Act before the National Commission it pleaded that the counsel for the appellant had not informed about the order dated 23.11.2023 due to which the proceedings could not be instituted timely. The record before the National Commission revealed that the order dated 23.11.2023 was received by the appellant on 06.12.2023. Before this court the petitioner had pleaded that the order dated 23.11.2023 came to notice of the LDA on 14.12.2023.

11. Apparently, the LDA has been making self contradictory statements on oath and all of them cannot be correct.

12. In **Basawaraj v. Land Acquisition Officer**: (2013) 14 SCC 81, the Hon’ble Supreme Court summarized the law regarding condonation of delay by stating that:?

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to

condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

13. In **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy**: (2013) 12 SCC 649, the Hon’ble Supreme Court discussed the law regarding condonation of delay as explained in various precedents and summarized the same as follows:?

“21. From the aforesaid authorities the principles that can broadly be culled out are:

(i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

(ii) *The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

(iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

(iv) ***No presumption can be attached to deliberate causation of delay***

but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) ***Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.***

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) ***There is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.***

(ix) ***The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.*** *It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

(x) ***If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.***

(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm*

of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

(a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

(b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

(c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

(d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."*

(Emphasis supplied)

14. In **Sheo Raj Singh (Deceased) Through Lrs. v. Union of India**: 2023 SCC OnLine SC 1278, after discussing the various precedents on the issue, the Hon'ble Supreme Court summarized the principles regarding condonation of delay in the following words:?

"29. *Considering the aforementioned decisions, there cannot be*

any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only

excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

(Emphasis added)

15. In **Postmaster General v. Living Media India Ltd.**: (2012) 3 SCC 563, the Hon'ble Supreme Court refused to condone the delay of 427 days in filing the SLP by holding that: -

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

* * *

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an

exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

(Emphasis added)

16. Therefore, in light of the aforesaid judgment of the Hon'ble Supreme Court, the plea taken by the LDA that delay in filing the appeal by it was attributable to the multiple lengthy compulsory procedural stages to which it is subject to by virtue of it being a statutory authority, fails to make out a reasonable explanation for the inordinate delay caused in filing the appeal against the impugned order dated 23.11.2023

17. In paragraph 21, 25 and 31 of the writ petition the petitioner has specifically pleaded that the delay in filing the appeal was attributable to the fault of the previous counsel of the Authority who did not inform the Authority about the passing of the impugned order dated 23.11.2023 and the petitioner should not be made to suffer for it. It has been pleaded that the National Commission therefore should have taken a lenient view in allowing the application of condonation of delay for filing the appeal against the impugned order.

18. In **Rajneesh Kumar v. Ved Prakash**, 2024 SCC OnLine SC 3380, the Hon'ble Supreme Court has observed that: -

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court.

20. In these circumstances, this court finds no good ground to interfere in the impugned order dated 30.07.2025, passed

The Indian Penal Code, 1860-Sections 452, 323, 504, 506, 392, 406, 420 & 120B; The Uttar Pradesh Dacoity Affected Areas Act, 1983- Sections 2(b) & 7; The Code of Criminal Procedure-1973- Sections 5, 244 & 245, Chapter XVIII; The Bharatiya Nagarik Suraksha Sanhita,2023-Section 582- The Uttar Pradesh Dacoity Affected Areas Act is a Special Act and Section 7 of the Act expressly lays down the procedure and power of a Special Court which has been constituted by virtue of Section 5 of the Cr.P.C. The Special Court thus consists of the Sessions Judge or the Additional Sessions Judge, empowered to try the scheduled offences by following the

procedure provided by the Code of Criminal Procedure, 1973 for the trial of Sessions Cases. The Special Court has to follow the procedure set down by the Cr.P.C. under Chapter XVIII which relates to trial before the Court of Session. If the prescribed procedure is not adopted then it is either a case of lack of jurisdiction and is an abuse of the process of law-Application allowed.(E-15)

Held- As District Jhansi has been notified by the State Government as a Dacoity Affected Area and Section 392 IPC is classified as a Scheduled offence under Section 2(b) of the U.P Act No. 31 of 1983, therefore, in the instant matter trial must proceed as per Section 7 of the U.P. Act No. 31 of 1983 which empowers the Special Court to follow the procedure as provided under Chapter XVIII of the Code of Criminal Procedure **(Para 15, 18 & 19)**

Case Law Cited

Gangula Ashok and Another Vs. Andhra Pradesh 2000 (2) SCC 504

List of Acts

The Indian Penal Code, 1860; The Uttar Pradesh Dacoity Affected Areas Act, 1983; The Code of Criminal Procedure-1973-; The Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Uttar Pradesh Dacoity Affected Areas Act, 1983; Special Act and Section 7 of the Act expressly lays down the procedure and power of a Special Court; constituted by virtue of Section 5 of the Cr.P.C; Special Court has to follow the procedure set down by the Cr.P.C. under Chapter XVIII; prescribed procedure is not adopted; abuse of the process of law.

Case Arising From

The impugned orders dated 26.06.2024 and 30.05.2025 passed by the learned Special Judge (Dacoity Affected Area), Jhansi in Complaint Case No. 103 of 2023 (Rajeev Agarwal and others Vs. Sanjay Agarwal) under Sections 452, 323, 504, 506, 392, 406, 420, 120B IPC, Police Station-Kotwali, District-Jhansi, pending in the Court of learned Special Judge (Dacoity Affected Area), Jhansi.

Appearances for Parties

Counsel for Applicant(s) : Atharva Dixit, Pranav Tiwary
Counsel for Opposite Party(s) : G.A., Shashank Shekhar, Sheo Ram Singh

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Sri Atharva Dixit, learned counsel for the applicant, Mr. Sheo Ram Singh, learned counsel for the opposite party Nos. 2 to 4, Sri Ratan Singh, learned A.G.A.-I for the State and perused the record.

2. The present application under Section 528 B.N.S.S. has been filed with the prayer to quash the impugned orders dated 26.06.2024 and 30.05.2025 passed by the learned Special Judge (Dacoity Affected Area), Jhansi in Complaint Case No. 103 of 2023 (Rajeev Agarwal and others Vs. Sanjay Agarwal) under Sections 452, 323, 504, 506, 392, 406, 420, 120B IPC, Police Station-Kotwali, District-Jhansi, pending in the Court of learned Special Judge (Dacoity Affected Area), Jhansi.

3. Briefly stated, the applicant lodged a complaint in the Court of learned Special Judge (Dacoity Affected Area), Jhansi as Complaint Case No. 103 of 2023 (Sanjay Agarwal Vs. Rajeev Agrawal and others) wherein vide order dated 16.02.2024, the opposite party Nos. 2 to 4 have been summoned to face the trial under Sections 392, 452, 120B, 504, 506 IPC.

4. After taking cognizance, the learned Trial Court had fixed 06.06.2024 for the framing of the charges and on 26.06.2024, the date was fixed for recording of the evidence under Section 244 Cr.P.C.

5. It has been submitted that the respondents/accused moved an application under Section 39B before the learned Trial Court which was allowed vide order dated 30.05.2025 permitting, them to cross-examine P.W.-2 on the basis of the evidence adduced under Section 244 Cr.P.C.

6. The main submission of learned counsel for the applicant is that the procedure adopted by the learned Special Court for trying a Scheduled offence i.e., Section 392 IPC is illegal and against the procedure prescribed. It has been submitted that the instant complaint was lodged against the respondents/accused in the Court of Special Court (Dacoity Affected Area) Jhansi. The cognizance was taken and summoning order was passed u/s 392, 452, 120B, 504, 506 & 392 IPC which is a Scheduled offence under the provisions of the UP Dacoity Affected Area Act, 1983 therefore trial ought to have been conducted in the manner as prescribed under Chapter XVIII of the Code of Criminal Procedure and the provisions of Sections 244 or 245 of the Code of Criminal Procedure would not apply to the proceedings of the Complaint Case pending before a Special Court which happens to be the learned Sessions Judge under the U.P. Dacoity Affected Areas Act, 1983 (here-in-after referred to as "U.P Act No. 31 of 1983").

7. At this juncture, it is relevant to refer the provisions of U.P. Dacoity Affected Areas Act, 1983 whose object is to make provision for specifying certain offences in the Dacoity Affected Areas of the Uttar Pradesh in order to curb effectively commission of Scheduled offences and to make provision for punishment and speedy trial thereof and

further attachment of properties acquired through the commission of such offences.

8. The State of Uttar Pradesh vide Government Notification (No. 8111-P/VIII-3-31) on November 5, 1981 had declared Jhansi as a Dacoity Affected Area.

9. The Schedule appended to the said Act classifies Section 392 IPC to be a Scheduled offence under Section 2(b) of the U.P. Act No. 31 of 1983.

10. Section 7 of U.P. Act No. 31 of 1983 prescribes the procedure and powers of the Special Courts:-

"Section 7. Procedure and powers of Special Courts.- (1) A Special Court may take cognizance of any scheduled offence,

(a) upon receiving a complaint of facts which constitute such Courts. offence;

(b) upon a police report of such facts ;

(c) upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed:

Provided that all cases triable by a Special Court under this Act, pending before any Court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act.

(2) A Special Court shall, while trying a scheduled offence, so far as may

be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of sessions cases :

Provided that the Special Court may, wherever necessary, perform the functions of a Magistrate under section 207 of the said Code and proceed to try the case as if the case had been committed to Court of Sessions for trial under the provisions of such Code.

(3) Save as otherwise expressly provided in this Act, the provisions of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purposes of the provisions of the said Code, the Special Court shall be deemed to be a Court of Sessions and the person conducting the prosecution before a Special Court shall be deemed to be a public prosecutor.

(4) A Special Court may, with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal abettor in the commission thereof and any pardon so tendered shall for purposes of section 308 of the said Code, be deemed to have been tendered under section 307 thereof.

(5) A. Special Court may pass upon any accused person convicted by it any sentence authorised by law for the

punishment of offence of which such person is convicted."

11. Ordinarily, the power of taking cognizance in a Complaint Case in the Cr.P.C., is vested with the Magistrate as per the provisions of Section 190 Cr.P.C., but Section 193 Cr.P.C., provides for cognizance of the offences in other Courts also like the Court of Session.

12. Section 193 Cr.P.C., reads as under:-

"193. Cognizance of offences by Courts of Session.- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

13. The bare reading of provision of Section 193 indicates that the Court of Session may also take cognizance of an offence, if it is empowered to do so by any other law for the time being in force. This provision is completely in consonance with the saving clause contained in Section 5 of the Cr.P.C., which lays down that nothing contained in the Code shall in the absence of a specific provision to the contrary affect any special or local law for the time being in force or any special jurisdiction or power conferred or any special forum or procedure prescribed by any other law for the time being in force. As such, if the special laws are in force then the general laws could not be resorted to as regards the procedure of a trial or other things regarding a criminal offence made punishable either under the I.P.C or any other Act for the time being in force.

14. Section 4(2) of the Cr.P.C., deals with the trial of offences under other laws which reads as under:-

"4(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."

15. The Uttar Pradesh Dacoity Affected Areas Act is a Special Act and Section 7 of the Act expressly lays down the procedure and power of a Special Court which has been constituted by virtue of Section 5 of the Cr.P.C. The Special Court thus consists of the Sessions Judge or the Additional Sessions Judge, empowered to try the scheduled offences by following the procedure provided by the Code of Criminal Procedure, 1973 for the trial of Sessions Cases. The Special Court has to follow the procedure set down by the Cr.P.C. under Chapter XVIII which relates to trial before the Court of Session. If the prescribed procedure is not adopted then it is either a case of lack of jurisdiction and is an abuse of the process of law.

16. Learned counsel for the applicant has relied upon the judgment rendered by the Hon'ble Supreme Court in **Gangula Ashok and Another Vs. Andhra Pradesh 2000 (2) SCC 504** wherein it was observed that:

"Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has

been committed to it by a magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting to those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a magistrate.

Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which magistrates have to do until the case is committed to the Court of session.

We have noticed from some of the decisions rendered by various High Courts that contentions were advanced based on

Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments. Section 4 of the Code contains two sub-sections of which the first sub-section is of no relevance since it deals only with offences under the Indian Penal Code. However, sub-section (2) deals with offences under other laws and hence the same can be looked into. Sub-section (2) of Section 4 is extracted below :

"All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

*A reading of the sub-section makes it clear that subject to the provisions in other enactments all offences under other Laws shall also be investigated, inquired into, tried and otherwise dealt with under the provision of the Code, This means that if other enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code, If there is no such contrary provision in other laws, then provisions of the code would apply to the matters covered thereby. This aspect has been emphasised by a Constitution Bench of this Court in paragraph 16 of the decision in *A.R. Antulay v. Ramdas Srinivas Nayak and Anr.*, [1984] 2 SCC 500. It reads thus:*

"Section 4(2) provides for offences under other law which may be investigated, inquired into, and otherwise dealt with according to the provisions of

the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations."

Nor can Section 5 of the Code be brought in aid for supporting the view that the Court of Session specified under the Act can obviate the interdict contained in Section 193 of the Code as long there is no provision in the Act empowering the Special Court to take cognizance of the offence as a court of original jurisdiction. Section 5 of the Code reads thus :

"5. Saving. - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction power conferred, or any special form of procedure prescribed, by any other law for the time being force."

This Court, on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, has held that "it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2); In short, the provisions of this Code would be applicable to the extent, in the

absence of any contrary provision in the special Act or any special provision including the jurisdiction or ap-plicability of the Code." (vide para 128 in Directorate Enforcement v. Deepak Mahajon, [1994] 3 SCC 440.

Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge sheet cannot straightway laid before the Special Court under the Act."

17. Learned A.G.A. for the State could not dispute the aforesaid facts and circumstances.

18. As District Jhansi has been notified by the State Government as a Dacoity Affected Area and Section 392 IPC is classified as a Scheduled offence under Section 2(b) of the U.P Act No. 31 of 1983, therefore, in the instant matter trial must proceed as per Section 7 of the U.P. Act No. 31 of 1983 which empowers the Special Court to follow the procedure as provided under Chapter XVIII of the Code of Criminal Procedure.

19. In view of the aforesaid discussion, the Court finds that the impugned orders dated 26.06.2024 and 30.05.2025 have been passed without jurisdiction and is an abuse of the process of the Court. Hence, the impugned orders dated 26.06.2024 and 30.05.2025 passed by the learned Special Judge (Dacoity Affected Area), Jhansi are hereby set aside and the matter is remitted back with a direction to the Court concerned to proceed with trial afresh, in accordance with the

procedure as discussed above, after giving opportunity of hearing to both the parties, expeditiously without granting any unnecessary or long adjournments to either of the parties, if there is no other legal impediment.

20. With the aforesaid direction, the application u/s 528 B.N.S.S. is **allowed**.

(2025) 12 ILRA 734
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE PRAVEEN KUMAR GIRI, J.

Application U/S 482. No. 40092 of 2024

Pawan Kumar Singh & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Whether proceedings of Criminal Case No. 157 of 2024 emanating from Charge Sheet dated 29.01.2024 arising out of Case Crime No. 369 of 2023, PSKotwali Chunar, Mirzapur, for the offences under Section 354A, 504 & 506 Indian Penal Code pending before the Court of Civil Judge, (Junior Division) FTC/offences against woman, Mirzapur are liable to be quashed.

Head Notes

The Code of Criminal Procedure, 1973- Sections 216, 218, 221, 227, 228, 232, 239, 240 & 482; The Indian Evidence Act, 1872-Section 3- The accused has a remedy to move a discharge application before the concerned Magistrate or Sessions Court. The Court, after providing an opportunity of hearing, may either discharge the accused or frame charges against the accused as per the provisions of law mentioned in the Code of Criminal Procedure, 1973 or the Bharatiya Nagarik Suraksha Sanhita, 2023- Application dismissed.(E-15)

Held- Court is not inclined to grant any relief to the applicant as prayed in the prayer clause as the issue has already been settled by the Hon'ble Supreme Court in the case of State of Gujarat v. Girish Radhakrishnan Varde; (2014) 3 SCC 659.

(Para 9, 10 & 14)

Case Law Cited

State of Gujarat v. Girish Radhakrishnan Varde; (2014) 3 SCC 659; Arnesh Kumar vs. State of Bihar; 2014 (8) SCC 273 and Satyendra Kumar Antil vs. Central Bureau of Investigation and Another; 2021 (10) SCC 773;

List of Acts

The Code of Criminal Procedure, 1973; The Indian Evidence Act, 1872

List of Keywords

Remedy to move a discharge application; Court after providing an opportunity ; may either discharge the accused or frame charges

Case Arising From

Summoning order dated 28.05.2024 passed in Criminal Case No. 157 of 2024 for the offences under Section 354A, 504 and 506 Indian Penal Code pending before the Court of Civil Judge, Junior Division FTC/offences against woman, Mirzapur and also quash the further proceedings Criminal Case No. 157 of 2024 emanating from Charge Sheet dated 29.01.2024 arising out of Case Crime No. 369 of 2023, PSKotwali Chunar, Mirzapur, for the offences under Section 354A, 504 and 506 Indian Penal Code pending before the Court of Civil Judge, (Junior Division) FTC/offences against woman, Mirzapur

Appearances for Parties

Counsel for Applicant(s) : Abhishek Bhushan, Dinesh Singh, Sr. Advocate
Counsel for Opposite Party(s) : Anand Kumar, G.A., Pankaj Kumar, Shyam Singh

(Delivered by Hon'ble Praveen Kumar Giri, J.)

1. Heard Shri R.R. Shukla, Advocate holding brief of Shri Dinesh Singh, learned counsel for the applicants and Shri Pankaj Kumar Tripathi, learned AGA for the State.

2. Learned counsel for the applicants submits that he has filed the instant application under Section 482 Cr.P.C. with the relief which has been mentioned in the prayer clause of the application.

3. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the present criminal application and quash the summoning order dated 28.05.2024 passed in Criminal Case No. 157 of 2024 for the offences under Section 354A, 504 and 506 Indian Penal Code pending before the Court of Civil Judge, Junior Division FTC/offences against woman, Mirzapur and also quash the further proceedings Criminal Case No. 157 of 2024 emanating from Charge Sheet dated 29.01.2024 arising out of Case Crime No. 369 of 2023, PS- Kotwali Chunar, Mirzapur, for the offences under Section 354A, 504 and 506 Indian Penal Code pending before the Court of Civil Judge, (Junior Division) FTC/offences against woman, Mirzapur, otherwise the applicants shall suffer irreparable loss and hardship."

4. Learned counsel for the applicants submits that opposite party No.2 lodged the First Information Report (F.I.R.) with allegations of molestation and making indecent comments against her, who is a lady. On the facts so alleged in the First Information Report, the F.I.R. was registered as Case Crime No. 369 of 2023, Police Station Kotwali Chunar, Mirzapur, under Section 354A, 504 and 506 of the Indian Penal Code.

5. Learned counsel for the applicants further submits that the victim, i.e. opposite party No.2, in her statements recorded under Sections 161 and deposition recorded under Section 164 Cr.P.C., has not supported the version of the F.I.R. However, after investigation, the police has submitted charge-sheet under Sections 354A, 504 and 506 I.P.C. against the applicants. Learned counsel for the applicants further submits that the present case is a counter blast, as disciplinary proceedings had earlier been initiated against the opposite party No.2 (Victim) by the department.

6. Per contra, learned A.G.A. submits that the F.I.R. is not an encyclopedia. Therefore, the victim, i.e. opposite party No.2, has disclosed other facts which occurred with her at a later stage and the charge-sheet has been submitted in accordance with law and the learned Judicial Magistrate has taken cognizance on the sections mentioned in the charge-sheet.

7. On perusal of the record, it transpires that the learned Magistrate has taken cognizance on the charge-sheet as per law and if no offence is made out under the sections mentioned in the charge-sheet, the same can be examined at a later stage, as remedy is available to the accused under Section 239 Cr.P.C. (corresponding Section 262 B.N.S.S.) at the stage of framing of charges, where the accused shall be provided an opportunity of hearing. Thus, quashing/setting aside the cognizance order amounts to discharge at an early stage and adding or subtracting, excluding or including any section also amounts to alteration of charge for which an appropriate stage is provided under Sections 216, 218 and 221 Cr.P.C.

(corresponding Sections 239, 241 and 244 B.N.S.S.) for alteration of charge, separate charge for distinct offence and cases where it is doubtful as to what offence has been committed. The provisions mentioned in Section 216, 218, 221 Cr.P.C. (corresponding Section 239, 241, 244 BNSS) delineated below:

"Section 216 Cr.P.C., Court may alter charge- (1) *Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) *Every such alteration or addition shall be read and explained to the accused.*

(3) *If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*

(4) *If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.*

(5) *If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on*

which the altered or added charge is founded.

Section 218 Cr.P.C., Separate charges for distinct offences- (1) *For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.*

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2) *Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.*

Section 221 Cr.P.C., Where it is doubtful what offence has been committed- (1) *If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.*

(2) *If in such a case the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.*

Section 239 B.N.S.S., Court may alter charge- (1) *Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) *Every such alteration or addition shall be read and explained to the accused.*

(3) *If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*

(4) *If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.*

(5) *If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the altered or added charge is founded.*

Section 241 B.N.S.S., Separate charges for distinct offences- (1) *For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.*

Provided that where the accused person, by an application in writing, so desires and the Court is of opinion that such person is not likely to be prejudiced thereby, the Court may try together all or any number of the charges framed against such person.

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 242, 243, 244 and 246.

Section 244 B.N.S.S., Where it is doubtful what offence has been committed- *(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once or he may be charged in the alternative with having committed some one of the said offences.*

(2) If in such a case the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

8. The material collected by the Investigating Officer during investigation is not evidence as per the Indian Evidence Act, 1872 or Bharatiya Sakshya Adhiniyam, 2023. The term "evidence" is defined under Section 3 of the Indian Evidence Act, 1872 as well as under Section 2(1)(e) of the Bharatiya Sakshya Adhiniyam, 2023, which are delineated below respectively:

Evidence-*"Evidence" means and includes* □ *(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;*

(2) all documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence.

Section 2(1)(e) □Evidence" *means and includes* □ *(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;*

(ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

9. The remedy is available to the accused to seek discharge from the offences mentioned in the charge-sheet or cognizance-cum-summoning order. The Hon'ble Supreme Court in **State of Gujarat v. Girish Radhakrishnan Varde, (2014) 3 SCC 659**, has observed in paragraphs 13 and 14 of the judgment that the Judicial Magistrate or court cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge. The relevant paragraphs are delineated below:

"13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and **the magistrate cannot exclude or include any section into the chargesheet after investigation** has been completed and chargesheet has been submitted by the police.

14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be **precluded from seeking a remedy** if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the **prosecution** cannot be allowed to suffer prejudice by ignoring **exclusion of the sections** which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this

lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for **taking cognizance** after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report **cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C.** as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. **Simultaneously, the accused also has the liberty** at this stage to submit whether the charge under a particular provision should be framed or not and this is the **appropriate forum in a case based on police report** to determine whether the charge can be framed and a particular section can be **added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.**

(Emphasis supplied)"

10. The accused has a remedy to move a discharge application before the concerned Magistrate or Sessions Court. The Court, after providing an opportunity of hearing, may either discharge the accused or frame charges against the accused as per the provisions of law mentioned in the Code of Criminal Procedure, 1973 or the Bharatiya Nagarik Suraksha Sanhita, 2023. The relevant provisions are quoted below:

(i). In a **Sessions trial**, under Section 227 Cr.P.C. (corresponding Section 250 B.N.S.S.), an application for discharge is filed while under Section 228 Cr.P.C. (corresponding Section 251 B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

"Section 227 Cr.P.C., Discharge- *If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

Section 228 Cr.P.C., Framing of charge- *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which* □

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before such Magistrate on such date as he deems fit and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1),

the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 250 B.N.S.S., Discharge- *(1) The accused may prefer an application for discharge within a period of Sixty days from the date of commitment of the case under Section 232.*

*(2) If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is **not sufficient ground for** proceeding against the accused, he shall **discharge the accused** and record his reasons for so doing.*

Section 251 B.N.S.S., Framing of charge- *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which* □

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before such Magistrate on such date as he deems fit and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court of Session, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

(ii). In the **trial of warrant cases by a Magistrate instituted on a police report**, under Section 239 Cr.P.C. (corresponding Section 262 B.N.S.S.), an application for discharge is filed while, under Section 240 Cr.P.C. (corresponding Section 263 B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

"Section 239. Cr.P.C., When accused shall be discharged. □ *If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

Section 240 Cr.P.C., Framing of charge. □ *(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*

(2) The charge shall then be read and explained to the accused, and he shall

be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 262 B.N.S.S., When accused shall be discharged- *(1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under Section 230.*

*(2) If, upon considering the police report and the documents sent with it under Section 193 and after making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the **accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused** and record his reasons for so doing.*

Section 263 B.N.S.S., Framing of charge- *(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which the Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.*

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried. □

(iii). In the **trial of warrant cases by a Magistrate instituted otherwise than on a police report**, i.e. on a complaint, under Section 245 Cr.P.C. (corresponding Section 268 B.N.S.S.), an application for

discharge is filed while, under Section 246(1) Cr.P.C. (corresponding Section 269(1) B.N.S.S.), an order for framing of charge is passed. The aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

“Section 245 Cr.P.C., When accused shall be discharged- (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded, the Magistrate considers the charge to be groundless.

Section 246(1) Cr.P.C., Procedure where accused is not discharged- (1) If, when such evidence has been taken or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Section 268 B.N.S.S., When accused shall be discharged-- If, upon taking all the evidence referred to in Section 267, the Magistrate considers, for reasons to be recorded, that **no case against the accused has been made out** which, if unrebutted, would warrant his conviction, the Magistrate shall **discharge him**.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 269(1) B.N.S.S., Framing of charge- (1) If, when such evidence has been taken or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

11. After framing of charge, if the accused does not plead guilty, the trial court shall call the prosecution witnesses and the accused shall be given an opportunity of hearing to cross-examine the witnesses and lead evidence and before entering into defence, the Court may acquit the accused under Section 232 Cr.P.C. (corresponding Section 255 B.N.S.S.) in a Sessions trial. In the case of trial of warrant cases, the accused shall be provided an opportunity of hearing to cross-examine the prosecution witnesses under Sections 242 and 246(4) Cr.P.C. (corresponding Sections 265 and 269(4) B.N.S.S.). The provisions mentioned in the aforesaid sections of Cr.P.C. and B.N.S.S. are delineated below:

“Section 232 Cr.P.C., Acquittal- If, after taking the evidence for the prosecution, **examining the accused and hearing the prosecution and the defence on the point**, the Judge considers that there is **no evidence** that the accused committed the offence, the Judge shall record an order of **acquittal**.

Section 242 Cr.P.C., Evidence for prosecution- (1) If the accused refuses to plead or does not plead or claims to be tried or if the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

Section 246(4) Cr.P.C., Procedure where accused is not discharged- (4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

Section 255 B.N.S.S., Acquittal- If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.

Section 265 B.N.S.S., Evidence for Prosecution- (1) If the accused refuses to plead or does not plead, or claims to be tried

or the Magistrate does not convict the accused under section 264, the Magistrate shall fix a date for the examination of witnesses:

Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination:

Provided further that evidence of a witness under this sub-section may be recorded by audio-video electronic means.

Section 269(4) B.N.S.S., If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.”

13. Before the stage of framing of charge, remedy is available to the accused

as per the conditions mentioned in the judgments of **Arnesh Kumar vs. State of Bihar; 2014 (8) SCC 273** and **Satyendra Kumar Antil vs. Central Bureau of Investigation and Another; 2021 (10) SCC 773**, that the accused may not be taken into custody during investigation for the offence mentioned in the F.I.R. and the accused may file a writ petition for quashing of the F.I.R. or for stay of arrest during investigation or move an application for anticipatory bail or regular bail before the competent Court and participate in the discharge proceedings.

14. In view of the aforesaid facts and circumstances of the case, this Court is not inclined to grant any relief to the applicant as prayed in the prayer clause as the issue has already been settled by the Hon^{ble} Supreme Court in the case of **State of Gujarat v. Girish Radhakrishnan Varde; (2014) 3 SCC 659**, in paragraphs 13 and 14 of the judgment.

15. Accordingly, the application is dismissed.

16. The trial court is directed to frame charge in accordance with law.

(2025) 12 ILRA 744

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 17.12.2025

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Criminal Misc. Bail Application No. 43604 of
2025

Rihan

Versus

...Applicant

State of U.P.

....Opposite Party

Issue for Consideration

Whether the applicant is entitled to be released on bail during the investigation/trial.

Head Notes

The Bharatiya Nyaya Sanhita, 2023-Sections 109(1), 109(2), 118(2), 121(1), 189(5), 191(2), 191(3), 195(1), 196(1), 196(2), 223, 310(2), 324(5), 324(6), 61(2) & 62; 7 Criminal Law Amendment Act; The Bharatiya Nagarik Suraksha Sanhita, 2023-Section 483; The Prevention of Damage of Public Property Act, 1984-Section 3/4- That the slogan raised by an individual person or by a crowd that "gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda" is a challenge to the authority of law as well as sovereignty and integrity of India as the same incites the people for arm rebellion, therefore, this act not only will be punishable under Section 152 BNS but also against the basic tenets of Islam-Bail application rejected.(E-15)

Held- Sufficient material in the case diary showing that the applicant was part of an unlawful assembly which not only raised objectionable slogans challenging the authority of the Indian legal system but also caused injuries to police personnel and damaged public as well as private property, which is nothing but an offence against the State and he was arrested from the spot. Therefore, this court does not find any ground to release the applicant on bail.

(Para 12 & 14)

Case Law Cited

List of Acts

The Bharatiya Nyaya Sanhita; Criminal Law Amendment Act; The Prevention of Damage of Public Property Act, 1984

List of Keywords

Slogan raised; Challenging the authority of law : As well as sovereignty and integrity of India; Act not only punishable u/s 152 BNS; Also against the basic tenets of Islam

Case Arising From

Bail application has been filed with a prayer to release the applicant on bail in Case Crime No.489 of 2025, under Sections-109(1), 109(2), 118(2), 121(1), 189(5), 191(2), 191(3), 195(1), 196(1), 196(2), 223, 310(2), 324(5), 324(6), 61(2), 62 BNS, 7 Criminal Law Amendment Act and Section 3/4 Prevention of Damage of Public Property Act, Police Station-Kotwali, District-Bareilly, during the pendency of the trial.

Appearances for Parties

Counsel for Applicant(s) : Akhilesh Kumar Dwivedi
Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Akhilesh Kumar Dwivedi, learned counsel for the applicant and Sri Anoop Trivedi, learned Additional Advocate General, assisted by Sri Sanjay Kumar Singh and Sri Nitesh Kumar Srivastava, learned AGA for the State.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.489 of 2025, under Sections-109(1), 109(2), 118(2), 121(1), 189(5), 191(2), 191(3), 195(1), 196(1), 196(2), 223, 310(2), 324(5), 324(6), 61(2), 62 BNS, 7 Criminal Law Amendment Act and Section 3/4 Prevention of Damage of Public Property Act, Police Station-Kotwali, District-Bareilly, during the pendency of the trial.

3. As per the prosecution story, an FIR was lodged on 26.05.2025 with the allegation that the President of Ittefaq Minnat Council (in short 'INC'), Maulana Taukir Raza had given a call to the muslim community to assemble in the field of Islamia Inter College to make a demonstration against the State for atrocities as well as lodging false cases

against the muslim youth. Police received information on 25.09.2025 that Maulana Taukir Raza, as well as one of the leaders of the INC, Nadeem Khan, had incited people belonging to the Muslim community to assemble in the grounds of Islamia Inter College after the conclusion of namaz on 26.09.2025. Although the police requested them not to go ahead, Section 163 BNSS was also enforced in District Bareilly, prohibiting any assembly of more than five persons. Thereafter, the first informant, who was posted near the house of INC leader Nadeem Khan in Biharipur, Police Station- Kotwali, District-Bareilly, found that Nadeem Khan incited the people to assemble and proceed to Islamia Inter College, and a crowd also came out from the house of Nadeem Khan. Thereafter, he also left the place to incite the people at other places. It was found that the crowd of 500 people assembled in Biharipur and they started making slogans against the Government and also raising slogans "**gustakh-e-nabi ki ek saja sar tan se juda, sar tan se juda**" and police tried to stop them but they started snatching the canes of the policemen and also torn their uniform and on objecting by the police, they started throwing petrol bomb, firing and stone pelting which has resulted into injury to several policemen and also damage to several police and private vehicles and on the spot, 7 persons including the present applicant were arrested and based on their statements, names of several persons including the main accused, Maulana Taukir Raza and Nadeem Khan, came to surface. On the basis of the statements of these arrested persons and on the identification of other co-accused, an FIR was lodged against 25 named and 1700 unknown persons. Thereafter, police also arrested other named accused and identified unknown

persons on the basis of information received from arrested persons, as well as independent witnesses and also on perusal of CCTV footage.

4. Learned counsel for the applicant has submitted that the applicant has been falsely implicated and he was arrested from his home, but the police falsely claimed his arrest from the spot. It is further submitted that the applicant has no criminal history and there is no incriminating material against him. Therefore, the applicant is entitled to be released on bail during the investigation/trial.

5. Per contra, Sri Anoop Trivedi, learned Additional Advocate General, assisted by Sri Sanjay Kumar Singh and Sri Nitesh Kumar Srivastava, learned AGA, have vehemently opposed the prayer and submitted that the act of the applicant and other co-accused is not only promoting enmity between the religious communities but also against the State as well as against the unity and integrity of India. It is further submitted by the learned Additional Advocate General that the slogans used by the crowd "gustakh-e-nabi ki ek saja sar tan se juda, sar tan se juda" itself shows that the persons involved in the crowd do not have any respect for the Indian legal system, as disrespect to any God or Nabi of any religion is punishable in BNS by providing appropriate punishment, and there is no such punishment for beheading a person who disrespects the God or Nabi of any religion. Therefore, such an act is punishable not only u/s 152 of BNS but also under other sections of BNS, as the persons involved, including the applicant, challenged the sovereignty and integrity of India by their act of raising the above-

mentioned slogans and destroyed public and private properties.

6. Considering the aforesaid submission and on perusal of record, it is not in dispute that at the instigation of INC President, Maulana Taukir Raza as well as another leader, Nadeem Khan, a crowd of more than 500 people assembled in Biharipur area of Police Station- Kotwali and made slogans against the State as well as the disputed/objectionable slogan "**gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda**" and on being prevented by the police, they starting pelting stones, firing, damaging police and private vehicles and applicant as well as other six persons were also arrested from the spot. However, before analysing the aforesaid fact, it would be appropriate to mention that the offence of blasphemy or disrespecting any religion or God is punishable u/s 299 and 196 BNS. Section 302 of BNS further provides that if any person deliberately utters any word to wound religious feeling, then he shall be punished. In BNS, there is a specific Chapter, i.e. Chapter XVI, which provides offences relating to religion, and the relevant sections are Sections 298, 299 and 302 BNS, which are quoted as under:

"298. Injuring or defiling place of worship with intent to insult religion of any class.-Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may

extend to two years, or with fine, or with both.

299. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.-Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

302. Uttering words, etc., with deliberate intent to wound religious feelings of any person.-Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

7. Apart from this, if any group of persons either by spoken or written or by sign or visible representation or through electronic communication promote or attempt to promote enmity between the different groups on the ground of religion then, that is punishable u/s 196 BNS with the imprisonment up to 3 years and if same has been committed in place of any worship then same would be punishable up to 5 years. Section 196 of BNS is being quoted as under:

"196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.? (1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional

group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

8. From the perusal of the above section, it is clear that BNS has taken care of all such situations where any person disrespects any religion or its God, Prophet, Guru or attempts to promote enmity between the religious groups by chanting any slogan or visible representation, then appropriate punishment has also been provided. Therefore, chanting the slogan "**gustakh-e-nabi ki ek saja sar tan se juda, sar tan se juda**" which provides punishment of beheading for disrespecting the Nabi(Prophet) amounts to challenging the sovereignty and integrity of India and also the indian legal system, which is based on solemn constitutional objective, which is rooted in democratic principles. The Constitution of India provides freedom of speech and expression as well as other liberties to all Indian citizens irrespective of their caste, creed or religion. Therefore, if a person, instead of respecting the law framed under the Indian constitution, attempts to challenge the law or promotes or incites people to commit an offence in the garb of providing punishment, though the same is not provided in the criminal law then that should be dealt with strictly. The Constitution of India permits the right to assemble and freedom of speech and expression under Article 19 of the Constitution of India, but it has certain

limitations as per Article 19(2) of the Constitution of India. Therefore, any slogan by a crowd that provides a death sentence contrary to the appropriate punishment provided by the BNS or other criminal law is not only against the constitutional object but also a challenge to the lawful authority of the indian legal system and also punishable under Section 152 BNS.

9. Generally, slogans or proclamations are used in every religion, but these slogans are for the purpose of showing their respect to the concerned God or Guru, like in Muslim "*nara-e-takbir*" followed by "*Allahu Akbar*" which means God is the greatest and there is no dispute or objection about it. Similarly, in the Sikh religion, the slogan (proclamation) "*Jo bole so nihaal, Sat Sri Akal*" is also an acknowledgement of God as the ultimate, timeless reality and this call was popularised by Guru Gobind Singh Ji. Similarly, chanting the slogans (Devotional call) in a cheerful and joyful moments by Hindus like "*Jai Shree Ram*" or "*Har Har Mahadev*". Therefore, raising or chanting these slogans (Devotional calls or proclamations) by any person or a crowd is not an offence unless they are maliciously used to intimidate persons belonging to other religions. Though the slogan "*gustakh-e-nabi ki ek saja sar tan se juda, sar tan se juda*" does not have any trace in the Quran or any other religious text belonging to Muslims, even then this slogan is being used widely by several muslim persons without knowing its correct meaning and effect.

10. Before 1947, there were several incidents where the Hindus and Muslims quarrelled with each other on religious issues; therefore, in 1927, the blasphemy law was enacted by the English

Government, covering the hurting of religious feelings as a crime. Thereafter, on the division of India and Pakistan in 1947, the Pakistan Government enacted the blasphemy law. As per this law, any person who disrespects the religion or the Quran would be liable to punishment, and this blasphemy law in Pakistan was further amended by the Pakistani Army Commander, Mohammad Zia-ul-Haq, in 1982 by adding section 295-B wherein it is mentioned that in case any person says anything disrespecting to Quran then a person would be liable to life imprisonment or death. In 1986, the Pakistani blasphemy law was again amended, and Section 295(c) was added, which provides that disrespect to "*Huzur Sallallahu alayhi wasallam*" shall also be punishable with the life imprisonment or death. Thereafter, the Sariate Court in Pakistan further made this law more strict and directed that disrespect to other Nabis (nabiyyin), apart from "*Sallallahu alayhi wasallam*", will also be punishable with the punishment of only death. Thereafter, in the year 2011, a Christian woman, Asia Bibi, was convicted under the blasphemy law in Pakistan. The Governor of Punjab, Salman Taseer, educated in London, supported the women Asia Bibi, and this created huge unrest in the Pakistan and the crowd assembled on roads making demonstration under the leadership of Mulla Khadim Hussain Rizvi, who for the first time used the slogan "gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda" and thereafter this slogan also spread to other countries including India and has been widely misused by certain muslims just to intimidate the people of other religions and also to challenge the authority of the State. Therefore, it is clear that the slogan "gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda" used by the crowd in India

is nothing but used to challenge the authority of law and sovereignty of India and also to incite people for armed rebellion.

11. There are several instances which shows even Prophet Mohammad had shown his kindness despite being disrespected by some people and he never desired or expressed to behead such person. In one incident, when Prophet Mohammad travelled to city of Taif, a non-Muslim woman neighbour, who frequently harmed the prophet by throwing garbage in his path but prophet never retaliated or complaint. When the neighbour fell ill, the prophet went to visit her out of kindness, which ultimately lead the neighbour to embrace the Islam. The above act on the part of prophet Mohammad demonstrated his unwavering principle of repelling evil with good, his deep passion, and his focus on long term guidance over immediate retribution. Therefore, if any follower of Islam raises a slogan for beheading any person, who disrespects the Nabi, that is nothing but disrespect to the ideals of prophet Mohammad. As love, kindness and compassion attract others but showing expression of violence through words creates enmity or annoyance towards the religion of the person who promotes violence.

12. In view of above analysis, it is clear that the slogan raised by an individual person or by a crowd that "gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda" is a challenge to the authority of law as well as sovereignty and integrity of India as the same incites the people for arm rebellion, therefore, this act not only will be punishable under Section 152 BNS but also against the basic tenets of Islam.

13. Coming to the fact of the present case, it is not in dispute that such a disputed or objectionable slogan "*gustakh-e-nabi ki ek saja, sar tan se juda, sar tan se juda*" was used by the crowd of thousands of people assembled at the instigation of Maulana Taukir Raza and when police stopped the crowd and informed that in view of the enforcement of order under Section 163 BNSS, they cannot assemble and their assembly is unlawful and also requested not to assemble in Islamia Inter College but the people started pelting stone, throwing petrol bombs and firing which resulted in injuries to many policemen and they had also damaged public and private property, thereafter several persons including the present applicant were arrested from the spot.

14. There is sufficient material in the case diary showing that the applicant was part of an unlawful assembly which not only raised objectionable slogans challenging the authority of the Indian legal system but also caused injuries to police personnel and damaged public as well as private property, which is nothing but an offence against the State and he was arrested from the spot. Therefore, this court does not find any ground to release the applicant on bail.

15. Accordingly, the bail application of the applicant is rejected.

(2025) 12 ILRA 750

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 18.12.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

THE HON'BLE ABDHESH KUMAR

CHAUDHARY, J.

Criminal Misc. Writ Petition No. 4791 of 2025

Rajesh Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Matter pertains to whether the petitioner, who is neither the informant, nor the victim, nor the closest legal heir of deceased within the meaning of s. 2(wa) of Code of Criminal Procedure, possesses the requisite locus standi to maintain writ petitions u/a 226 of Constitution seeking transfer of investigation of concluded criminal cases to the Central Bureau of Investigation, particularly when charge-sheets have already been filed, trials have commenced or proceedings are sub judice, and identical relief earlier sought by the victim's wife stood withdrawn.

Headnotes

Indian Penal Code, 1860 - 120-B, 302, 307 and 34 - Official Secrets Act, 1923 - s. 5 - Code of Criminal Procedure, 1973 - ss. 2(wa), 216, 320(4) (b), 394 - Civil Procedure Code, 1908 - s. 2 (11) - Hindu Succession Act, 1956 - s. 8 - The instant connected writ petitions were filed by the petitioner, the uncle of late Ajeet Singh, seeking transfer of investigation of two FIRs being Case Crime No. 0015 of 2021 under various sections of IPC relating to murder of Ajeet Singh, and Case Crime No. 445 of 2020 under Official Secrets Act, 1923 to Central Bureau of Investigation, alleging undue influence of a politically influential accused upon the investigating agency, namely the Special Task Force - FIR was initially lodged by an injured eyewitness and, after investigation by STF, charge-sheets were filed against multiple accused, including the said influential person under lesser sections, whereupon trial commenced and witnesses began to be examined - The wife of deceased, being the primary victim, had earlier filed multiple writ petitions seeking identical relief of CBI investigation, which were dismissed as withdrawn after remand by Supreme Court, without any challenge to charge-

sheet - Thereafter, the instant petitioner, who was neither the informant nor a legal heir in closest degree, instituted the instant writ petitions without assailing the charge-sheets, despite the fact that in the second FIR cognizance had already been taken and proceedings were stayed by High Court in an application filed u/s 482 Cr.P.C.

Held: The victim in a criminal case is a person, who has suffered a loss or injury caused by an act or omission of accused person and also includes his/her legal heir - In the instant case, FIR No.0015 of 2021 has been lodged by injured person, who was with the deceased at the time of incident in question wherein the investigation has been concluded and charge sheet has been filed - The wife of deceased had rightly filed some writ petitions as she was a victim in view of s. 2 (wa) Cr.P.C. but she had withdrawn all the writ petitions, therefore, those writ petitions were dismissed by High Court being withdrawn - The present petitioner, who is uncle of deceased, may not come within the purview of victim or legal heir of deceased, as the wife outshines the uncle in 'closest legal heir test' to be considered as legal heir in view of s. 2 (wa) of Cr.P.C. - The locus standi of a stranger to interfere in criminal proceedings is absolutely limited - Thus, the petitioner is not a victim as per the provisions of s. 2(wa) of Cr.P.C. - Further, the prayer of 'transfer of investigation to CBI' is stale and technically infructuous as the investigation has not only started but stands already completed in both the FIRs and even trial has been commenced in the FIR No.0015/2021 and all the proceeding of FIR No.445/2020 has been stayed by High Court - The entire case has been premised on apprehension and no cogent evidence has been provided on record to entail any entertainment of such prayer - Any relief granted at this stage would amount to interfering by a stranger to an ensuing trial, which is not permissible under the provisions of Code of Criminal Procedure and specifically barred in view of judgment of Supreme Court - Thus, liberty is granted to the parties to move appropriate applications before the learned Trial Court at the relevant stage in accordance with the provisions of the Code of Criminal Procedure (now BNSS). [Paras 35, 42, 43] (E-13)

Case Law Cited

All India Democratic Women's Association v. State and Others, **1998 Cri. L.J. 2629 - relied on**

Shri P.V. Narshimharao v. State, **1997 Cri. L.J. 3117**; Prisoners Rights Forum represented by its Director P. Pugalenthil v. High Court of Judicature at Madras, **AIR 2014 MADRAS 246**; Sanjai Tiwari v. State of U.P., **2020 SCC OnLine SC 1027 - referred to**

List of Acts

Indian Penal Code, 1860; Official Secrets Act, 1923; Code of Criminal Procedure, 1973; Civil Procedure Code, 1908; Hindu Succession Act, 1956

List of Keywords

Locus standi; Victim; Legal heir; Closest legal heir; Writ of mandamus; Transfer of investigation; Central Bureau of Investigation (CBI); Special Task Force (STF); Charge -sheet; Supplementary charge-sheet; Cognizance; maintainability; Criminal proceedings; Interference with trial; Stranger to the proceedings; Apprehension; Investigation concluded; Pending proceedings; Discretionary jurisdiction; s. 2(wa), 216 Cr.P.C., 482; Withdrawal of writ petition; Dismissed as withdrawn; Misconceived petition; Infructuous relief; Alteration of charge; Administration of justice; Abuse of process of law.

Case Arising From

ORIGINAL JURISDICTION: (Criminal Misc. Writ Petition No. 4791 of 2025)

Connected with other Matter

(Criminal Misc. Writ Petition No. 6047 of 2025)

From the FIR dated 07.01.2021 registered at P.S. Vibhuti Khand District Lucknow

Appearances for Parties

Advs. for the Petitioner:

Kapil Misra, Ashish Kumar Singh

Advs. for the Respondent:

G.A., Anurag Kumar Singh, Naved Ali

(Delivered by Hon'ble Rajesh Singh
Chauhan, J.
&

Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Sri Kapil Misra, learned counsel for the petitioner and Sri V.K. Singh, learned Government Advocate assisted by Sri Rao Narendra Singh, learned counsel appearing for the State in Criminal Misc. Writ Petition No.4791 of 2025 (hereinafter referred to as □first writ petition□) and Sri Kapil Misra, learned counsel for the petitioner, Sri V.K. Singh, learned Government Advocate assisted by Sri Rao Narendra Singh, learned counsel appearing for the State as well as Sri Naved Ali, learned counsel for opposite party no. 7 in Criminal Misc. Writ Petition No.6047 of 2025 (hereinafter referred to as □second writ petition□).

2. Since the petitioners in both the writ petitions are the same and in his second writ petition, the petitioner has tried to raise an issue as to how the main accused person may have influenced the investigating agency in the first case i.e. Special Task Force (hereinafter referred to as □STF□) inasmuch as according to him, the said main accused with the help of one Journalist has obtained certain secret and/or confidential documents from the STF by adopting illegal means while the investigation in the first case was being transferred from local police to STF, therefore, he has prayed for transfer of the investigation in both the cases to Central Bureau of Investigation (hereinafter referred to as □CBI□).

3. In view of the above, since the second writ petition is an off-shoot of the first writ petition, both these petitions have been heard together and with the consent of

learned counsel for the parties, these writ petitions are being connected and decided by this common order.

4. Main prayer of first writ petition bearing Criminal Misc. Writ Petition No.4791 of 2025 is as under:-

“1. Issue a writ order or direction in the nature of Mandamus commanding the respondents to transfer and entrust of the investigation of FIR dated 07.01.2021 registered as Case Crime No.15 of 2021 u/s 120-B, 302, 307, 34 I.P.C. at P.S. Vibhuti Khand District Lucknow to Central Bureau of Investigation and further direct the respondent No.5 to carry out a speedy and expeditious investigation in the aforementioned case within a specified time. (Annexure No. 1).□

5. Main prayer of second writ petition bearing Criminal Misc. Writ Petition No.6047 of 2025 is as under:-

“1. Issue, a writ order or direction in the nature of Mandamus commanding the respondents to transfer and entrust of the investigation of FIR registered as Case Crime No. 445 of 2020 u/s 5 & of Official Secret Act, 1923 at P.S. Vibhuti Khand District Lucknow to Central Bureau of Investigation and further direct the respondent No.5 to carry out a speedy and expeditious investigation in the aforementioned case within a specified time. (Annexure No. 1).”

6. Notably, in both the writ petitions, writs of mandamus have been prayed seeking to transfer and entrust the investigation of both the FIRs bearing (i) Case Crime No.0015 of 2021, under Sections 120-B, 302, 307 & 34 IPC, Police Station- Vibhuti Khand, District- Lucknow

and (ii) Case Crime No.445 of 2020, under Section 5 (2) of Official Secrets Act, 1923, Police Station- Vibhuti Khand, District-Lucknow, to the Central Bureau of Investigation (hereinafter referred to as □CBI□) and CBI be directed to carry out speedy and expeditious investigation in the aforesaid cases, therefore, it is amply clear that writ of certiorari has not been prayed in both the writ petitions assailing any FIR or consequential proceedings.

7. At the very outset, since the learned Government Advocate as well as the learned counsel for the opposite party no.7 has raised a preliminary issue relating to maintainability of the present petitions on the basis of locus standi of the petitioner, this Court, as such, would like to examine the locus of the present petitioner to file both the aforesaid writ petitions.

8. In both the aforesaid writ petitions, the present petitioner is neither informant nor complainant nor the accused person but he is admittedly uncle of one late Ajeet Singh, who was murdered on 06.01.2021 in the State capital and for which Case Crime No.0015 of 2021 (supra) came to be lodged on 07.01.2021 against three accused persons, namely, Dhruv Singh alias Kundu Singh, Akhand Pratap Singh, Kanhaiya Vishwakarma alias Girdhari alias Doctor and three unknown persons, likewise the FIR bearing Case Crime No.445 of 2020 (supra) has been lodged by one Sub Inspector Sri Shiv Netra Singh against one Sri Suresh Bahadur Singh, Senior Journalist of Jan Sandesh and Dhananjay Singh for possessing one secret document allegedly by adopting illegal means. In the second FIR, the present petitioner is neither a victim nor any affected party in any manner whatsoever.

9. For the sake of convenience, definition of □victim□ mentioned under Section 2 (wa) of Cr.P.C. is being reproduced hereunder:-

“Section 2 (wa) □victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression □victim□ includes his or her guardian or legal heir.□

10. Perusal of the aforesaid definition clearly indicates that the victim would be a person, who has suffered a loss or injury caused by an act or omission by an accused person and also includes his/her legal heir. The informant of the first FIR No.0015 of 2021 is Mohar Singh, son of Sri Kling Singh, who is friend of the deceased (Ajeet Singh) and received injuries as he was with him when the alleged incident of firing and murder took place on 06.01.2021.

11. It would be pertinent to mention herein that after the registration of the aforesaid FIR No.0015 of 2021 (supra), wife of late Ajeet Singh filed a writ petition bearing Criminal Misc. Writ Petition No.25544 of 2021, (Smt. Ranoo Singh Vs. State of U.P. and Others), seeking prayer in the nature of mandamus, thereby commanding the respondents to transfer and entrust the investigation of the said FIR to CBI. The reason for seeking such a transfer was that one Ex-Member of Parliament (Dhananjay Singh), who is alleged to be involved in the murder of her husband, is a highly influential person and investigation already transferred from local police to STF did not yield any result and on the contrary was trying to protect the said Dhananjay Singh. Thus, in the

aforesaid background, since she was very much apprehensive that if the investigation is conducted by the STF, Dhananjay Singh would either be saved or he would be implicated only in minor sections, the said writ petition was filed before this Court.

12. Learned AGA has informed the Court that after thorough investigation, charge sheet has been submitted against thirteen accused persons including Dhananjay Singh, for whom charge sheet has been filed only under Sections 212 & 176 IPC by the STF.

13. Having considered the aforesaid submissions of learned counsel for the parties, this Court had dismissed the aforesaid writ petition vide order dated 30.11.2022 observing that this Court did not find any ground to entrust the matter to any other agency such as CBI as charge sheet had already been filed against thirteen accused persons including Ex-Member of Parliament, Dhananjay Singh and most importantly no infirmity during investigation by the STF in the murder of the husband of the petitioner was shown or brought on record. However, this Court while dismissing the aforesaid petition left open for the petitioner to challenge the charge sheet, if she was aggrieved and if so advised.

14. Subsequently, wife of late Ajeet Singh, namely, Ranoo Singh assailed the aforesaid order of this Court dated 30.11.2022 before the Apex Court by filing SLP (C) No.12751/2022 (Criminal Appeal No.1867/2024), □Ranoo Singh Vs. State of U.P. & Ors.□, before the Apex Court and the main plea of learned counsel for the petitioner (Ranoo Singh) was that even if the charge sheet has been filed, the prayer seeking transfer of the investigation to an

independent agency may not be considered as infructuous, if serious allegations have been levelled against the accused persons. It was argued by the learned counsel for Ranoo Singh that if this Court was of the view to dismiss the petition for the reason that the charge sheet has been filed, at least this Court ought to have assigned reasons in brief as to why the grounds prayed for transfer were not found sufficient.

15. On the basis of the aforesaid submission of the learned counsel, the order of this Court dated 30.11.2022 was set aside and the matter was remitted back to this Court for deciding the writ petition afresh strictly in accordance with law by the Apex Court vide order dated 02.04.2024. The order to that effect dated 02.04.2024 (supra) reads as under:-

“1. Delay condoned.

2. Leave granted.

3. These appeals challenge the judgments and orders passed by the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, thereby rejecting the writ petitions filed by the appellant(s) for transferring of investigation to an independent agency like the Central Bureau of Investigation (for short, □CBI□).

4. The only reason given in the impugned judgments and orders is that since the charge-sheets had already been filed, no ground was made out for transfer of investigation to another agency, viz, CBI.

5. In our view, this cannot be a ground for rejecting the prayer for transfer of investigation to an independent agency.

When serious allegations have been made by the appellant(s), the High Court should at least have assigned reasons in brief as to why the grounds prayed for transfer were not found to be sufficient.

6. In that view of the matter, the impugned order(s) are quashed and set aside and the matters are remitted back to the High Court for deciding them afresh, in accordance with law.

7. We request the High Court to decide the petitions as expeditiously as possible and in any case within a period of six months from today.

8. We clarify that we have not considered the merits of the matters and the impugned judgments and orders have been quashed and set aside only on the aforesaid grounds.

9. The appeals are accordingly disposed of.

10. Pending application(s), if any, shall stand disposed of. □ ”

16. Later, Smt. Ranoo Singh again filed a Miscellaneous Application No.428/2025 in Crl.A. No.1867/2024, □Ranoo Singh Vs. State of U.P. & Ors.□, before the Supreme Court for appropriate order/ directions and the Hon□ble Court again passed an order dated 21.03.2025 which reads as under:-

“1. Vide order dated 02.04.2024, we had requested the High court to decide the petition as expeditiously as possible and in any case within a period of six months from today.

2. There is no doubt that the High Court is not an inferior Court to the

Supreme Court. However, when the Supreme Court had made a request to the High Court, it is expected that due weightage should be given to such a request.

3. We, therefore, reiterate our request to decide the matter within a period of three months from today.

4. The petitioner is at liberty to move an application before the concerned Bench of the High Court along with this Order.

5. The miscellaneous application is, accordingly, disposed of.”

17. After the aforesaid order dated 21.03.2025, which was passed by the Apex Court, the petitioner (Ranoo Singh) in that petition, instead of pursuing her writ petition, which was to be decided in compliance of the order of the Apex Court, filed an application for withdrawal of the said writ petition before this Court.

18. Notably, after filing of the writ petition bearing Criminal Misc. Writ Petition No.25544 of 2021, wife of late Ajeet Singh filed three more writ petitions bearing (i) Criminal Misc. Writ Petition No.27624 of 2021, (Ranoo Singh Vs. State of U.P. and Others), (ii) Criminal Misc. Writ Petition No.3180 of 2024, (Ranoo Singh Vs. State of U.P. and Others) and (iii) Criminal Misc. Writ Petition No.3786 of 2024, (Ranoo Singh Vs. State of U.P. and Others), more or less on the same prayers and all the writ petitions were connected together. The applications for withdrawal of the writ petitions were filed in Criminal Misc. Writ Petition No.25544 of 2021 (i.e. remanded by the Supreme Court) as well as in three other connected

writ petitions. Interestingly, the present petitioner (Rajesh Singh) filed an application for impleadment also in Criminal Misc. Writ Petitions No.3180 of 2024 and 3786 of 2024. The Division Bench of this Court vide a common order on 23.04.2025 in all the aforesaid writ petitions as well as in Criminal Misc. Applications filed in the aforesaid writ petitions, passed the following order dated 23.04.2025 (supra), which reads as under:-

□[C.M. Application No. 8 of 2025 (withdrawal of CRLP No. 25544 of 2021)]

[C.M. Application No. 5 of 2025 (withdrawal of CRLP No. 27624 of 2021)]

[C.M. Application No. 4 of 2025 (withdrawal of CRLP No. 3180 of 2024)]

[C.M. Application No. 4 of 2025 (withdrawal of CRLP No. 3786 of 2024)]

Sri Ajit Singh, Advocate appears on behalf of the petitioner-Ranoo Singh in Crl. Misc. Writ Petition No. 25544 of 2021, Crl. Misc. Writ Petition No. 27624 of 2021, Crl. Misc. Writ Petition No.3180 of 2024 and Crl. Misc.Writ Petition No. 3786 of 2024 and he says that he has filed applications for withdrawal of the petition on behalf of the petitioner in all such writ petitions. These applications for withdrawal are duly supported by the affidavit of the petitioner herself.

Sri Rao Narendra Singh, Advocate appears on behalf of State-respondents in Crl. Misc.Writ Petition No. 3786 of 2024 and Sri Anurag Kumar Singh, Advocate appears on behalf of respondents in Crl. Misc. Writ Petition No. 3180 of 2024. They have expressed their no

objection to the writ petitions being dismissed as withdrawn.

Accordingly, all the withdrawal applications are allowed and the Crl. Misc. Writ Petition No. 25544 of 2021, Crl. Misc. Writ Petition No. 27624 of 2021, Crl. Misc. Writ Petition No.3180 of 2024 and Crl. Misc.Writ Petition No. 3786 of 2024 are hereby dismissed as withdrawn.

[Application for Impleadment in CRLP No. 3180 of 2024]

[C.M. Application No. 6 of 2025 (Impleadment in CRLP no. 3786 of 2024)]

Sri Kapil Mishra, Advocate appears and has pointed out that he has filed impleadment applications in Crl. Misc. Writ Petition No. 3180 of 2024 and Crl. Misc. Writ Petition No. 3786 of 2024. However, this Court finds no good ground to allow such impleamdnet applications, as the writ petitions have been dismissed as withdrawn.

The applications for impleadment are, accordingly, disposed of."
(Emphasis Supplied)

19. Although no reasons were attributed by Ranoo Singh to withdraw these writ petition, however, it appears that since the charge sheet had already been filed in the FIR/ Case Crime No.0015 of 2021 (supra) and that charge sheet was not assailed in any of the aforesaid writ petitions, therefore, it was quite possible that she might have thought to challenge the charge sheet by filing appropriate petition before the competent court. In any case, all the writ petitions filed by the wife of the deceased late Ajeet Singh have been □dismissed as withdrawn□ and all the

applications were disposed of accordingly vide order dated 23.04.2025.

20. It is noteworthy that in Criminal Misc. Writ Petition No.3180 of 2024 (CRLP); Ranoo Singh Vs. State of U.P. and others, the present petitioner Rajesh Singh had filed impleadment application, which was rejected vide order dated 23.04.2025 (supra), therefore, the present petitioner feeling himself aggrieved from the order dated 23.04.2025, so far as his impleadment has been denied, sought similar relief before the Apex Court by filing petition bearing Writ Petition (Criminal) No.201/2025, Rajesh Singh Vs. State of UP & Anr., under Article 32 of the Constitution of India. The Hon^{ble} Supreme Court did not entertain the writ petition, however, granted liberty to the petitioner (Rajesh Singh) to file a fresh writ petition before this Court and it was directed in the disposal order, that if such a writ petition is filed, the same shall be considered on its own merit without being influenced by the rejection of the petitioner's application for impleadment in the writ petition filed before this Court, which has already been withdrawn. In the light of the aforesaid observation, the Hon^{ble} Supreme Court disposed of the aforesaid writ petition.

21. The petitioner filed the present first writ petition, but again did not assail the charge sheet nor filed any other petition before this Court challenging the charge sheet and has prayed the same identical relief, which was earlier prayed by the wife of late Ajeet Singh (Smt. Ranoo Singh).

22. This Court is unable to comprehend as to what is the locus of the present petitioner to file the present writ petition, when he is neither the "victim"

in view of Section 2 (wa) of Cr.P.C. nor is a person aggrieved in any manner or a legal heir. Admittedly, The petitioner is uncle of the deceased late Ajeet Singh and even if the degree of closeness of relation of the present petitioner with the deceased is considered, the wife is immediate victim and aggrieved, so the uncle cannot be placed above her. According to this Court, no doubt a restrictive meaning ought not to be given to the meaning of "legal heir" as per Section 2(wa) of Cr.P.C., however, keeping in view the nature of criminal proceedings and the limited right available even to a complainant, once the criminal machinery has been set into motion, the meaning of "victim" has to be given a purposeful interpretation.

23. This Court finds that there is no definition of "legal heir" under the Code of Criminal Procedure. However, there are stray mention of words like "near relative", "legal representative" in the said code, which can be construed to have cognate meaning to "legal heir." As far as the use of word "near relative" is concerned, it has been mentioned under Section 394 of the Code of Criminal Procedure, relating to abatement of appeals. Here also, this Court finds that in the explanation appended to the said Section, "near relative" has been given to mean a parent, spouse, lineal descendant, brother or sister. Further, as far as "legal representative" is concerned, the same has been used under Section 320(4) (b) relating to compounding of offences, wherein it says "legal representative" shall mean to be a person, as defined in the Civil Procedure Code, 1908. This Court finds that as per Section 2 (11) of the Civil Procedure Code, defines "legal representative" to be a person who in law represents the estate of a deceased person,

which brings the schedule incorporated as per Section 8 of the Hindu Succession Act, 1956 appended to the said Act relating to □Class-I□ and □Class-II□ heir into limelight. Interestingly, in both the cases, this Court finds that Uncle is a far away and/or distant relative and in a way does not find any place both under the meaning of the word □near relative□ or □legal representative□ mentioned in the Code of Criminal Procedure.

24. Thus, this Court ought to devise a mechanism which may be called as the □closest legal heir test□ to determine as to whether a particular person would come under the definition of □legal heir□ in terms of Section 2(wa) of Cr.P.C. or not, keeping in mind that the law has to interpreted to ensure that the □spirit of justice□ prevails, recognizing the right to prosecute a legitimate grievance survives the victim, especially in serious cases, as the present one. According to the □closest legal heir test□, the closest or the proximate legal heir of the victim must outshine the next closer legal heir because the administration of justice does not warrant any dispute even on determining as to who would be the □legal heir□ to pursue the grievance of a victim, in pursuing a criminal case, which is fundamentally construed to be an offence against the society and therefore, it is the primary duty of the State to protect the right and interest of the victim.

25. Having said so, this Court is called upon to exercise its discretionary power in determining the legal heir of the victim in the present peculiar facts and circumstances. It is pertinent to mention herein that guardian by itself is a different class under the definition of Section 2(wa) Cr.P.C. relating to victim and as such, the

same may not be mixed with the concept of legal heir, as they form a class by itself. As far as the present case is concerned, this Court finds that the wife of the victim, late Ajeet Singh (i.e. Ranoo Singh) is very much available and as such, as per the 'closest legal heir test', the right of the wife as a □legal heir□ outshines the right of an uncle, as wife is a more closer legal heir in the pedigree table, than an uncle. Therefore, the right of a wife to be a legal heir of the victim is at a higher pedestal than an uncle. The wife has admittedly withdrawn her all writ petitions seeking CBI investigation, therefore, the same relief now being sought by a far away legal heir i.e. uncle has to be seen with some circumspection and keeping in view of the historical facts of the present case as has been narrated in the preceding paragraphs can not be entertained in the absence of any authorization and/or N.O.C. from the wife.

26. Further, the present writ petition has not been filed in the nature of PIL, for which in any case this Court does not have the roster jurisdiction and when the learned counsel for the petitioner was given an option to pursue the relief sought in the present writ petition, the learned counsel choose to press the present writ petition in its present form and prayed for disposal of the same in accordance with law.

27. Notably, this Court finds that much water has flown under the bridge after the writ petition, seeking similar relief had been withdrawn by the wife of the victim (deceased) after completion of the investigation, charge sheet has been filed, that charge sheet could have been assailed before this Court by filing a petition under Section 482 Cr.P.C. or in this writ petition also but admittedly, that charge sheet has

not been assailed either by the wife of the deceased or by the present petitioner (if, at all, he claimed to come under the definition of legal heir of □victim□).

28. It has been informed by the learned Government Advocate that a number of witnesses of fact have already been examined before the learned Trial Court including the complainant in the trial arising out of FIR No.0015 of 2021 (supra) and the trial is going on smoothly and in full swing.

29. So far as the second writ petition is concerned, the complainant is one Shiv Netra Singh, Sub Inspector and allegations have been levelled against two accused persons, namely, Suresh Bahadur Singh and Dhananjay Singh. The petitioner is not the victim as the alleged crime is not distinctly affecting the petitioner or his family. In that case too, the investigation has been concluded and charge sheet dated 10.12.2022 has been submitted before the Court concerned. Thereafter, cognizance has been taken by the Chief Judicial Magistrate on 16.01.2023. Both the accused persons have been summoned. The aforesaid charge sheet and summoning order have been challenged before this Court by opposite party no.7 of the second writ petition, namely, Suresh Bahadur Singh bearing Application U/S 482 No.1009 of 2024 and this Court vide order dated 20.02.2024 has stayed the further proceedings of Criminal Case No.2842 of 2023 titled as □State Vs. Suresh Bahadur Singh□, pending in the Court of Chief Judicial Magistrate, Lucknow arising out of FIR No.445 of 2020 (supra). Therefore, trial in the second writ petition arising out of FIR No.445 of 2020 has been stayed and in a way this Court has

already ceased of the said issue and the same is pending for consideration.

30. Sri Kapil Misra has tried to explain the reason behind filing of both the writ petitions by stating that Ex-Member of Parliament, Dhananjay Singh, is having close association with STF and the STF was the investigating agency, therefore, Dhananjay Singh was extended undue benefit by not filing charge sheet against him under some heavier Sections relating to murder and conspiracy and explained the fact that when the investigation was being conducted by the local police, Dhananjay Singh was declared proclaimed offender and a reward of Rs.25,000/- was announced against him for the charges punishable under Sections 302 & 120-B of IPC but on the eve of notification for Uttar Pradesh Assembly Elections 2022, the investigation was transferred to STF and that agency has submitted charge sheet against Dhananjay Singh in a bailable offence under Sections 212 & 176 IPC in FIR No.0015 of 2021 (supra).

31. Sri Kapil Misra has further submitted that had the investigation been transferred to CBI instead of STF, the correct facts and circumstances must have come into the notice and the culpability of Dhananjay Singh being instrumental to commit the murder of Ajeet Singh would have surfaced. He has further submitted that there are some instances when the local police did not extend any undue help to Dhananjay Singh or even Court did not pass any order in favour of Dhananjay Singh when he requested the Government security cover, but according to the learned counsel, the STF has provided all such favour to him from time and again. Sri Misra has also stated that Writ-C No.20672

of 2018 was filed by Dhananjay Singh to get the Government security cover and in that writ petition, some confidential documents were filed by Dhananjay Singh and those confidential documents belonged to the office of Inspector General of Police, STF, U.P., Lucknow, as this Court while disposing of the Writ-C No.20672 of 2018 has observed this fact. Therefore, apprehension of the petitioner cannot be overruled that if the investigating agency was STF, who filed the charge sheet against Dhananjay Singh in minor sections, the trial pursuant to that FIR would not be concluded properly.

32. On the aforesaid submissions of Sri Kapil Mishra, Sri V.K. Singh, learned Government Advocate, has stated that in FIR No.0015 of 2021, the trial is going on and relevant fact witnesses are being examined and if during examination of any fact witness or formal witness, learned Trial Court finds the culpability of any person including Dhananjay Singh, appropriate order may be passed strictly in accordance with law. Sri V.K. Singh has further submitted that learned Trial Court has got ample power to alter or add the charge if it is so required in the interest of justice, at any stage before judgment is pronounced in view of Section 216 of the Code of Criminal Procedure, however, he requests that if any observation to that effect is issued by this Court, it may likely affect the trial. Therefore, any alteration of charge may be left to the learned Trial Court and in any case, a requisite application to that effect by the defence or the prosecution may be filed before the Trial Court at the appropriate stage.

33. Sri V.K. Singh has reiterated that in view of the aforesaid facts and circumstances, both the aforesaid writ

petitions are misconceived for the simple reason that the petitioner has filed the aforesaid writ petitions having no proper locus to file those writ petitions when identical writ petition was filed by the wife of the deceased which was dismissed as being withdrawn; the present petitioner also does not come within the definition of "victim" under Section 2 (wa) Cr.P.C. and he did not assail the charge sheet in the writ petition or in the petition filed under Section 482 Cr.P.C. so far as FIR No.0015 of 2021 is concerned. According to him, when the investigation has already been concluded, charge sheet has been filed, charges have been framed against accused persons, trial is going on and the fact witnesses are being examined, at this stage, the relief so prayed "of transfer of investigation to CBI" in the first writ petition may not be granted and the petitioner may provide relevant information to the prosecution if he is having some important information, which are necessary for the trial in question.

34. So far as the second writ petition is concerned, Sri V.K. Singh has stated that in the aforesaid case, charge sheet arising out of Case Crime/ FIR No.445 of 2020 (supra) has been assailed before this Court by filing petition under Section 482 Cr.P.C. and further trial proceedings have been stayed, therefore, the second writ petition is also misconceived, rather the same has been rendered infructuous for all practical purposes. Therefore, Sri V.K. Singh, learned Government Advocate, has requested that both the writ petitions may be dismissed being misconceived.

35. Having heard learned counsel for the parties and having perused the material available on record, we are of the

considered opinion that the victim in a criminal case is a person, who has suffered a loss or injury caused by an act or omission of the accused person and also includes his/her legal heir. In the present case, FIR No.0015 of 2021 has been lodged by the injured person, who was with the deceased at the time of incident in question wherein the investigation has been concluded and charge sheet has been filed. The wife of the deceased had rightly filed some writ petitions as she was a victim in view of Section 2 (wa) Cr.P.C. but she had withdrawn all the writ petitions, therefore, those writ petitions were dismissed by this Court being withdrawn. The present petitioner, who is uncle of the deceased, may not come within the purview of victim or legal heir of the deceased, as the wife outshines the uncle in the □closest legal heir test□ to be considered as legal heir in view of Section 2 (wa) of Cr.P.C.

36. In the case of **All India Democratic Women's Association Vs. State and Others, 1998 Cri. L.J. 2629**, Madras High Court ruled that in criminal proceedings, third parties can intervene only to the extent of assisting the prosecution. It was further held that if third parties are allowed to intervene in all criminal proceedings, then there will be a number of associations to represent one party or the other and this would give rise to chaos and confusion and stalling of criminal proceedings.

37. Further, in the case of **Shri P.V. Narshimharao Vs. State, 1997 Cri. L.J 3117**, Delhi High Court has held that a private party/third party has no role in the criminal proceeding instituted by the State. The petitioner is not even a private party. The main victim of the case has withdrawn herself from the proceedings and a new

face in the name of the petitioner has come up for the first time to thwart the criminal proceedings/trial, which is in advance stage. The petitioner is a stranger to the present proceedings as it was held in the case of **Shri P.V. Narshimharao (supra)** that any such intervention cannot be allowed and the petition was rejected.

38. The order of transfer of investigation could have been passed when the Court finds that there is new material or evidence of sterling nature, which has been ignored by the investigating agency but in the present case, no such material or evidence has been shown to the Court and only apprehension has been shown to the effect that the main mastermind and allegedly the person to be instrumental in the said crime, who allegedly planned the murder of late Ajeet Singh is having close association with STF, the investigating agency, therefore, such investigation is not proper.

39. Notably, this is a highly stale prayer as the investigation in question culminated into the charge sheet/ supplementary charge sheet, which was filed before the competent Court on 05.04.2021, 21.06.2021, 31.03.2022, 04.02.2022, 24.05.2022 and finally on 20.08.2022. The aforesaid relief of the petitioner must have been prayed either during investigation or immediately after filing of the charge sheet. Though two writ petitions bearing Criminal Misc. Writ Petitions No.25544 of 2021 & 27624 of 2021 have been filed by the wife of the deceased in the year 2021 but before passing any appropriate order in the aforesaid writ petitions, the first writ petition bearing Criminal Misc. Writ Petition No.25544 of 2021 has been dismissed on 30.11.2022 after noticing the

fact that charge sheet has been filed though liberty was given to the petitioner to challenge the charge sheet before the appropriate court of law but no such recourse has been adopted by the petitioner (Ranoo Singh). To the contrary, she filed applications for withdrawal of all the writ petitions, which were filed by her, and those writ petitions have been □ dismissed as being withdrawn □ by this Court on 23.04.2025. In any case, the trial is going on in the said FIR and number of fact witnesses have been examined by the learned Trial Court, therefore, if the apprehension of the wife of late Ajeet Singh or the present petitioner finds some material or evidence, they can always intervene in the trial proceedings to the extent of providing assistance to the prosecution, as per the provisions of Code of Criminal Procedure.

40. We are in full agreement with the observations of the Madras High Court in re; All India Democratic Women's Association (supra) that if third parties are allowed to intervene in all criminal proceedings, then there will be a number of associations to represent one party or the other and this would give rise to chaos and confusion and stalling of criminal proceedings. Therefore, the appropriate party/ parties either from defence side or from prosecution side may file appropriate application before the Trial Court to alter or add the charge(s), if there is any sufficient material or evidence of sterling nature and it is needless to say that those applications may be considered by the learned Trial Court strictly in accordance with law and the same may be disposed of in the interest of justice.

41. There is another aspect of the matter that inasmuch as any relief granted

by this Court in the present petitions could tantamount to interfering in the already initiated criminal proceedings pending before the learned Trial Court. Having said so, this Court finds that the locus standi of the petitioner to file the present writ petition and interfere in pending criminal proceedings is absolutely negated. This Court finds that the High Court of Madras in the case of **Prisoners Rights Forum represented by its Director P. Pugalenthai Vs. High Court of Judicature at Madras, AIR 2014 MADRAS 246**, was faced with a similar situation wherein the said High Court held in that case that a person having no locus standi cannot interfere in the criminal legal proceedings. Further, a Full Bench of the Hon□ble Supreme Court in the case of **Sanjay Tiwari Vs. State of U.P., 2020 SCC OnLine SC 1027**, on this issue, their Lordships have specifically laid down that a stranger to criminal proceedings has no locus standi to interfere. In this case, a social activist and an Advocate by profession has filed a petition before this Court seeking directions to learned Special Judge to expedite and conclude the pending trial against the appellant Sanjay Tiwari for offence under the IPC and PC Act and in that said petition, this Court had directed the Sessions Court to expedite the trial and conclude at the earliest, which order was assailed by the appellant before the Hon□ble Supreme Court. The Supreme Court has made the following observations, which makes for an interesting read:-

“11. It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under the Prevention of Corruption Act are offences which affect not only the accused but the

entire society and administration. It is also well settled that the High Court in appropriate cases can very well under Section 482CrPC or in any other proceeding can always direct the trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by Respondent 2 does not appear to be a bona fide proceeding. Respondent 2 is in no way connected with initiation of criminal proceeding against the appellant. Respondent 2 in his application under Section 482CrPC in para 6 has described him as a social activist and an advocate.

42. Hence, in view of above, the locus standi of a stranger to interfere in criminal proceedings is absolutely limited. Thus, we have no hesitation in holding that the petitioner is not a victim as per the provisions of Section 2(wa) of the Cr.P.C. Further, the prayer of □transfer of investigation to the CBI□ is stale and technically infructuous as the investigation has not only started but stands already completed in both the FIRs and even trial has been commenced in the FIR No.0015/2021 and all the proceeding of the FIR No.445/2020 has been stayed by this Court. Further, the entire case has been premised on apprehension and no cogent evidence has been provided on record to entail any entertainment of such prayer by this Court. Most significantly, any relief granted at this stage would amount to interfering by a stranger to an ensuing trial, which is not permissible under the provisions of Code of Criminal Procedure and specifically barred in view of the judgment of the Hon□ble Supreme Court.

43. For all the aforesaid reasons, we are not inclined to pass any order on the prayers of both the writ petitions, but

liberty is given to the parties, as observed in the preceding paragraphs, to file requisite application before the learned Trial Court at appropriate stage, as per the provisions of Code of Criminal Procedure (now BNSS).

44. It is needless to say that if any appropriate application is filed before the learned Trial Court, as observed above, learned Trial Court shall consider and dispose of those applications without being influenced from any observation made by this Court in the present order.

45. With the above observations, both the writ petitions are **disposed of**.

46. There shall be no order as to cost(s).

(2025) 12 ILRA 763
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.12.2025

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Misc. Writ Petition No. 9232 of 2025

Satinder Singh Bhasin **...Petitioner**
Versus
State of U.P. & Anr. **...Respondents**

Issue for Consideration

Matter pertains to whether, in the facts and circumstances of case, the continuation of proceedings under the Prevention of Money Laundering Act, 2002 pursuant to ECIR No. ECIR/LKZO/14/2021 together with the consequential search and seizure operations and issuance of Non-Bailable Warrants, is legally sustainable when the predicate offence against the petitioner is alleged to have ceased to be a "scheduled offence" under PMLA, and when the underlying criminal proceedings stand

consolidated and stayed and whether such actions suffer from jurisdictional infirmity, violation of statutory safeguards, and infringement of Articles 14, 19, and 21 of Constitution of India.

Headnotes

Prevention of Money Laundering Act, 2002 - ss. 2(1)(u), 3, 4, 5, 17, 44, 50 - Constitution of India, 1950 - Articles 21, 226 - Indian Penal Code, 1860 - ss. 406, 420, 467, 468, 471, 120-B - Code of Criminal Procedure, 1973 s. 41A, 154, 161 - The petitioner approached the High Court by filing the instant criminal writ petition challenging the initiation and continuation of proceedings by Enforcement Directorate under PMLA, 2002, including the registration of the ECIR, conduct of search and seizure proceedings, issuance of open ended non-bailable warrants, and consequential coercive measures, arising out of alleged predicate offences connected with multiple FIRs relating primarily to the "Grand Venice Project" - The genesis of the matter lay in numerous FIRs alleging offences of cheating and allied crimes, which were subsequently consolidated by Supreme Court into a single principal FIR bearing No. 353 of 2015, pursuant to which supplementary charge-sheets were filed and certain offences, including s. 420 IPC, were dropped, leaving the petitioner to face proceedings only u/s 406 IPC - Parallely, the petitioner obtained an interim order thereby staying further proceedings in the consolidated predicate criminal case - Despite such stay and despite the petitioner's contention that no scheduled offence under the PMLA survived against him, the Enforcement Directorate proceeded to investigate, issue summons, conduct searches, provisionally attach properties, and secure issuance of non-bailable warrants - Aggrieved thereby, and after being permitted by Supreme Court to withdraw proceedings under Article 32 with liberty to approach the High Court, the petitioner invoked the writ jurisdiction of High Court and contending that the very jurisdictional foundation for PMLA action was absent

and that all consequential steps taken by the Enforcement Directorate were liable to be interdicted.

Held: ED has failed to discharge its burden of demonstrating actual evasion by the petitioner - The chronology of summons and responses shows regular engagement on behalf of the petitioner - Most critically, the temporal aspect, nearly four years of investigation without completion and no prosecution complaint having been filed yet, suggests that NBWs are not being issued in the early stages of a nascent investigation where an accused is evading process but rather in a prolonged investigation where no clear investigative purpose is being served by further coercive measures - The petitioner's statement u/s 50 PMLA was recorded on 12.07.2022 - Since then, over two and a half years have elapsed - The ED continues to call for documents and information - At some point in a protracted investigation, the investigative agency must move forward to conclude its inquiry and file a complaint or close the investigation - Accordingly, the NBWs issued on 11.04.2025 are hereby cancelled - The petitioner is directed to join the investigation and cooperate therein upon prior written intimation by ED - Having evaluated the statutory framework of PMLA, the effect of Supreme Court's consolidation order, the nature and permissible scope of an ECIR, and judicial threshold for interference at the stage of investigation, the Court found that while the ED's jurisdiction is indeed derivative of and contingent upon the existence of a scheduled offence, such jurisdiction cannot be said to have been extinguished merely by the stay of proceedings in the predicate FIRs or by clubbing of FIRs - At the same time, the invocation of coercive measures, including search, seizure, and issuance of non-bailable warrants, must adhere strictly to statutory safeguards and constitutional limitations - Thus, in view of terms, the petition is partly allowed. [Paras 188, 190, 193, 196, 197, 200] (E-13)

Case Law Cited

Vijay Madanlal Choudhary v. Union of India, **2022 SCC OnLine SC 929**; Parvathi Kollur v. State, **2022 SCC OnLine SC 1975**; Pavana Dibbur v. Enforcement Directorate, **2023 SCC OnLine SC 1486**; Sagar Maruti Suryavanshi v.

Directorate of Enforcement and others, **2024 SCC OnLine Bombay 3348**; Inder Mohan Goswami v. State of Uttarakhand, **(2007) 12 SCC 1**; Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, **(1992) 3 SCC 1**; Surjeet Kumar Bansal v. Central Bureau of Investigation, **2024 PHHC 045226**; Subhash Popatlal Dave v. Union of India, **(2014) 1 SCC 280**; State through CBI v. Dawood Ibrahim Kaskar, **(2000) 10 SCC 438**; Ottavio Quattrocchi v. Central Bureau of Investigation, **75 (1998) DLT 97 (DB)**; N. Dhanraj Kochar v. Enforcement Directorate, **(2022) SCC OnLine Mad 8794**; Jitendra Nath Patnaik v. Enforcement Directorate, Bhubaneswar, **CRLMC No. 2891/2023, Order dated 02.09.2023**; Pawan Insa v. Directorate of Enforcement, Government of India, Chandigarh Zonal Office, Chandigarh, **CRM-M No. 6378 of 2023, Order dated 10.04.2024**; Wave Hospitality Pvt. Ltd. v. Union of India, **2019 SCC OnLine Del 8855**; Ashok Malik v. Soga Impex Pvt. Ltd., **2012 SCC OnLine Del 3464**; Satender Kumar Antil v. CBI, **(2021) 10 SCC 773**; Directorate of Enforcement v. Deepak Mahajan, **(1994) 3 SCC 440**; Mantri Developers Pvt. Ltd. v. Directorate of Enforcement, **W.P. No. 20713 of 2022, decided on 14.12.2022**; Vijayraj Surana v. Enforcement Directorate, **2024 SCC OnLine Mad 8404 - referred to**

Amitbhai Anilchandra Shah v. CBI, **(2013) 6 SCC 348 - followed**

List of Acts

Prevention of Money Laundering Act, 2002; Constitution of India, 1950; Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Predicate FIR; Scheduled offences; Prevention of Money Laundering Act, 2002; ECIR; The Grand Venice Mall; Greater Noida Industrial Development Authority; Commercial mall; Open ended Non-Bailable Warrants; Enforcement Directorate; Proceeds of crime; Jurisdictional fact; Foundation of PMLA proceedings; Search and seizure; Provisional attachment; Summons; Coercive action; Criminal proceedings; Stay of proceedings; Continuation of proceedings; Subsistence of offence; Quashing; Writ jurisdiction under Article 226; Abuse of power; Sine qua non;

Statutory document; Consequential proceedings; Exercise of power; Absence of proceeds of crime; Interference by the High Court.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 9232 of 2025

Connected with other Matter

Criminal Misc. Writ Petition No. 15414 of 2025

From Judgment and Order dated 11.04.2025 passed by the Special Judge, Anti-Corruption, CBI, Ghaziabad in ECIR/LKZO/14/2021

Appearances for Parties

Advs. for the Petitioner:

Aditya Yadav, Malay Prasad, Saloni Mathur, Shivam Yadav, Tanya Makker

Advs. for the Respondent:

Pankaj Kumar Shukla, G.A., Manoj Kumar Singh, Sushant

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. Since both the afore-captioned Criminal Misc. Writ Petitions have been filed challenging the ECIR/LKZO/14/2021, they have been heard together and are being disposed by means of this common order. For adjudication of both the writ petitions the facts of Criminal Misc. Writ Petition No.9232 of 2025 has been taken.

2. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner, seeking the following reliefs:

“(i) Issue a writ of certiorari or any other appropriate writ, order, or direction quashing and setting aside order dated 11.04.2025 passed by learned Special Judge, Anti-Corruption, CBI, Ghaziabad whereby open ended Non-

Bailable Warrants have been issued against the petitioner in relation to ECIR/LKZO/14/2021;

(ii) Issue a writ of mandamum or any other appropriate writ, order, or direction restraining the respondent, its officers, or any person acting under its authority, from initiating or continuing any coercive actions against the petitioner under the Prevention of Money Laundering Act, 2002, in relation to ECIR/LKZO/14/2021 or related matters;

(iii) Issue a writ of certiorari or any other appropriate writ, order, or direction quashing the Enforcement Case Information Report bearing no.ECIR/LKZO/14/2021 registered by the respondent pursuant to FIR No.353 of 2015 dated 09.06.2015, along with all consequential proceedings, including the raids conducted on 10.04.2025, as being illegal, ultra vires and violative of the petitioner's fundamental right under Article 14, 19 and 21 of the Constitution;

(iv) Declare the respondent's action in registering the ECIR and conducting raids as ultra vires the PMLA and unconstitutional for want of a predicate offence, violating Articles 14, 19 and 21 of the Constitution."

FACTUAL MATRIX

3. The petitioner, Satinder Singh Bhasin, is an individual residing New Delhi, and was one of the Directors of M/s Bhasin Infotech & Infrastructure Pvt. Ltd. (hereinafter "BI IPL"), a company engaged in the development of a large commercial project known as "The Grand Venice Mall" at Greater Noida, Gautam Buddh Nagar. The project was undertaken

on a commercial plot allotted by the Greater Noida Industrial Development Authority for the development of a theme-based commercial mall and an adjoining commercial tower (hereinafter "subject property").

4. The construction of the Grand Venice Mall and the commercial tower is stated to have been completed in the years 2014-2015, after which the establishments became operational and housed various national and international brands.

5. On 09.06.2015, an FIR being FIR No. 353 of 2015, Police Station - Kasna, Gautam Buddh Nagar, came to be registered against the petitioner and others under Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter "IPC"), alleging irregularities in relation to the said project. Subsequently, between 2015 and 2019, a large number of similar FIRs, were lodged in relation to the same project, alleging non-delivery of units, non-payment of assured returns, non payment of invoices and delay in possession etc.

6. Upon investigation of the FIR No. 353/2015, the police submitted a final report dated 30.11.2016, concluding that the dispute was essentially civil or commercial in nature and recommending closure. A protest petition was filed by the complainant on 10.03.2017. Thereafter, a supplementary charge sheet dated 17.02.2019 was filed. In the supplementary charge-sheet, Section 420 IPC was dropped, and only an allegation under Section 406 IPC was retained against the petitioner.

7. On 15.04.2019, the learned Trial Court took cognizance of the supplementary charge-sheet and issued

summons to the petitioner for the offence under Section 406 IPC.

8. Meanwhile, in view of the multiplicity of FIRs relating to the subject project, petitions were filed before the Hon^{ble} Supreme Court, culminating in proceedings in W.P. (Crl.) No. 242/2019. By interim order dated 06.11.2019, the Hon^{ble} Supreme Court noted that multiple FIRs containing identical allegations existed concerning the same project. Bail was also granted to the petitioner with a direction to deposit ₹50 Crores to demonstrate bona fides and facilitate settlements as a pre-condition. The petitioner complied with the said condition and was released on bail.

9. Ultimately, by order dated 12.05.2022, in the aforesaid writ petition, the Hon^{ble} Supreme Court consolidated all FIRs (46 as per the record) pertaining to the "Grand Venice" project into the principal FIR No. 353/2015 and directed that all other charge-sheets and FIRs would stand merged, and the entire matter would proceed only from the principal FIR.

10. Pursuant thereto, the petitioner filed Criminal Misc. Application No. 25724/2022 before this Court, seeking quashing of the proceedings arising out of the principal FIR. By order dated 27.04.2023 in Criminal Misc. Application No. 25724/2022, proceedings in Case No. 1559/2019 (arising out of the said principal FIR) pending before the Court of the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar were stayed by a learned Single Judge of this Court.

11. While the proceedings in the predicate FIR were thus pending, the Directorate of Enforcement (hereinafter

"ED"), Lucknow Zonal Office, registered ECIR No. ECIR/LKZO/14/2021 dated 12.03.2021 under Sections 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA"), predicated on FIR No. 353/2015.

12. The first summons by ED was issued on 29.03.2022, to which the petitioner submitted a reply on 18.04.2022. On 12.07.2022, the petitioner physically appeared before the Investigating Officer, supplied documents, and his statement under Section 50 PMLA was recorded. The ED issued further summons on 14.07.2022, and the petitioner is stated to have supplied the documents on the same day through email.

13. Another set of summons were issued by ED on 08.05.2024, requiring his appearance on 14.05.2024. The petitioner submitted the documents on 16.05.2024 and again on 20.05.2024. Summons were later issued on 17.02.2025, followed by further communications on 20.02.2025, 21.02.2025, 22.02.2025, 06.03.2025, and 21.03.2025, to all of which replies or document production was made either by the petitioner or his authorized representative.

14. On 16.02.2025, the petitioner was allegedly detained at Police Station Beta-II, Gautam Buddh Nagar, without an FIR. On 18.02.2025, he was allegedly picked up from Connaught Place, New Delhi, purportedly by Uttar Pradesh Police personnel without following mandatory inter-State arrest protocols.

15. The petitioner, therefore, approached the High Court of Delhi by filing W.P. (Crl.) No. 598/2025. By orders dated 19th 20.02.2025, the High Court of

Delhi took serious note of the allegations of illegal detention and abduction, directed the production of the petitioner, and ordered an inquiry by the Commissioner of Police, Uttar Pradesh.

16. Thereafter, on 09.04.2025, the ED issued an authorization under Section 17 PMLA for conducting search and seizure proceedings. On 10.04.2025 at about 6:45 a.m., ED officials conducted searches at the petitioner's residence and business premises at Delhi and Noida, and the search continued at the residence until 12.04.2025. During the said searches, an amount of ₹36,00,000/- was recovered, allegedly found in a locker at Goa belonging to M/s India Ocean World Pvt. Ltd., a company in which the petitioner asserts he holds no position either as a director or a shareholder.

17. On 11.04.2025, the learned Special Judge, Anti-Corruption, CBI, Ghaziabad, issued Non-Bailable Warrants (hereinafter □NBW□) against the petitioner in relation to the same ECIR.

18. On 13.04.2025, the petitioner lodged a complaint at P.S. - Rajouri Garden, New Delhi, alleging misbehaviour with his children during the search, and also issued representations to senior officials of the Directorate of Enforcement.

19. The petitioner thereafter approached the Hon□ble Supreme Court by filing a writ petition under Article 32 challenging the ECIR, the search proceedings, the NBW, and all consequential actions. By order dated 21.04.2025, the Hon□ble Supreme Court permitted the petitioner to withdraw the petition with liberty to approach the High Court of competent jurisdiction.

20. Consequently, the petitioner has filed the present writ petition, before this Court challenging the ECIR, the search and seizure proceedings, the NBWs issued on 11.04.2025, and all coercive steps taken pursuant to the ECIR. The bone of the contentions of the petitioner is that since the predicate offence against him survives only under Section 406 IPC, which is not a scheduled offence under the PMLA, and the trial of the said predicate offence stands stayed by the order of a learned Single Judge of this Court dated 27.04.2023, the ED lacks jurisdiction to continue any proceedings under the PMLA.

21. On these facts, the petitioner seeks quashing of the ECIR, quashing of the NBWs, setting aside of the search and seizure proceedings, and protection from further coercive action arising out of the impugned ECIR.

22. Before proceeding further, for the sake of convenience, this Court deems it appropriate to set out that in the present matter, there are 49 FIRs in total, which are predicate FIRs (schedule offences), out of which 44 FIRs are arising out of FIR No. 353/2015 principal FIR (Grand Venice Project consolidated FIRs) and 5 remaining FIRs are part of Mist Avenue FIRs. Further, the Hon□ble Supreme Court consolidated/clubbed 46 FIRs. The ED has stated that 2 FIRs out of the 46 clubbed FIRs are not part of the ECIR.

SUBMISSIONS ON BEHALF OF THE PETITIONER

A. Submissions relating to the maintainability of the petition and jurisdictional defects

23. Mr. Manish Tiwari, learned Senior counsel appearing on behalf of the

petitioner submits that the very initiation and continuation of ECIR by the ED is wholly without jurisdiction, as the foundational requirement of a subsisting scheduled offence under the PMLA is absent. It is submitted that in FIR No.353/2015, which constitutes the predicate offence for the present ECIR, the allegations under Section 420 IPC were expressly dropped in the supplementary charge-sheet dated 17.02.2019, and the petitioner is now proceeded only under Section 406 IPC. Section 406 IPC is not a scheduled offence under the PMLA, and no other scheduled offence is pending against him within the meaning of the Schedule to the PMLA.

24. Learned counsel submits that after dropping Section 420 IPC, the continuation of ED proceedings violates the law laid down in *Vijay Madanlal Choudhary v. Union of India*¹, wherein the Hon^{ble} Supreme Court affirmed that PMLA proceedings can continue only where a scheduled offence exists or survives. The petitioner relies on this principle to assert that if the predicate offence is non-existent, extinguished, non-scheduled, or stayed, then proceedings under the PMLA cannot be sustained.

25. Further reliance is placed on the judgment of the Hon^{ble} Supreme Court in *Parvathi Kollur v. State*², wherein the Hon^{ble} Court reiterated that proceedings under the PMLA cannot survive, where the accused stands discharged or acquitted in the predicate offence or where the predicate offence does not survive in law. Learned counsel submits that the learned Additional Solicitor General in that case accepted this proposition unequivocally. The petitioner submits that the same principle squarely

applies in the present case, because the only provision now attracted in the predicate FIR is Section 406 IPC, which is not a scheduled offence.

26. The proceedings in the predicate FIR have been stayed by a learned Single Judge of this Court in Criminal Misc. Application No. 25724/2022 vide order dated 27.04.2023. It is argued that the effect of the stay is that the predicate proceedings remain in a state of suspension, and the ED cannot, in the teeth of such stay, continue to treat the FIR as alive for the purposes of sustaining the ECIR

27. Learned Senior Counsel further relies strongly on *Pavana Dibbur v. Enforcement Directorate*³ in support of the proposition that the existence of a scheduled offence is the jurisdictional foundation of PMLA proceedings. Learned counsel submits that once Section 420 IPC has been dropped, the entire basis for registration of the ECIR has ceased, and ED proceedings must necessarily collapse.

28. The petitioner additionally relies on the judgment of the Bombay High Court in *Sagar Maruti Suryawanshi v. Enforcement Directorate*⁴, asserting that the ED cannot club unrelated transactions or separate FIRs into a single ECIR. The petitioner submits that the respondent has improperly added FIRs pertaining to unrelated projects such as the [□]Mist Project[□] into the present ECIR, notwithstanding the Hon^{ble} Supreme Court order dated 12.05.2022 consolidating all Grand Venice FIRs into FIR No.353/2015 alone.

29. The petitioner submits that the Hon^{ble} Supreme Court[□]s order dated

12.05.2022 consolidating all Grand Venice related FIRs into a single FIR makes it impermissible for the ED to rely upon any other FIR for purposes of the ECIR. It is argued that the respondent's reliance upon separate or additional FIRs amounts to a direct violation of the binding directions of the Hon^{ble} Supreme Court.

B. Submissions regarding issuance of Non-Bailable Warrants (NBWs)

30. The petitioner submits that the issuance of open-ended NBWS dated 11.04.2025 by the learned Special Judge is wholly without jurisdiction and contrary to settled principles governing issuance of warrants. It is argued that the issuance of NBWs in the absence of a prosecution complaint before the Special Court under Section 44 PMLA, and without any cognizance having been taken, renders the warrants illegal.

31. The petitioner submits that there is no stage in PMLA investigation that contemplates issuance of NBWs in aid of investigation, and the scheme of the Act nowhere permits such recourse. The petitioner asserts that the ED's reliance on precedents relating to police investigations under the Code of Criminal Procedure, 1973 (hereinafter CrPC) is misconceived, because those decisions do not apply to PMLA, which is a complete code with self-contained procedures.

32. It is submitted that the NBWs were issued despite the petitioner having joined investigation on multiple occasions, having furnished documents as required, and despite the ED itself having communicated that personal appearance was not mandatory as reflected in emails

dated 06.03.2025 and again on 21.03.2025, where it was stated that personal appearance was not required and that only submission of documents was necessary.

33. The petitioner submits that no notice under Section 41A CrPC has ever been issued to him in connection with the PMLA proceedings. It is further argued that prior to the issuance of the NBWs, no fresh summons under Section 50 PMLA had been issued, and therefore, the NBWs were issued without adherence to the mandatory procedure laid down in *Inder Mohan Goswami v. State of Uttarakhand*⁵, where the Hon^{ble} Supreme Court cautioned against mechanical issuance of NBWs without first issuing summons or bailable warrants.

34. The petitioner submits that he has cooperated with the ED investigation fully, as demonstrated by his appearance on 12.07.2022, submission of documents on 12.07.2022, 14.07.2022, 16.05.2024, and 20.05.2024, and further submission on 22.02.2025 and 21.03.2025. It is stated that the petitioner has, at no point, evaded the process of law.

35. The petitioner further submits that the NBW violates his fundamental rights under Article 21 of the Constitution, as it was issued without any default on his part in complying with investigation requirements. Learned counsel submits that the NBWs are in gross violation of natural justice and the principles laid down for issuance of coercive process.

36. It is argued that the Special Court proceeded mechanically and failed to take into consideration the ED's own communication acknowledging compliance by the petitioner. The petitioner asserts that

the Court also failed to examine the ED's statement in the last summon dated 21.03.2025 that personal appearance was not required.

C. Submissions regarding compliance with summons and allegations of non-cooperation

37. The petitioner submits, in detail, the chronology of compliance with summons issued by the ED. It is submitted that the petitioner responded to the first summon dated 29.03.2022 by submitting a written reply on 18.04.2022. Thereafter, the petitioner physically appeared before the ED on 12.07.2022, where his statement under Section 50 PMLA was recorded.

38. It is submitted that upon issuance of the second summons dated 14.07.2022, the petitioner provided the requisite documents on the same day through email. The ED acknowledged receipt. The petitioner received the third summons dated 08.05.2024, requiring appearance on 14.05.2024. He provided the required documents on 14.05.2024, 16.05.2024, and again on 20.05.2024, as demanded.

39. With respect to the summons dated 17.02.2025, the petitioner states that he could not appear immediately due to his illegal detention by the Uttar Pradesh Police on 16.02.2025, a matter that came before the Delhi High Court in W.P. (Crl.) No. 598/2025. The petitioner submits that on 20.02.2025 and 21.02.2025, the ED was informed about the orders of the Delhi High Court directing his production.

40. It is further submitted that on 22.02.2025, the petitioner provided all documents sought by the ED. The

petitioner contends that in view of this compliance, the allegation that he was evading investigation is patently incorrect.

41. It is submitted that on 06.03.2025, the ED conveyed by email that personal appearance was not necessary. On 21.03.2025, the ED again stated that personal appearance was not required, and the petitioner's authorized representative appeared and submitted the required documents before the ED on 26.03.2025.

D. Submissions regarding search and seizure proceedings

42. The petitioner submits that the search and seizure operations conducted on 10.04.2025, 11.04.2025, and 12.04.2025 under Section 17 of the PMLA are illegal and vitiated for complete non-compliance with the mandatory statutory conditions. It is urged that the ED neither recorded nor furnished any valid "reason to believe" that the petitioner was in possession of proceeds of crime or records relating to such proceeds. The petitioner submits that the jurisdictional prerequisites under Section 17(1) are mandatory in nature and non-negotiable.

43. It is further submitted that no incriminating material was seized from the petitioner's residence or business premises during the search operations spanning nearly three days. It is specifically pointed out that the only recovery referred to by the respondent relates to a sum of ₹36,00,000/- allegedly found in a locker in Goa belonging to a company, M/s India Ocean World Pvt. Ltd., with which the petitioner asserts he has no connection. The petitioner submits that this recovery has no bearing upon the petitioner personally and cannot justify the coercive action.

44. The petitioner submits that the entire manner in which the search was conducted reflects a mala fide exercise of coercive powers. The petitioner asserts that his children were subjected to intimidation during the search, compelling him to lodge a complaint with P.S. Rajouri Garden, New Delhi on 13.04.2025. The petitioner also addressed a detailed grievance to the senior officers of the ED on the same day regarding the misconduct during the search.

45. The petitioner submits that the ED undertook the search proceedings despite being fully aware that the Delhi High Court had taken cognizance of his illegal detention by the Uttar Pradesh Police on 16.02.2025 and had ordered an inquiry. Learned counsel submits that the ED attempted to use the coercive mechanism of search to create a false basis for further action, including moving for NBWs, and that this conduct demonstrates colorable exercise of authority.

46. The petitioner submits that the legality of the search must be tested against the standards laid down in Vijay Madanlal Choudhary (Supra) regarding the need for strict adherence to statutory safeguards. It is argued that the ED's actions have violated both statutory and constitutional protections.

E. Jurisdictional illegality of clubbing Distinct Transactions in one ECIR

47. It is submitted that the ED has acted wholly without jurisdiction in attempting to subsume and investigate entirely distinct transactions and predicate offences under a single ECIR. An ECIR, being the equivalent of an F.I.R. under the PMLA, must be rooted in specific

scheduled offence, with the alleged proceeds of crime traceable to that very transaction while it is permissible to consolidate multiple FIRs, if they emanate from the same project or scheme, for instance, multiple complaints in respect of the same scam or transaction, the law does not permit amalgamating unrelated projects or companies into one ECIR. Learned counsel for strengthening his above-said submissions relied on the judgment of the Bombay High Court in ***Sagar Maruti Suryavanshi Vs. Directorate of Enforcement and others***⁶, (Paragraph 42-44). It is argued that applying the above-said judgment, it is submitted that while FIR arising from the Grand Venice project could legitimately to be consolidated into one ECIR, the ED's attempt to also include F.I.R. concerning the entirely different project, as such the Mist project, involving the separate company, directors, investors is ex facie permissible. Each distinct transaction requires its own ECIR since the scheduled offence the set of the accused, such alleged accused of crime are transaction specific. It is vehemently submitted that the artificial or enlargement of one ECIR to cover multiple transactions obliterates the jurisdictional foundation of PMLA confesses distinct streams of alleged criminality and directly violates the ratio in ***Sagar Maruti Suryavanshi (supra)***, such overreach is *ultra virus* the Act, contrary to binding judicial pronouncement and render the ECIR effective and liable to be quashed.

F. Submissions regarding violation of supreme court's consolidation order

48. The petitioner submits that by judgment dated 12.05.2022, the Hon'ble Supreme Court consolidated all FIRs

relating to the Grand Venice project into FIR No. 353/2015 and held that no parallel or separate FIRs would survive thereafter. The petitioner emphasises that the Hon^{ble} Supreme Court expressly directed that all proceedings would emanate only from the consolidated FIR.

49. It is submitted that the ED has unlawfully ignored this binding direction and has relied upon additional FIRs concerning unrelated projects such as the [□]Mist Avenue Project[□] for purposes of issuing and sustaining the ECIR. The petitioner contends that this constitutes a direct violation of the Hon^{ble} Supreme Court[□]s order and is impermissible under Section 44 PMLA and the doctrine of judicial discipline.

G. Submissions on the absence of proceeds of crime

50. The ED has failed to identify, quantify, or demonstrate the existence of any [□]proceeds of crime[□] attributable to the petitioner. It is noted that no provisional attachment order has been passed despite the ECIR having been registered in 2021. Learned counsel submits that the absence of any attachment or identification of proceeds of crime is compelling evidence that the ECIR is baseless.

51. The petitioner contends that the absence of proceeds of crime also renders the NBWs unjustified because the ED has been unable to show, even prima facie, that the petitioner is involved in money laundering. It is submitted that Section 5 PMLA, read with explanations given in *Vijay Madanlal Choudhary (Supra)*, establishes that the concept of proceeds of crime is central to PMLA jurisdiction.

H. Submissions regarding illegal detention and police conduct

52. The petitioner submits that he was illegally detained by the Uttar Pradesh Police on 16.02.2025 without an FIR and was subsequently abducted from Connaught Place on 18.02.2025. It is stated that these acts were brought to the notice of the Delhi High Court in W.P. (Crl.) 598/2025, wherein orders dated 19.02.2025 and 20.02.2025 took serious cognizance of the matter and ordered an inquiry by the Commissioner of Police, Uttar Pradesh.

53. The petitioner submits that the ED attempted to use this period of illegal detention to falsely allege that the petitioner was evading investigation, despite the record showing that the petitioner had appeared and furnished documents earlier. It is contended that the ED[□]s allegation of non-cooperation is tainted by these circumstances.

I. Submissions on violation of natural justice and Article 21

54. The petitioner submits that the ED[□]s conduct in seeking NBWs and undertaking search operations without valid grounds violates the petitioner[□]s right to life and personal liberty under Article 21 of the Constitution. It is argued that the ED did not consider the petitioner[□]s consistent cooperation, the stay of the predicate FIR, or the Hon^{ble} Supreme Court[□]s consolidation directions.

55. It is further submitted that the coercive actions taken by the ED are arbitrary, disproportionate, and designed to circumvent the judicial protections accorded to the petitioner by the Delhi High Court and this Court.

J. Submissions on the petitioner's cooperation and bona fides

56. The petitioner submits that he has demonstrated complete bona fides throughout the investigation process. It is pointed out that the petitioner had earlier deposited ₹50 crores before the Hon^{ble} Supreme Court during the consolidation proceedings, in compliance with directions. The petitioner asserts that there has never been any attempt on his part to evade the investigation and that the record of correspondences, appearance, and document submissions clearly establishes his cooperation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT ED

A. ED's submissions regarding maintainability and limited interference at investigation stage

57. Mr. Zoheb Hossain, learned counsel appearing on behalf of the respondent ED vehemently opposed the present petition submitting to the effect that the present petition is not maintainable because the petitioner seeks to invoke the extraordinary writ jurisdiction to interfere in an ongoing money-laundering investigation at a premature stage.

58. It is submitted that it is a settled principle of law that investigation under the PMLA should not be interrupted unless a clear case of abuse of power is established, which, in the ED's submission, is not present here.

59. The ED submits that the prayer for quashing the ECIR is, in law, impermissible. ED relies upon the judgment of the Hon^{ble} Supreme Court

in *Vijay Madanlal Choudhary (Supra)*, contending that the ECIR is an internal document meant solely for administrative and investigative purposes and is not to be equated with an FIR. Only because the ECIR is not a statutory document and has no legal impact on the rights of the accused, it cannot be quashed or set aside in writ jurisdiction.

60. The ED further submits that the petitioner has erroneously attempted to use judicial review to challenge the investigative prerogative of the respondent. It is stated that courts must refrain from interfering at the stage of evidence collection or during ongoing investigation, especially in cases involving economic offences of serious magnitude.

B. ED's submissions regarding scheduled offence and effect of stay of predicate FIR

61. The ED submits that the petitioner's argument that PMLA proceedings cannot continue because Section 420 IPC has been dropped or because the predicate FIR is stayed is legally untenable. The ED states that a stay of proceedings does not amount to quashing of the FIR and does not wipe out the existence of the allegations.

62. The ED places heavy reliance on the judgment of the Hon^{ble} Supreme Court in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*⁷, where the Hon^{ble} Court held that a stay of proceedings does not efface the underlying order or proceeding. ED submits that the petitioner cannot treat the stay order dated 27.04.2023 as equivalent to the FIR being quashed or dismissed.

63. The ED argues that the principle sought to be invoked by the petitioner that PMLA proceedings cannot survive without the predicate offence is inapplicable here because the predicate FIR continues to subsist in law. The ED submits that the petitioner cannot take advantage of a procedural stay order to defeat the statutory investigation under the PMLA.

64. The ED also refers to the judgment of the *Punjab and Haryana High Court in Surjeet Kumar Bansal v. Central Bureau of Investigation*⁸, where it was held that a stay of the scheduled offence does not automatically translate into a stay of PMLA proceedings. According to the ED, this principle fully applies to the present matter.

C. ED's submissions regarding the petitioner's alleged non-cooperation

65. The ED submits that the petitioner has repeatedly failed to join the investigation despite issuance of multiple summons. It is submitted that the petitioner has either not appeared or has avoided personal appearance.

66. While the petitioner may have furnished certain documents, he did not comply with summons requiring personal appearance. Mere filing of replies or sending documents does not amount to cooperation when the ED specifically requires the accused to appear for recording of statements.

67. The ED submits that the petitioner's conduct must be viewed in light of the magnitude of the offences under investigation, involving allegations of large-scale financial fraud and possible layering of funds. ED submits that ensuring personal

presence of the petitioner is essential for effective investigation. The ED relies on *Subhash Popatlal Dave v. Union of India*⁹, submitting that an accused who does not comply with summons or evades process cannot claim equitable or discretionary relief.

68. The ED further submits that the petitioner's claim of "illegal detention" by the Uttar Pradesh Police is irrelevant to the present proceedings and does not excuse his non-appearance before the ED. The ED argues that the cumulative conduct of the petitioner demonstrates evasion, justifying coercive steps.

69. The ED submits that the issuance of NBWs by the Special Court on 11.04.2025 is lawful and justified. It is stated that when an accused fails to appear despite repeated summons, the investigating agency is entitled to move the Court for appropriate process, including NBWs.

70. According to the ED, the Special Court was fully justified in issuing NBWs after noting the petitioner's persistent failure to join the investigation. The ED submits that the Court's order cannot be interfered with in writ jurisdiction in the absent of any glaring error.

71. The ED relies on judicial precedents concerning the power of courts to issue warrants during investigation, including judgments such as *State through CBI v. Dawood Ibrahim Kaskar*,¹⁰ and *Ottavio Quattrocchi v. Central Bureau of Investigation*¹¹ and submits that these judgments establish the principle that courts may issue process during investigation when the accused is avoiding appearance.

72. The ED also relies on cases relating to absconding or non-cooperating

accused, including *Inder Mohan Goswami (Supra)*, where the Hon^{ble} Supreme Court held that warrants may be issued against persons who avoid process or evade appearance.

73. The ED submits that the petitioner's attempt to challenge NBWs in writ jurisdiction is contrary to law because the proper course is for the petitioner to appear before the Special Court and seek cancellation of the warrants. ED emphasises that NBWs cannot be cancelled *in absentia*.

E. ED's submissions regarding search proceedings

74. The ED submits that the search proceedings under Section 17 PMLA conducted on 10.04.2025 and thereafter were lawful, duly authorized, and carried out pursuant to statutory satisfaction recorded by the competent authority.

75. The petitioner's objections regarding *reason to believe* are misconceived because Section 17 PMLA does not require the ED to disclose such reasons to the party searched at the time of search. ED states that the correctness of the search can be examined by the Adjudicating Authority upon filing of the complaint under Section 17(4) PMLA, and therefore, the petitioner has an effective statutory remedy which he has chosen not to pursue.

76. Search results yielded materials relevant to the investigation, including discovery of cash amounting to ₹36 lakh, which forms part of the evidence. ED contends that the petitioner cannot pre-judge the evidentiary value of seized items at this stage.

F. ED's tabular chart submissions relating to multiple FIRs

77. ED submits that the ECIR was registered on 12.03.2021 on the basis of FIR No. 353/2015, which contained scheduled offences under the PMLA. ED further clarifies that the ECIR was not confined to a single FIR but was expanded by way of two addendums to incorporate all relevant predicate materials against the petitioner.

78. It is submitted that forty-nine FIRs in total form the basis of investigation under ECIR. Out of these forty-nine, forty-four FIRs were earlier consolidated by the Hon^{ble} Supreme Court into FIR No. 353/2015 (Grand Venice Project). ED submits that although consolidated for the purposes of police investigation, each one of those FIRs contained scheduled offences under Sections 420 IPC, 467 IPC, 468 IPC, 471 IPC, and 120-B IPC, and therefore continue to remain valid material for the purposes of PMLA.

79. ED states that in addition to the forty-four consolidated FIRs, there exist five independent FIRs, all registered in relation to M/s Mist Avenue Pvt. Ltd. (Mist Project), in which the petitioner is also an accused, as stated by the ED. These FIRs were never part of the Hon^{ble} Supreme Court consolidation order and are being investigated independently.

80. These Mist Avenue FIRs include allegations under Sections 420, 467, 468, 471, 406, and 120-B IPC, all of which are schedule offences (except 406 IPC). ED submits that these FIRs are independent criminal transactions, have not been quashed, and therefore squarely fall within the definition of "scheduled

offences" for Section 2(1)(u) PMLA. The ED relies heavily on these Mist Avenue FIRs to establish that scheduled offences continue to exist, and that consolidation of Grand Venice FIRs does not erase the existence of other predicate offences that independently sustain the ECIR against the petitioner.

81. ED submits that addendums to the ECIR were issued twice:

“(i) Addendum dated 10.03.2025, by which seven additional FIRs were included; and

(ii) Addendum dated 21.05.2025, by which fourteen more FIRs were included.”

82. ED argues that this procedure is legally permissible and fully supported by judicial precedent. ED places reliance on the principle that an ECIR is only an internal document, and additional material can be placed on record at any stage of investigation, so long as it relates to scheduled offences. It is urged that the addendums were issued because the original ECIR already pertained to FIR No. 353/2015 dated 09.06.2015, which contains allegations of cheating and fraud against the petitioner. Subsequent consolidation by the Hon^{ble} Supreme Court on 12.05.2022 did not quash those other FIRs nor extinguish their status as scheduled offences at the time of ECIR registration.

83. ED further submits that out of the forty-six FIRs consolidated by the Hon^{ble} Supreme Court, two FIRs were not added in the ECIR. One because it did not contain any scheduled offence and the other because ED could not obtain a copy. Therefore, the ECIR ultimately reflects

forty-four consolidated FIRs and five Mist Avenue FIRs, totaling forty-nine.

84. ED submits that the petitioner's argument that only Section 406 IPC survives after submission of the chargesheet is fundamentally misconceived. ED argues that PMLA jurisdiction arises not at the stage of cognizance but at the time of commission of the scheduled offence and registration of the predicate FIR. Multiple FIRs still contain scheduled offences against the petitioner. ED argues that the Hon^{ble} Supreme Court order did not quash any FIR. It only directed consolidation and filing of a composite chargesheet. ED submits that consolidation does not amount to quashing, and therefore, the scheduled offences in those other FIRs continue to exist for PMLA purposes.

85. ED, stresses upon the contention that five FIRs relating to the Mist Project are separate criminal transactions that have not been consolidated by the Hon^{ble} Supreme Court order and have not been stayed by any High Court. These FIRs contain clear allegations of fraud, forgery, and cheating, all of which constitute scheduled offences. ED annexes the details of these FIRs in its note, which include FIR dated 19.07.2019 under Sections 420, 467, 468, 471, 120-B IPC FIR dated 10.05.2019 under Sections 420, 467, 468, 471 IPC FIR dated 24.12.2018 under Sections 420, 406, 120-B IPC and others relating to M/s Mist Avenue Pvt. Ltd. In each of these FIRs, the petitioner Satinder Singh Bhasin is a named accused. ED submits that even if, for the sake of argument, the petitioner was right that the consolidated Grand Venice FIR No. 353/2015 now only contains Section 406 IPC, the Mist Avenue FIRs

independently sustain the ECIR. ED argues that PMLA is □transaction-based, not FIR-based,□ and therefore every scheduled offence, even one contained in an independent FIR, triggers PMLA jurisdiction.

86. ED submits that the Hon□ble Supreme Court order dated 12.05.2022 consolidated forty-four FIRs for the limited purpose of police investigation. It did not quash the FIRs, extinguish the underlying scheduled offences, or prohibit investigation by central agencies such as the ED. ED asserts that the PMLA proceedings do not depend on whether multiple FIRs are consolidated for police purposes. ED emphasises that every scheduled offence gives rise to a separate stream of proceeds of crime, and consolidation only affects procedural convenience.

87. The ED□s tabular chart sets out multiple FIRs relating to transactions involving Satinder Singh Bhasin and various companies associated with him, including BIPL, GVCTPL, and Grand Venezia Pvt. Ltd. and Mist Project. The multiplicity of FIRs indicates a wider pattern of fraudulent conduct across several projects.

88. The ED argues that the petitioner was named in numerous FIRs registered at P.S. Kasna, Gautam Budh Nagar, under serious offences including Sections 406, 420, 467, 468, 471, 504, 506, and 120B IPC. The ED contends that the scale and seriousness of the allegations demonstrate the need for a comprehensive money-laundering investigation.

89. The ED submits that various complainants have alleged diversion of

funds, breach of trust, and cheating by the petitioner, forming the basis for tracing the proceeds of crime under the PMLA.

90. Sri Pankaj Kumar Shukla, learned counsel appearing on behalf of the intervener has made submissions on certain legal points, but mainly opted all arguments made by learned counsel appearing on behalf of the ED.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

91. The petitioner submits that the Hon□ble Supreme Court in *Shree Chamundi Mopeds Ltd. (Supra)* explained that while the distinction between stay and quashing exists for certain purposes, a stay nevertheless freezes the effect and operation of the order under challenge. The petitioner argues that the respondent cannot rely on this distinction to bypass the stay and continue coercive proceedings.

92. It is contended that the ED□s position that an ECIR is beyond judicial review is a misreading of *Vijay Madanlal Choudhary (Supra)*. It is submitted that the said judgment held only that the ED is not required to furnish a copy of the ECIR to the accused, and it did not state that the ECIR is beyond scrutiny when the very initiation of PMLA proceedings suffers from lack of jurisdiction. The petitioner contends that judicial review is available where the ECIR is based on a non-scheduled offence, where the FIRs have been expressly consolidated or merged pursuant to Hon□ble Supreme Court orders, or where the ECIR has been registered in colorable exercise of power. In this context, the petitioner relies upon the decisions passed in *N. Dhanraj Kochar v. Enforcement Directorate*¹²; Order dated

02.09.2023 passed in ***Jitendra Nath Patnaik v. Enforcement Directorate, Bhubaneswar***¹³ passed by the Orissa High Court at Cuttack and Order dated 10.04.2024 passed in ***Pawan Insa v. Directorate of Enforcement, Government of India, Chandigarh Zonal Office, Chandigarh***¹⁴, which, according to the petitioner, clarify that although an ECIR is ordinarily not quashable at the initial stage, the High Court may intervene where manifest illegality or jurisdictional defect exists.

93. The petitioner submits that the reliance placed by the respondent on State through ***CBI v. Dawood Ibrahim Kaskar***¹⁵ and ***Ottavio Quattrocchi v. Central Bureau of Investigation***¹⁶ is misplaced, as those decisions were rendered in a completely different statutory context where the police had authority to seek NBWs during investigation. According to the petitioner, these authorities cannot be used to justify issuance of NBWs under PMLA prior to filing of a complaint.

94. The petitioner submits that the ED's allegation of evasion is thus contrary to the documentary record. Reliance placed by the ED on the judgment of ***Subhash Popatlal Dave v. Union of India***¹⁷ is stated to be wholly inapplicable, because that decision concerns an absconding accused who did not respond to summons, whereas the present petitioner has fully complied. The petitioner further distinguishes ***Wave Hospitality Pvt. Ltd. v. Union of India***¹⁸, submitting that the said case is related to provisional attachment proceedings and had no relevance to the present issue of alleged non-cooperation.

95. The petitioner submits that the ED's reliance on the decision in ***Ashok***

Malik v. Soga Impex Pvt. Ltd.¹⁹ is fundamentally misplaced. It is argued that the principle that warrants cannot be cancelled in absentia applies only in situations where the warrants were issued after proper cognizance had been taken by the Court. The said decision arose from proceedings under Section 138 of the Negotiable Instruments Act, 1881 where cognizance had already been taken, and the accused had not appeared.

96. The petitioner asserts that in the present case, no complaint has been filed under Section 44 PMLA, and no cognizance exists at all. Therefore, the Special Court lacked jurisdiction to issue NBWs in the first place. It is submitted that where an order is wholly without jurisdiction, the High Court may quash it even if the accused has not physically appeared, because such an order is void ab initio and not a legitimate judicial process.

97. The petitioner reiterates the principle reaffirmed in ***Satender Kumar Antil v. CBI***²⁰, that the graded procedure of summons, then bailable warrant and then non-bailable warrant applies only after cognizance. Therefore, in the absence of cognizance in any PMLA complaint, the issuance of NBWs is non-est and can be interdicted even without the petitioner's presence.

98. The petitioner submits that the ED's claim of non-cooperation or evasion is factually incorrect and contrary to the documentary record. It is stated that the petitioner has, from the very inception, complied with every lawful directive of the ED. The petitioner provides a detailed account of compliance:

“i. A written reply to the first summons was made on 18.04.2022.

ii. The petitioner physically appeared before the ED on 12.07.2022.

iii. Documents were furnished promptly on 14.07.2022.

iv. Upon receiving summons dated 08.05.2024, the petitioner supplied documents on 14.05.2024, 16.05.2024, and 20.05.2024.

v. Upon summons dated 17.02.2025, the petitioner could not appear due to being illegally detained by the Uttar Pradesh Police, a fact acknowledged by the Delhi High Court on 19.02.2025 and 20.02.2025.

vi. Nevertheless, the petitioner submitted documents on 21.02.2025 and 22.02.2025.

vii. On 26.03.2025, the petitioner’s authorized representative appeared before the ED and furnished all remaining documents.”

99. The petitioner submits that on 06.03.2025 and again on 21.03.2025, the ED itself communicated in writing that the petitioner’s personal appearance was “not mandatory,” and only documents were required. In such circumstances, the allegation that the petitioner was avoiding personal appearance is factually baseless.

100. The petitioner contends that **Subhash Popatlal Dave (Supra)** has no application to the present matter because in that case, the accused was a proclaimed offender who had deliberately avoided process. Here, the petitioner has always cooperated and

complied, unless prevented by illegal detention by the state police.

101. The petitioner submits that the ED’s reliance on **Wave Hospitality Pvt. Ltd. (Supra)** is also misplaced because that case concerned provisional attachment proceedings under Section 5 PMLA and had no relation to compliance with summons.

102. The petitioner also relies on the Bombay High Court’s judgment in **Sagar Maruti Suryawanshi (Supra)**, which held that the ED cannot combine unrelated FIRs to create a composite ECIR and must confine itself to the scheduled offence forming the basis of money-laundering. The petitioner argues that ED’s attempt to incorporate FIRs relating to the “Mist Project” into the present ECIR violates this principle.

103. The petitioner submits that the Hon’ble Supreme Court’s order in W.P. (Crl.) No. 242/2019 dated 12.05.2022 consolidated all FIRs relating to the Grand Venice project into one principal FIR No. 353/2015, directing that all other FIRs and charge-sheets be treated as statements under Section 161 CrPC. The petitioner submits that the ED has unlawfully relied upon multiple FIRs that no longer survive in law.

ANALYSIS AND FINDINGS

I. INTRODUCTION TO THE STATUTORY SCHEME

104. This Court has heard learned counsel for the petitioner and the Enforcement Directorate at length and has perused the material placed on record,

including the writ petition, the tabular chart filed by the ED, the ED's written submissions, the petitioner's case-law compilations, the petitioner's rebuttal note, and the documents annexed thereto.

105. The primary challenge in the present proceedings is to the ECIR and NBWs issue vide order dated 11.04.2025.

106. Before examining the factual controversies and rival submissions, it is necessary to set out the relevant statutory concepts central to the adjudication i.e., ECIR, scheduled offence, predicate offence, and the scope of judicial review over an ECIR.

(A) Section 3 of the PMLA reads thus:

Offence of money-laundering. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation. For the removal of doubts, it is hereby clarified that,

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever. On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines "proceeds of crime", which reads thus:

2.

Definition (1) In this Act, unless the context otherwise requires, "proceeds of crime" means

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation. For the removal of doubts, it is hereby clarified that "proceeds

of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. □

B. Clause (v) of sub Section (1) of Section 2 of the PMLA defines □property□ to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of □proceeds of crime□ is sine qua non for the offence under Section 3 of the PMLA.

(C) Clause (x) of sub-Section (1) of Section 2 of the PMLA defines □schedule□. Clause (y) thereof defines □scheduled offence□, which reads thus:

□2. Definition □ (1) In this Act, unless the context otherwise requires, □□□□□□□□□□.

(y) □scheduled offence□ means –

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value

involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule.

5. Attachment of property involved in money-laundering.-

4[(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has

been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1[first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3[sub-

section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation. □ For the purposes of this sub-section, □ person interested □, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

17. Search and seizure.-(1)
Where 1[the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person □

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, 1[or]

[(iv) is in possession of any property related to crime,]

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to □

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

d) place marks of identification on such record or I[property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

* * * * *

3[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such

order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure 3[or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

4[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for

continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.]

44. Offences triable by Special Courts.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), □

1[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];

(b) a Special Court may, 2*** upon a complaint made by an authority authorised in this behalf under this Act take 3[cognizance of offence under section 3, without the accused being committed to it for trial];

4[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

5[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court

and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]

4[Explanation. □ For the removal of doubts, it is clarified that, □

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to □Magistrate□ in that section includes also a reference to a □Special Court□ designated under section 43.

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.-(1)

The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely: □

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commissions for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and

produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not □

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the 2[Joint Director]. □

107. These expressions lie at the core of the PMLA framework and have been judicially examined at length by the Hon^{ble} Supreme Court in Vijay Madanlal Choudhary (Supra) and Pavana Dibbur (Supra) and by various High Courts, including this Court. For convenience, the relevant paragraphs of Vijay Madanlal Choudahry (Supra) are reproduced below for reference:

“100. We would now elaborate upon the meaning of □investigation□ in clause (na) of Section 2(1). It includes all proceedings under the Act conducted by the Director or an authority authorised by the Central Government under this Act for

collection of evidence. The expression "all the proceedings under this Act" unquestionably refers to the action of attachment, adjudication and confiscation, as well as actions undertaken by the designated authorities mentioned in Chapter VIII PMLA, under Chapter V PMLA, and for facilitating the adjudication by the adjudicating authority referred to in Chapter III to adjudicate the matters in issue, including until the filing of the complaint by the authority authorised in that behalf before the Special Courts constituted under Chapter VII PMLA. The expression "proceedings", therefore, need not be given a narrow meaning only to limit it to proceedings before the court or before the adjudicating authority as is contended but must be understood contextually. This is reinforced from the scheme of the Act as it recognises that the statement recorded by the Director in the course of inquiry, to be deemed to be judicial proceedings in terms of Section 50(4) of the 2002 Act.

105. The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property [mentioned in Section 2(1)(v) PMLA] derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence [mentioned in Section 2(1)(y) read with Schedule to the Act] or the value of any such property.

Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(u)].

106. The "proceeds of crime" being the core of the ingredients constituting the offence of money laundering, that expression needs to be

construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act □ so long as the whole or some portion of the property has been derived or obtained by any person □as a result of□ criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, □as a result of□ criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act.

Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person □as a result of□ criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or

activity constitutes offence of money laundering under Section 3 PMLA.

107. Be it noted that the definition clause includes any property derived or obtained □indirectly□ as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the □property□ which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression □proceeds of crime□, it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to □any property□ including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of □proceeds of crime□. The definition of □property□ also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of

criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now.

Section 3 of the 2002 Act

122. Coming to Section 3 of the 2002 Act, the same defines the offence of money laundering. The expression "money laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country.

However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. This is amply clear from the original provision, which has been further clarified by insertion of the Explanation vide Finance (No. 2) Act, 2019.

147. We may also note that argument that removing the necessity of projection from the definition will render the predicate offence and money laundering indistinguishable. This, in our view, is ill founded and fallacious. This plea cannot hold water for the simple reason that the scheduled offences in the 2002 Act as it stands (amended up to date) are independent criminal acts. It is only when money is generated as a result of such acts that the 2002 Act steps in as soon as proceeds of crime are involved in any process or activity. Dealing with such proceeds of crime can be in any form "being process or activity. Thus, even assisting in the process or activity is a part of the crime of money laundering. We must keep in mind that for being liable to suffer legal consequences of one's action of indulging in the process or activity, is sufficient and not only upon projection of the ill-gotten money as untainted money. Many members of a crime syndicate could then simply keep the money with them for years to come, the hands of the law in such a situation cannot be bound and stopped from proceeding against such person, if information of such illegitimate monies is revealed even from an unknown source.

148. *The next question is : Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act.*

149. *As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.*

150. *Be it noted that the authority of the authorised officer under the 2002 Act*

to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

151. *It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.*

153. *In other words, the authority under the 2002 Act is to prosecute a person for offence of money laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any*

process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a stand-alone process.

162. *As a matter of fact, prior to the amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate □prosecution□ for offence under Section 3 PMLA registration of scheduled offence is a prerequisite, but for initiating action of □provisional attachment□ under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including to prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act.*

212. *The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However,*

it is essentially an inquiry to collect evidence to facilitate the adjudicating authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. In other words, the role of the authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the adjudicating authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money laundering. It is also not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity.

ECIR vis-□-vis FIR

366. *As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154 of the 1973 Code [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] . There is no corresponding provision in the 2002 Act requiring registration of offence of money laundering. As noticed earlier,*

the mechanism for proceeding against the property being proceeds of crime predicated in the 2002 Act is a sui generis procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code.

368. Considering the scheme of the 2002 Act, though the offence of money laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under the 1973 Code to deal with other offences (other than money laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money laundering offence much less investigation thereof. The dispensation regarding prevention of money laundering, attachment of proceeds of crime and inquiry/investigation of offence of money laundering up to filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions

of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of persons concerned and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money laundering including bail and attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money laundering would then be governed by the provisions of the 1973 Code □ as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

369. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money laundering, analogy cannot be drawn from the provisions of the 1973 Code, in regard to registration of offence of money laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being

proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law.

370. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in the 2002 Act requiring authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

371. The next issue is : Whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the

person is guilty of money laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. In any case, upon filing of the complaint before the statutory period provided in the 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the authority under Section 44(1)(b) of the 2002 Act before the Special Court.

372. Viewed thus, supply of ECIR in every case to the person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of the 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including

frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution.

373. *It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the court concerned. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further.*

382.8. *The offence under Section 3 of the 2002 Act is dependent on illegal*

gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

382.26. *In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the authorities referred to in Section 48 to commence inquiry/investigation for initiating □civil action□ of □provisional attachment□ of property being proceeds of crime.*

382.27. *Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest. □*

Definition and Nature of ECIR

108. ECIR is a document generated by the ED under the PMLA, when they initiate an investigation into money laundering offences. The ECIR is akin to an FIR in criminal cases. It records the basis for the ED's investigation into suspected money laundering activities. It includes details of the predicate offence (scheduled offence under PMLA), the accused involved and the alleged proceeds of crime. The ED registers an ECIR basis on a schedule offence and proceeds to investigate money laundering links. It is treated as an internal document. Unlike FIR, the ED does not typically provide a copy of the ECIR to the accused.

109. Upon perusal of the aforementioned paragraphs of *Vijay Madanlal Choudhary (Supra)*, it is drawn that an ECIR is an internal, administrative record maintained by the ED upon receipt of information relating to the commission of the offence of money laundering under Section 3 PMLA. The Hon'ble Supreme Court has clarified that an ECIR is not equivalent to an FIR, does not initiate criminal prosecution, and is not required to be furnished to the accused. The purpose of the ECIR is merely to record initiation of investigation by the ED.

110. However, while an ECIR is not a statutory instrument, its validity may be questioned on limited grounds where the initiation of investigation is vitiated by a jurisdictional defect, such as absence of a scheduled offence, or initiation on the basis of allegations/offences which no longer survive in law. What the Court cannot do is appraise evidence or monitor the investigation.

Scheduled Offence and Predicate Offence.

111. The PMLA is a derivative legislation. Proceedings under Section 3 PMLA are predicated upon the commission of a Scheduled Offence listed in the Schedule to the Act. A Scheduled Offence is therefore the Predicate Offence, whose proceeds constitute "proceeds of crime".

112. If the Scheduled Offence does not exist, PMLA proceedings may be affected but a mere stay or a dispute about cognizance does not extinguish the scheduled offence itself. The Hon'ble Supreme Court in *Vijay Madanlal Choudhary (Supra)* held that the PMLA proceedings cannot proceed in the absence of a subsisting scheduled offence, however, it did not hold that every interim order in the predicate offence stops PMLA investigation.

Scope of judicial review over ECIR

113. Courts have repeatedly held that the ECIR generally cannot be quashed, because it does not affect rights or liabilities. Nevertheless, judicial review lies where:

- (i) the ECIR is demonstrably without jurisdiction;
- (ii) the allegations do not disclose any scheduled offence, or
- (iii) where statutory safeguards are violated.

114. This Court therefore approaches the matter by examining only whether the threshold for interference is met, without venturing into factual inquiry reserved for the investigating agency or the Special Court.

II. ISSUE OF SEARCH AND SEIZURE UNDER SECTION 17 PMLA

115. The petitioner challenges the search conducted between 10.04.2025 and 12.04.2025 on the ground that there was no reason to believe. The ED's position is that authorization was duly recorded and the challenge is premature because the petitioner has a statutory remedy before the Adjudicating Authority.

116. This Court, regarding the said issue is inclined to agree with the respondent as per which the prayer seeking a declaration that the search action conducted by the ED is illegal, is a relief for which the petitioner has an efficacious alternate statutory remedy under the PMLA, before the Adjudicating Authority, to challenge or contest the validity of the search.

117. Hence, the relief sought in the present writ petition is rejected. Moreover, allegations of misconduct during search are disputed questions of fact not amenable to writ jurisdiction.

III. MULTIPLE FIRs, CLUBBING ORDER AND WHETHER ECIR CAN BE BASED ON ADDENDUMS, AND ITS VALIDITY.

118. The principles governing consolidation of criminal proceedings have been clarified in *Amitbhai Anilchandra Shah v. CBI21*. There, the Hon'ble Supreme Court held that multiple FIRs concerning the same transaction not to be investigated separately but also held that consolidation cannot operate to efface the existence of individual FIRs for all investigation purposes. The Hon'ble Court observed that consolidation is an

administrative measure to avoid duplication, not a substantive extinguishment of offences.

119. The petitioner asserts that after the Hon'ble Supreme Court's order dated 12.05.2022 consolidating several Grand Venice project FIRs into FIR No. 353/2015, the ED could not rely upon other FIRs, especially FIRs relating to the Mist Project. The ED contends otherwise, relying on the tabular chart which shows that the ECIR originally included FIR No. 353/2015 and pursuant to addendums dated 10.03.2025 and 21.05.2025, included a total of 49 FIRs, of which 44 FIRs relate to the Grand Venice consolidation, and 5 FIRs relate independently to the Mist Project.

120. The petitioner's submissions concede that the Hon'ble Supreme Court's order consolidated the pending Grand Venice FIRs, but this Court observes that it did not direct that future FIRs on distinct facts could not be registered. This Court notes from the record that the consolidation order also required a composite chargesheet to be filed in FIR No. 353/2015 for the Grand Venice matters. It did not bar investigation by other statutory agencies into distinct projects or offences.

121. The question therefore is not whether multiple FIRs exist, but whether the ED has acted unlawfully in drawing them into the ECIR. The Hon'ble Supreme Court has not held that ED investigation is tied only to the predicate FIR. Section 3 PMLA applies wherever there are proceeds of crime relating to any scheduled offence. If multiple FIRs, by multiple complainants allege cheating, forgery, falsification of documents, and criminal conspiracy in different real estate

projects, by the same party, they remain distinct scheduled offences for the purposes of PMLA.

122. The tabular chart filed by the ED contains FIR numbers, police stations, and the sections invoked, including Sections 406, 420, 467, 468, 471, and 120-B IPC, all of which are Scheduled Offences (Part A of the Schedule). The petitioner in his rejoinder does not dispute the authenticity of the chart and his objection relates only to the clubbing order.

123. The Hon^{ble} Supreme Court's consolidation order did not create an immunity from investigation under the PMLA, nor did it collapse distinct offences into non-existence. Consolidation for trial under CrPC is an administrative procedural direction and it does not extinguish the statutory ingredients of each scheduled offence for purposes of Section 3 PMLA.

124. The above stated reasoning of *Amitbhai Anilchandra Shah (Supra)* applies here. Even if several FIRs were directed to be merged for police investigation by the Hon^{ble} Supreme Court, their statutory character as independent allegations, particularly for purposes of special statutes such as PMLA, does not stand obliterated. The effect of consolidation is procedural, and it does not amount to quashing or discharge.

125. The petitioner argues that once the Hon^{ble} Supreme Court consolidated all 46 Grand Venice FIRs into FIR No. 353/2015, the ED could not have relied upon any other FIRs, nor could it have expanded the scope of the ECIR by way of addendums. The ED argues that addendums are a legitimate internal step reflecting expansion of investigation as new

facts emerge. The question before this Court is whether such addendums are permissible.

126. It must be noted at the outset that the ECIR is not a statutory document but an internal administrative document. Its contours are not fixed by any provision of the PMLA. Unlike an FIR under Section 154 CrPC, which cannot be amended or supplemented except through prescribed procedures, an ECIR is not bound by procedural rigidity. The Hon^{ble} Supreme Court in *Vijay Madanlal Choudhary (Supra)* recognized that the ECIR merely records initiation of investigation and it is not a foundational jurisdictional document like an FIR.

127. Consequently, where ED receives material relating to new scheduled offences, or further transactions involving the same accused or entities controlled by them, it is entitled to incorporate that information into its investigative record through addendums. The petitioner has shown no legal bar on the ED issuing addendums. Nor has any judicial pronouncement to that effect has held that addendums to an ECIR are impermissible.

128. The petitioner's argument that addendums are impermissible because the original ECIR was based on FIR No. 353/2015 is fundamentally misconceived. Section 3 PMLA does not restrict offences arising from only one scheduled offence. The test is the existence of "proceeds of crime" connected with a scheduled offence, not the numerical identity of the predicate FIR. If the accused is alleged to have diverted or laundered funds arising from multiple transactions, each giving rise to distinct scheduled offences, those offences form independent predicates for PMLA jurisdiction.

129. The ED has placed on record two addendums; one dated 10.03.2025 adding seven FIRs, and another dated 21.05.2025 adding fourteen FIRs, bringing the total to forty-nine FIRs. The petitioner has not demonstrated that these additional FIRs do not contain scheduled offences. On the contrary, the tabular chart discloses that the added FIRs invoke Sections 406, 420, 467, 468, 471, and 120-B IPC. These sections are part of the Schedule to the PMLA.

130. Therefore, the argument that ECIR cannot be based on FIRs later added is unsustainable. Clubbing under CrPC occurs for administrative consolidation of trial. It does not erase the scheduled offences for purposes of Section 3 PMLA. Nor does it bar ED from investigating proceeds of crime arising from such offences. The ED is not investigating the procedural effect of the Supreme Court's clubbing order, instead it is investigating laundering of proceeds of crime arising from duly registered criminal cases giving rise to schedule offences.

131. The petitioner contends that the so-called "Mist Project" FIRs are unrelated to the Grand Venice FIRs and were erroneously included into the ECIR. The ED's submissions, including the tabular chart and their additional note, clearly state that five Mist Project FIRs exist and that the petitioner is named as an accused therein. The petitioner does not dispute being named in these FIRs, instead, he contends that these FIRs stand nullified because of the Hon'ble Supreme Court's consolidation order and that the same pertain to different transaction and not the Grand Venice Mall issue.

132. This contention is factually inaccurate, that the consolidation order

dated 12.05.2022 applied only to Grand Venice FIRs and it did not extend to FIRs relating to other projects. There is not a single sentence in the Hon'ble Supreme Court order directing consolidation of the Mist Project FIRs or restraining their registration or investigation. The Mist Project FIRs concern a different project, different complainants, and allegations of separate fraudulent transactions. They are separate predicate offences, however, pertain to same set of individuals including the petitioner who is alleged to have played a key role in the entire set of allegations qua the schedule offences and the PMLA investigation considering that he was/is the director/promoter in the group companies.

133. Further, in ***Directorate of Enforcement v. Deepak Mahajan***²², although it does not concern the PMLA or ECIRs, the Hon'ble Supreme Court held that investigations under special statutes are not circumscribed by the procedural rigidity applicable to police FIRs under the CrPC, and that investigation may evolve as further material surfaces. Relevant paragraphs of the same are as under:

"116. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under Section 173 of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under Section 61(ii) in the case of FERA and under Section 137 of the Customs Act. To say differently, the police officer after consummation of the investigation files a report under Section 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under Section 190(1)(b) of the Code whereas the

empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under Section 190(1)(a) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special Acts. Therefore, the word "investigation" cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation."

134. This principle that special-statute investigations are dynamic and not limited to the initial material available can subsequently be applied in PMLA jurisprudence to recognize that an ECIR, being an internal record, may be supplemented or updated by way of addendums as the investigation progresses. The permissibility of addendums thus flows from the broader doctrine in **Deepak Mahajan (Supra)**.

135. The Mist Project FIRs invoke Sections 406, 420, 467, 468, 471, and 120-B IPC. These are scheduled offences. The petitioner is named as an accused. Therefore, these FIRs form independent and valid predicates enabling ED to investigate proceeds of crime connected to those offences.

136. The argument that all FIRs involving the petitioner must be treated as if they no longer exist because the Hon^{ble} Supreme Court consolidated only Grand Venice matters is untenable. The Hon^{ble} Supreme Court did not direct a freeze on future FIRs or a bar on FIRs relating to distinct projects. The direction to file a composite chargesheet in the Grand Venice cluster does not retroactively extinguish other transactions.

137. Consequently, the Mist Project FIRs constitute independent scheduled offences. Their inclusion through addendums in the ECIR is lawful, justified, and consistent with the scheme of the PMLA.

138. Since the ECIR has not been equated with an FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent "scheduled offence" registered by way of an FIR alleged to have been committed in respect of the similar transaction which was the subject matter of such ECIR.

139. Accordingly, the ED was entitled to issue addendums to the ECIR, particularly because the investigation is ongoing and proceeds of crime may emerge from multiple transactions. There are separate predicate offences, however, all, upon prima facie basis, pertain to same set of individuals including the petitioner who is alleged to have played a key role in the entire set of allegations qua the schedule offences and the PMLA investigation considering that he was/is the director/promoter in the group companies. The petitioner's contention with respect to the instant issue are thus devoid of any merits and stand rejected.

***IV. WHETHER STAY OF
PREDICATE FIR HAS ANY EFFECT
ON THE PMLA INVESTIGATION AND
QUASHING OF ECIR***

140. It is a settled proposition of law that proceedings under special statutes proceed independently of the outcome of the main criminal case, unless the special statute expressly incorporates any provision qua the fate of the predicate offence.

141. The petitioner places heavy reliance on the fact that criminal proceedings in FIR No. 353/2015 have been stayed by a learned Single Judge of this Court. He contends that once the predicate offence is stayed, ED cannot continue its investigation.

142. At the outset, it becomes necessary to understand the precise legal position that has emerged from the orders passed by the learned Single Judge of this Court and the Hon^{ble} Supreme Court regarding the predicate offences from which the ECIR has been derived.

143. The admitted position of facts of the present case reveals that on 12.05.2022, the Hon^{ble} Supreme Court in W.P. (Crl.) No. 242/2019, passed a consolidated order whereby 46 FIRs relating to the Grand Venice project were clubbed into one principal FIR, namely FIR No. 353/2015 dated 09.06.2015, registered at Police Station Kasna, Gautam Buddh Nagar, District Gautam Buddh Nagar, Uttar Pradesh. This consolidation was necessitated by the multiplicity of identical allegations arising from the same transaction, the non-delivery of commercial units and non-payment qua the Grand Venice Mall project. The Hon^{ble} Supreme Court, while consolidating these

FIRs, directed that all proceedings would be governed by the principal FIR and that a composite chargesheet would be filed, if required.

144. Following the Hon^{ble} Supreme Court's consolidation order, this Court was moved by the petitioner in Criminal Misc. Application No.25724/2022 for quashing of proceedings arising out of the said principal FIR No. 353/2015 and the consolidated proceedings in Case No. 1559/2019 pending before the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar. By order dated 27.04.2023, the learned Single Judge granted an interim order staying all further proceedings in the said Case No. 1559/2019. This stay order assumes critical importance in the present context because it is the predicate offence, the criminal case arising from the consolidated FIRs, whose proceedings stand stayed, not merely a procedural protection but a substantive halt to the criminal machinery.

145. The stay order remains in operation, and the respondent has not placed any material on record showing that no challenge to this stay order has been filed by the State/investigating agency, nor has any application been made to vacate the stay. The admitted position, therefore, is that the consolidated proceedings remain stayed.

146. The significance of this factual position cannot be understated when viewed against the statutory requirements of the PMLA. Under the PMLA, the offence of money laundering under Section 3 is inherently dependent upon the existence of a scheduled offence, a predicate offence as defined under the Act. The Hon^{ble} Supreme Court in Vijay

Madanlal Choudhary (Supra) examined in detail the scheme of the PMLA and held that the offence under Section 3 is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerned with the process or activity connected with such property, which constitutes the offence of money-laundering. A person under the PMLA cannot be prosecuted on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him.

147. The legal principle enunciated above establishes a cardinal foundation for PMLA proceedings. The predicate scheduled offence must continue to exist and remain operative. While the Hon^{ble} Supreme Court in the aforesaid judgment did not explicitly address the situation where the predicate offence stands stayed, a state intermediate between continuing vibrancy and final quashing, the logical extension of the principle is that where judicial proceedings in the predicate offence are eclipsed by a stay order, the jurisdictional foundation of the PMLA investigation stands suspended. This proposition has been examined by other High Courts. The High Court of Karnataka in *Mantri Developers Pvt. Ltd. v. Directorate of Enforcement*²³, decided on 14.12.2022, applied the principle from *Vijay Madanlal Choudhary (Supra)* and held that the existence of a scheduled offence is a jurisdictional fact, a condition

precedent for the exercise of investigative authority by the ED. In that case, similar facts were present, the predicate criminal proceedings had been stayed, and the PMLA proceedings continued. The Karnataka High Court, relying on the Supreme Hon^{ble} Supreme Court's pronouncement, held that PMLA investigation must also be stayed where the predicate offence is stayed. The relevant paragraphs of the same is as under:

“14. In these circumstances the offence alleged under the provisions of the PMLA cannot be sustained and cannot be permitted to be continued. Therefore, if the allegations in the predicate offences are considered to be the flesh, the offences under the PMLA is the blood. Therefore, if the predicate offence is not permitted to move forward, the impugned proceedings cannot. It would have been altogether different circumstance, if the petitioners were all acquitted of the offences under the IPC or any other predicate offence to which the offence under the PMLA is linked. The situation in the case at hand is not with regard to acquittal, however, the proceedings are stayed. Therefore, they are eclipsed and not extinguished. The Apex Court does not deal with a circumstance as to what should happen in a case, where it is eclipsed. The Apex Court only dealt with a situation where there is extinguishment of predicate offences. Therefore, it is necessary to consider taking cue from the findings of the Apex Court as to whether attachment order should be permitted to be confirmed or otherwise.

15. It cannot be disputed, that at a later point in time if the petitioners are acquitted, no proceeding under ECIR can continue. In the event they are convicted, it is always open to the Enforcement

Directorate to pass any order of attachment or conviction as the case would be. If that be the right of the Enforcement Directorate, since there is no determination in Crime No.163 of 2020, in the light of the interim order being granted by this Court, so long as the interim order is in operation, the impugned proceedings of attachment, in the considered view of this Court, cannot be permitted to continue failing which, it would run completely counter to the findings of the Apex Court.

16. In somewhat similar circumstance, a Division Bench of the High Court of Madras in *B. SHANMUGAM*’s case (*supra*) considers this very point as to what is the effect of the stay order and has held as follows:

□What is the effect of a stay order?

A Division Bench of the High Court of Madras holds that in the light of the link between the two and the judgment of the Apex Court in VIJAY MADANLAL CHOUDARY (supra) further proceedings under the PMLA should not be permitted to be continued, till the disposal of the case pending before the competent Court in the predicate offence, where there is an interim order of stay operating. I am in respectful agreement with the order passed by the Division Bench of Madras, but only to the extent of challenge to the impugned proceedings. There is no challenge to the proceedings under the ECIR. What is called in question is the provisional attachment order. In the light of judgments quoted hereinabove, the order passed under sub-section (1) of Section by the Enforcement Directorate cannot be termed

to be illegal, however, those proceedings cannot be permitted to be taken to its logical conclusion.

17. There are only three circumstances that the Court would indicate in *VIJAY MADANLAL CHOUDARY*’s case that in the event the accused in the predicate offence is discharged, acquitted or the proceedings against him are quashed in exercise of jurisdiction under Section 482 of the Cr.P.C., it is only then all the proceedings under the Act would become a nullity. That situation has not yet arrived. Therefore, if the proceedings under the predicate offences are eclipsed and not extinguished, the same would become applicable to the proceedings under the ECIR. The same will have to be eclipsed and cannot be extinguished.

18. In the event the submission of the learned counsel for the petitioners is accepted, it would defeat the very power of attachment under sub-section (1) of Section 5 of the PMLA and if the Enforcement Directorate is permitted to move on with the attachment by seeking a confirmation order or proceeding to sell the attached properties, it would defeat the very proceedings pending before this Court in the predicate offences and the judgment of the Apex Court in the case of *VIJAY MADANLAL CHOUDARY (supra)*. Therefore, to keep the right of the petitioners and the respondent/Enforcement Directorate alive, I deem it appropriate to stall further proceedings in the impugned attachment order i.e., the provisional attachment order directing it not to be confirmed or it being taken any further, however, it would not mean that there can be release of the subjects of attachment in favour of the petitioners. If status quo has

to be maintained in the proceedings under the IPC for the reason that there is an interim order; status quo has to be maintained in the proceedings of ECIR as well i.e., the impugned proceedings, all of which would mean that they are mutual to each other. The proceedings under the ECIR can continue once there is a determination by this Court in Writ Petition No.10258 of 2020 either in favour of the petitioners or against them. The impugned proceedings of attachment cannot continue as it would be subject to the final result of Writ Petition No.10258 of 2020. In the event the proceedings against the petitioners stand quashed, the attachment order or any other proceeding under the ECIR cannot continue. Till such time, the proceedings cannot be held to be illegal leading to its obliteration.

19. Insofar as the judgments relied on by the learned counsel appearing for the Enforcement Directorate particularly with reference to the case in J.SEKAR v. UNION OF INDIA - 2018 SCC OnLine Del 6523, rendered by the High Court of Delhi holding that the proceedings under the PMLA and the proceedings under the IPC or predicate offences are completely different and they can go hand in hand is concerned, there can be no qualm about the principles so laid down at the relevant point in time. With the judgment of the Apex Court in the case of VIJAY MADANLAL CHOUDARY (supra), the judgment in J.SEKAR would not become applicable to the facts of the case. The other judgments relied on would also follow suit in the light of the judgment of the Apex Court rendered in the case of VIJAY MADANLAL CHOUDARY (supra)."

148. The principle was also applied by the High Court of **Karnataka in C.**

Umma Reddy v. Directorate of Enforcement decided on 14.12.2022. In that case, the Court examined whether PMLA proceedings could continue where proceedings in the predicate offence stood stayed. The Karnataka High Court held that an order of stay, while not effecting permanent extinguishment, operates to eclipse the proceedings. The Court observed that the effect of an order of stay means that the operation of the impugned order is stayed or stands stalled as if the impugned order does not exist. This holding was grounded in the principle that a scheduled offence, after an FIR has been quashed, cannot exist and therefore, if there is no scheduled offence, there can be no offence of money laundering.

149. The principle and reasoning discussed in the preceding paragraphs may be applied to the present matter, for the reason that the stay order granted by the learned Single Judge of this Court in Criminal Misc. Application No. 25724/2022 operates to eclipse the predicate proceedings, thereby temporally suspending the jurisdictional foundation of the PMLA investigation qua the consolidated FIRs.

150. The ED, in its submissions, sought to distinguish between the effect of a stay order and the effect of quashing or acquittal. The ED contended that a stay order does not efface the existence of an FIR and relied upon the judgment of **Shree Chamundi Mopeds Ltd. (Supra)**, wherein the Hon^{ble} Supreme Court held that a stay of operation of an order does not lead to such a result and that it only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from

existence. This distinction is legally sound as a matter of technical jurisprudence. A stay order does not quash, instead it suspends. Quashing operates to wipe out proceedings as though they never existed. A stay, by contrast, operates to prevent further proceedings while leaving the underlying order or FIR intact in law.

151. While the ED is technically correct that a stay order does not extinguish the FIR, it is equally true that during the operation of a stay order, the machinery that would otherwise render judgment on the predicate offence is kept in abeyance as well due to stay order.

152. The petitioner cannot be tried, nor can the evidence be sifted, nor can guilt or innocence be determined at this stage with regard to the stay. The predicate offence, though technically existing in law, remains judicially inoperative.

153. In the context of the PMLA, a legislation expressly designed to address proceeds derived from the commission of criminal offences, the investigative authority cannot be permitted to unilaterally proceed with inquiry into proceeds of crime while the very question of whether a predicate offence was committed remains suspended in judicial abeyance.

154. The ED further relied upon judicial pronouncements from the High Court of Madras in *Vijayraj Surana v. Enforcement Directorate*²⁴, and other courts suggesting that once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document itself.

155. However, this principle, rightly understood, operates in the context

where the predicate offence subsists and continues to generate proceeds of crime. The principle does not contemplate a scenario where the predicate criminal proceedings themselves are stayed by a competent court. To permit the ECIR to breathe independently while the predicate remains in judicial suspension would amount to circumventing the stay order, a proposition antithetical to the rule of law and the principle of judicial discipline. When a High Court stays proceedings in a predicate offence, the implicit corollary is that all collateral and derivative proceedings must also desist until the stay is lifted or the matter is finally adjudicated.

156. The ED's argument that protective orders in the predicate case cannot bear upon independent PMLA proceedings is misplaced because the protective order is not merely the bail order dated 06.11.2019 granted by the Hon'ble Supreme Court but extends to the comprehensive stay of proceedings granted by the learned Single Judge vide order dated 27.04.2023. This distinguishes the present matter from scenarios where only a protective order or bail condition is in operation.

157. The petitioner's assertion is not confined to a bail order but extends to the comprehensive stay of proceedings in Case No. 1559/2019. A stay of proceedings is not merely a protective measure, rather it is an affirmative judicial determination that the State machinery shall not advance until the stay is lifted or the matter is finally adjudicated. When a High Court stays proceedings, it does so to prevent prejudice to the accused, to preserve the status quo, or in response to compelling legal circumstances. A stay order thus carries greater judicial weight than a protective

order. The ED's argument that PMLA investigations must continue despite the stay of predicate proceedings amounts, in substance, to circumventing the judicial order of stay, a course impermissible under the principle of subordination to superior court orders and the doctrine of judicial discipline.

158. Furthermore, the ED's reliance upon the judgments, asserting that stay on scheduled offence does not automatically translate to stay on PMLA proceedings, must be understood in their proper context. Those judgments were rendered in cases where the predicate offences continued to subsist, and no judicial stay had been granted. The principle enunciated therein that PMLA is an independent offence does not address the situation where the very predicate upon which PMLA investigation is based stands judicially suspended. The present case stands on materially different footing.

159. PMLA, as a special statute designed to combat money laundering, is premised upon the fundamental principle that proceeds of crime are only those derived from or obtained as a result of criminal activity relating to a scheduled offence. Section 2(1)(u) of the PMLA defines "proceeds of crime" as "any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence". The definition is not abstract or notional, and it requires a nexus between the property and a criminal activity relating to a scheduled offence. The scheduled offence must be concrete, not hypothetical.

160. In the present case, the ECIR was registered on 12.03.2021 and was predicated upon FIR No. 353/2015, which,

at that time, contained allegations under Sections 406 and 420 IPC. However, in the supplementary chargesheet filed on 17.02.2019, the allegations under Section 420 IPC were dropped, and cognizance came to be taken only under Section 406 IPC. Section 406 IPC (criminal breach of trust) is not a scheduled offence under the PMLA. This Court notes that while the ECIR was registered before the supplementary chargesheet was filed, and thus technically at the time of ECIR registration there were scheduled offences (Section 420), the current legal position is that cognizance is taken only under a non-scheduled offence.

161. In the interregnum, The ED through addendums dated 10.03.2025 and 21.05.2025, added five other FIRs relating to the Mist Avenue project (Nos. 841/2019, 425/2019, 219/2019, 264/2018, 268/2018). The ED contended that these FIRs, which are not part of the Hon'ble Supreme Court's consolidation order, contain scheduled offences and thus sustain the ECIR. However, this Court must observe that these Mist Avenue FIRs stand on an entirely different footing from the consolidated Grand Venice FIRs. The Hon'ble Supreme Court's consolidation order of 12.05.2022 applied specifically to FIRs relating to the Grand Venice project. The Mist Avenue FIRs, relating to a different project and different investors, were not part of the consolidation order and remain separate predicate offences.

162. The fact remains that qua the consolidated FIRs, the principal focus of the present investigation and the matter sub-judice before this Court, cognizance has been taken only under Section 406 IPC, a non-scheduled offence. The legal position is thus that the consolidated FIRs no longer

contain a scheduled offence, and proceedings therein stand stayed. Qua the independent Mist Avenue FIRs, scheduled offences do subsist, but these are separate transactions and not the subject of the present judicial stay.

163. This Court is acutely conscious of the principle that courts do not comment upon matters sub-judice before other benches or at other levels of the judicial hierarchy unless warranted in accordance with the law. The consolidated FIRs and proceedings arising therefrom remain sub-judice before the learned Single Judge in Criminal Misc. Application No. 25724/2022. The petitioner's application for quashing of those proceedings awaits adjudication. The learned Single Judge Court, in issuing the impugned stay order, formed a judicial opinion that circumstances warranted suspension of proceedings pending final determination. That opinion stands recorded in the order dated 27.04.2023.

164. This Court does not, in the present order, venture to revisit or reappraise the merits of the consolidated FIRs, the allegations contained therein, or the evidence available. Rather, this Court confines itself to the narrow but critical issue of whether investigative measures by the ED ought to proceed qua the consolidated FIRs while their predicate proceedings remain stayed and sub-judice.

165. The answer to this question flows not from a merits appraisal but from the jurisdictional requirement that the predicate scheduled offence must subsist and remain judicially operative.

166. The ED correctly points out that there exist FIRs which are not part of the consolidated Grand Venice FIRs. These

independent FIRs, specifically the five Mist Avenue FIRs, contain allegations of scheduled offences (Sections 420, 467, 468, 471, 120B IPC).

167. The petitioner does not dispute these FIRs. The issue before this Court is not whether the ED may investigate all FIRs without exception but whether the ED may pursue investigation specifically qua the consolidated FIRs whose proceedings stand stayed and sub-judice. Thus, any investigative measure or coercive step that is referable to the consolidated Grand Venice FIRs or the principal FIR No. 353/2015 shall be stayed until final adjudication of Criminal Misc. Application No. 25724/2022.

168. Lastly, with regard to the petitioner's contention that no proceeds of crime have been identified, ED states that the investigation is at a nascent stage. Therefore, at this stage, this Court cannot determine whether proceeds of crime exist or not.

169. This Court clarifies that the direction to refrain from investigative measures applies only to those FIRs which form part of the consolidated Grand Venice Project, i.e., those FIRs which were consolidated by the Hon^{ble} Supreme Court in its order dated 12.05.2022 into the principal FIR No. 353/2015, and qua which proceedings in Case No. 1559/2019 remain stayed by this Court's order dated 27.04.2023.

170. It is relevant to state here that the petitioner has sought quashing of the ECIR. This Court is constrained to decline this prayer, but on narrow and specific grounds that must be clearly articulated. The reasons for non-quashment are:

“A. The ECIR, qua the independent Mist Avenue FIRs, continues

to rest upon alleged scheduled offences. These FIRs are unaffected by the stay order and constitute independent predicate offences. The ECIR cannot be quashed in its entirety when it addresses investigations into proceeds of crime arising from multiple FIRs, some of which remain operative.

B. The Hon^{ble} Supreme Court, in Vijay Madanlal Choudhary (Supra), held that an ECIR is an internal administrative document, not equivalent to an FIR. Unlike an FIR which must be formally registered and requires statutory compliance with CrPC/BNSS, an ECIR is an internal record maintained by the ED to document initiation of investigation. The jurisdiction to quash an internal administrative document in the preliminary stages of investigation is limited and should be exercised only where clear jurisdictional defects appear. While the ECIR qua consolidated FIRs lacks a subsisting and operative scheduled offence, it is not devoid of all predicate material (the Mist Avenue FIRs), and therefore outright quashment is not warranted at this stage.

C. The offence relating to the consolidated FIRs is sub-judice before the learned Single Judge in Criminal Misc. Application No. 25724/2022. This Court cannot, and ought not, to offer pronouncements on matters pending adjudication before another bench, even in the guise of quashing an ECIR. The proper course is to stay investigative measures qua those FIRs while leaving the ECIR itself intact, subject to the direction that investigation shall not proceed qua the stayed consolidated FIRs.

D. The Hon^{ble} Supreme Court in its order dated 12.05.2022 directed filing of a

composite chargesheet in the consolidated proceedings. While the investigation is currently stayed, the Hon^{ble} Supreme Court has not closed the door to the possibility of a composite chargesheet being filed in the future. Complete quashment therefore at this stage would necessitate re-registration of the ECIR at a later date, creating procedural inefficiency. A stay of investigative measures qua consolidated FIRs is thus a more nuanced and efficient approach.”

171. In view of the foregoing, this Court is not inclined to quash the ECIR but suspends investigative measures qua the consolidated Grand Venice FIRs. The ECIR may be pursued qua other predicate FIRs, particularly the independent Mist Avenue FIRs.

V. ISSUE OF NON-BAILABLE WARRANT

172. The principles guiding issuance of NBWs have been discussed by the Hon^{ble} Supreme Court and many High Courts time and again. A court may issue a non-bailable warrant during investigation where summons have been ineffective, or where the presence of the accused is essential for the purposes of investigation. Investigating agency is not barred from approaching the court to compel appearance if the accused is demonstrably evading process.

173. Further, an accused has no vested right to demand that the investigating agency refrain from exercising statutory powers merely because the accused has furnished certain documents. Cooperation is not to be judged only by production of papers but also by timely compliance with summons and facilitating in investigation.

174. The NBW order dated 11.04.2025 has been examined. It records

that the petitioner stands for the offence of money laundering and directs arrest. The NBW is open-ended. The petitioner argues that NBWs cannot be issued during investigation without cognizance, and the ED argues that NBWs are justified because the petitioner repeatedly evaded personal appearance.

175. The writ petition annexures show emails and documents transmitted by the petitioner. However, the ED's written submissions state that critical documents were not submitted and personal appearance was avoided. The investigation requires personal interrogation under Section 50, and merely sending papers does not satisfy the requirement.

176. The record placed before this Court demonstrates that the investigation under ECIR has been pending since 12.03.2021. Over four years have elapsed since the ECIR was registered. During this extended period, the petitioner has been summoned on multiple occasions, and the record shows the issuance of summons dated 29.03.2022, 14.07.2022, 08.05.2024, 17.02.2025, 06.03.2025 and 21.03.2025. Bailable warrants were not issued, and NBWs were issued thereafter.

177. The preceding paragraph discloses engagement on behalf of the petitioner with the investigative process over the period. The petitioner has appeared in person on initial occasions (12.07.2022 and 14.05.2024) and subsequently through authorized representatives.

178. The ED, in its submissions dated 11.04.2025 (after the NBW was issued on 11.04.2025), belatedly sought to characterize the petitioner's conduct as

evasive, alleging that the petitioner fled from his premises in a clear and deliberate attempt to avoid any cooperation with the investigation during the search operations on 10.04.2025. However, the ED simultaneously acknowledged that the petitioner had been complying with summons and furnishing documents. In its chart of summons, the ED noted [] appeared[], [] submitted documents[], [] provided documents[], etc. The narrative of evasion sits uncomfortably with the record of sustained compliance on the face of it.

179. The temporal aspect is critical to the analysis. Four years have elapsed without completion of investigation. Summons continue to be issued, documents continue to be called for, and now, coercive measures in the form of NBWs have been resorted to. This Court must consider whether, after such a prolonged period, NBWs serve any legitimate investigative purpose or whether they represent a frustration of the investigative process rather than a facilitation thereof.

180. The power of issuance of NBWs is not unlimited but is hedged with important preconditions and principles. The Hon'ble Supreme Court in *Inder Mohan Goswami (Supra)* expounded the legal principles governing issuance of NBWs. The Hon'ble Supreme Court laid down comprehensive guidelines therein, as per which NBWs should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when it is reasonable to believe that the person will not voluntarily appear in court or the police authorities are unable to find the person to serve him with a summon or it is considered that the person avoiding the process of court.

181. The Hon^{ble} Supreme Court emphasized that the purpose of NBWs is to secure the presence of an accused before court and not to punish. The Hon^{ble} Court further observed that issuance of NBWs should be done carefully and should not become a tool for punishment before conviction. Mechanical issuance of NBWs without consideration of the facts and circumstances is impermissible.

182. The Hon^{ble} Supreme Court reiterated this principle in ***Satender Kumar Antil (Supra)***, wherein it held that NBWs during investigation demand proper justification. The Hon^{ble} Court observed that in the absent of evasion proof or likelihood that the person would abscond, NBWs should not be issued during the investigative stage mechanically.

183. By contrast, in the present case, the petitioner's reasons for nonappearance in February 2025 were that he had been illegally detained by the Uttar Pradesh Police and was before the Delhi High Court in a related proceeding (W.P. Crl. No. 598/2025). These reasons were not frivolous, rather they were factual and had been placed before the ED in writing. The petitioner thereafter appeared through a representative and furnished documents, which was a form of compliance albeit not in the exact manner sought.

184. This Court has examined the record with care to determine whether there is material showing that the petitioner has been evading the investigative process. The ED's written submissions dated 11.04.2025 (the very date on which NBWs were issued) are sparse in factual detail regarding evasion. The ED alleged that the petitioner fled from his premises in a clear and deliberate attempt to avoid any

cooperation with the investigation during the search operations on 10.04.2025 and that this act of fleeing has been captured on video, with CCTV. However, fleeing from a search operation is a distinct issue from evasion of summons or process. Fleeing from a search does not necessarily indicate prior intent to evade investigation, it may indicate a reaction to an unexpected and unannounced incursion at the residence. Moreover, the petitioner's legal position has been that the search itself was conducted without jurisdiction and in the absence of proper statutory satisfaction under Section 17 PMLA.

185. No affidavit or detailed material has been placed by the ED in support of the allegation of evasion. The bare assertions made in the written submissions, unsupported by documentary evidence of repeated failure to comply with summons or clear indicators of evasion, are insufficient to justify the issuance of NBWs, especially at the distance of nearly three years into the investigation.

186. The petitioner's counsel submitted in detail that the petitioner has consistently complied with summons, furnished documents as sought, and cooperated with the investigation. Counsel further submitted that the issuance of NBWs at such a late stage, after nearly three years, appears to be a colourable exercise of power designed to manufacture non-cooperation and justify coercive action. Learned counsel contended that the issuance of NBWs is in violation of the principles laid down in ***Inder Mohan Goswami (Supra)*** and ***Satender Kumar Antil (Supra)***, and that this Court is empowered to quash or cancel such warrants in writ jurisdiction where jurisdictional defects are apparent.

187. The ED's counsel submitted that the petitioner has been systematically evading investigation, has not appeared despite multiple summons, and that the ED was left with no option but to move for NBWs. Learned counsel further submitted that the fact that some documents were furnished does not constitute cooperation if personal appearance was specifically sought. Learned counsel argued that the petitioner fled during the search operations, which itself is indicative of consciousness of guilt and evasion.

188. This Court, having considered the submissions of both parties, the record, and the applicable legal principles, is of the view that the ED has failed to discharge its burden of demonstrating actual evasion by the petitioner. The chronology of summons and responses shows regular engagement on behalf of the petitioner. Most critically, the temporal aspect, nearly four years of investigation without completion and no prosecution complaint having been filed yet, suggests that NBWs are not being issued in the early stages of a nascent investigation where an accused is evading process but rather in a prolonged investigation where no clear investigative purpose is being served by further coercive measures.

189. The Hon^{ble} Supreme Court in *Inder Mohan Goswami (Supra)* was emphatic that NBWs are not instruments of punishment but tools to secure the presence of an accused in aid of investigation. If, after a prolonged investigation, no clear investigative result (such as completion of inquiry, confrontation of the accused with specific evidence, recording of statement under Section 50 PMLA, filing of prosecution complaint etc.) is in sight, then the issuance of NBWs becomes a hollow

exercise, a coercive measure that frustrates rather than facilitates the investigative process.

190. In the present case, the petitioner's statement under Section 50 PMLA was recorded on 12.07.2022. Since then, over two and a half years have elapsed. The ED continues to call for documents and information. At some point in a protracted investigation, the investigative agency must move forward to conclude its inquiry and file a complaint or close the investigation.

191. This Court is mindful that it is not the function of the High Court to micromanage investigation or to prescribe investigative methodology to the ED. The ED possesses statutory authority and domain expertise in investigating money laundering offences. However, the issuance of NBWs, being a coercive measure that curtails personal liberty, attracts constitutional scrutiny. When an accused has substantially cooperated over a prolonged period, and the ED has failed to demonstrate evasion, the issuance of NBWs becomes arbitrary.

192. Having examined the record, considered the submissions of both parties, and applied the legal principles governing issuance and cancellation of NBWs, this Court is of the following view:

“A. The petitioner has not evaded the investigative process. The ED has failed to place material on record demonstrating evasion, noncompliance with summons, or persistent absence. The chronology of engagement by the petitioner shows sustained cooperation, including personal appearance and furnishing of documents in response to summons.

B. The investigation has been pending for over four years, and no clear investigative purpose is being served by the issuance of NBWs at this stage. The investigative agency has had ample opportunity to conclude its inquiry. The prolongation of investigation, punctuated by NBWs, frustrates rather than facilitates the investigative process.

C. The issuance of NBWs is not justified under the principles laid down in a catena of judgments. The judgments laying down the principle require clear demonstration of evasion or reasonable apprehension thereof, and mechanical issuance of NBWs is impermissible.”

193. Accordingly, the NBWs issued on 11.04.2025 are hereby cancelled. The petitioner is directed to join the investigation and cooperate therein upon prior written intimation by the ED.

CONCLUSION

194. In view of the foregoing discussions, and upon careful consideration of the rival submissions advanced on behalf of the parties, this Court is of the opinion that the issues arising for adjudication lie within a narrow compass. The petitioner has questioned the very initiation and continuation of proceedings under the PMLA on the ground that the foundational requirement of a subsisting scheduled offence is absent, and that the ECIR and consequential coercive measures have been pursued in colourable exercise of authority.

195. On the other hand, the ED contends that multiple FIRs containing scheduled offences continue to subsist in

law, and that the ECIR, being an internal document, cannot be interfered with in writ jurisdiction.

196. Having evaluated the statutory framework of the PMLA, the effect of the Hon^{ble} Supreme Court's consolidation order, the nature and permissible scope of an ECIR, and the judicial threshold for interference at the stage of investigation, this Court finds that while the ED's jurisdiction is indeed derivative of and contingent upon the existence of a scheduled offence, such jurisdiction cannot be said to have been extinguished merely by the stay of proceedings in the predicate FIRs or by clubbing of FIRs.

197. At the same time, the invocation of coercive measures, including search, seizure, and the issuance of non-bailable warrants, must adhere strictly to statutory safeguards and constitutional limitations.

198. The cumulative assessment of facts and law, therefore, warrants the issuance of limited relief for ensuring that investigative powers are exercised within permissible bounds, without unduly obstructing the ED from conducting a lawful investigation into allegations that prima facie stem from multiple FIRs involving scheduled offences.

199. The conclusions hereinbelow strike a balance between the competing considerations of individual liberty and the need for an effective investigation into economic offences. Accordingly, the following directions are passed:

“A. The prayer for quashing of the ECIR is declined qua all the 49 FIRs, having regard to the settled legal position

that the ECIR is an internal document of the ED and is ordinarily not amenable to quashing in exercise of writ jurisdiction, particularly when multiple FIRs containing scheduled offences continue to subsist in law and investigation is still at the nascent stage where not even the prosecution complaint is filed.

B. The respondent, ED, shall refrain from pursuing or continuing investigation, inquiry, summons, searches, seizures, attachment or any other coercive measures including warrants qua the offences and allegations arising out of the consolidated FIR including FIR No.353/2015 i.e. principal FIR (Grand Venice Project consolidated FIRs), till such time as:

“i. the final adjudication of Criminal Misc. Application No. 25724/2022 pending before the learned Single Judge of this Court; or

ii. the stage of framing of charges in Case No. 1559/2019.

iii. Any final order passed by the competent Court qua the said FIRs, whichever is the earliest.

C. The petitioner is directed to pursue Criminal Misc. Application No. 25724/2022.

D. The NBWs dated 11.04.2025 issued by the learned Special Judge are set aside, as the same were issued in a manner inconsistent with the procedural safeguards applicable at the pre-complaint stage under the PMLA.

E. Upon vacation of the stay order in Criminal Misc. Application No.

25724/2022, or upon final adjudication of the said application, the respondent shall be free to resume investigation process qua the FIR No. 353/2015 principal FIR (Grand Venice Project consolidated FIRs), in accordance with the law.”

200. In view of the aforementioned terms, the petition is partly allowed and stands disposed of.

201. All pending applications, if any, also stand disposed of.

202. It is made clear that the observations made by this Court in the preceding paragraphs shall not be construed as an expression on the merits of the case in any FIR/ECIR.

203. The judgment be uploaded on the website forthwith.

(2025) 12 ILRA 812
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Misc. Writ Petition No. 27966 of
 2025
 Alongwith other connected cases

Birendra Lal Verma & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Matter pertains to whether the FIRs registered against the petitioners in relation to Phensedyl cough syrup containing codeine were liable to be quashed in exercise of writ/inherent jurisdiction on the ground that the alleged acts were governed solely by the Drugs and

Cosmetics Act, 1940 and not the NDPS Act, and consequently, whether continuation of investigation under the NDPS Act and allied penal provisions was legally sustainable at the pre-trial stage.

Headnotes

Narcotic Drugs and Psychotropic Substances Act, 1985 - ss. 2, 8, 21, 22, 25, 26, 26(D), 29, 37, 60, 80 - Bharatiya Nyaya Sanhita, 2023 - ss. 61(2), 132, 276, 277, 278, 318(4), 319(4) - 336(3), 319(2), 3(5), 338, 340(2), 206(b), 336(2) - Drugs and Cosmetics Act, 1940 - ss. 2, 32(3) - Drugs and Cosmetics Rules, 1945 - Rule 97 - The petitions arose out of multiple FIRs registered against the petitioners alleging illegal possession, transportation and trade of Phensedyl cough syrup containing codeine phosphate, wherein the police authorities, acting on specific information, seized substantial quantities of the said syrup and initiated proceedings under the provisions of the NDPS Act as well as allied penal statutes. The prosecution case, in substance, was that the petitioners were dealing with the contraband substance without valid authorization and in quantities exceeding the permissible limit, thereby attracting penal liability. The petitioners, on the other hand, contended that Phensedyl is a medicinal preparation governed by the Drugs and Cosmetics Act, 1940, that they were operating under valid licences, and that the essential ingredients for constituting an offence under the NDPS Act were absent. Aggrieved by the registration and continuation of criminal proceedings, the petitioners invoked the writ/inherent jurisdiction of the High Court seeking quashing of the FIRs and consequential reliefs.

Held: The transferring of Phensedyl cough syrup was being done from Jharkhand to the State of Uttar Pradesh by e-way bills which were not in the proper category of carrying of drugs but were for the purposes of carrying of snacks and namkeen - According to the FIRs, medicinal articles were brought from the State of Jharkhand after concealing them in various grains namely wheat and rice - Not only that,

the persons who were dealing with those articles namely Phensedyl cough syrup were having fabricated citizenship cards, Aadhar cards etc. etc - If fabrication was there as is evident from the FIR then definitely cases of the petitioners would be covered under various other sections of BNS as well - The sub-stockists to whom the various main stockists were transferring the articles, were either not in existence or were such stockists who were not maintaining their stock registers etc. properly - As per s. 32(3) of Drugs and Cosmetics Act, the petitioners could be prosecuted under "any other law for any act or omission which constitutes an offence against this Chapter" - Also s. 80 of NDPS Act gives the liberty to prosecute under the NDPS Act along with the Drugs and Cosmetics Act - The enormity of the entire matter has to be investigated and, therefore, no question for interference in the FIRs arises, writ petitions dismissed. [Paras 44 to 48] (E-13)

Case Law Cited

State of Jharkhand v. Dr. Nishkant Dubey & Ors., **Criminal Appeal No.5476 of 2024 decided on 21.1.2025**; Md. Sahabuddin & Ors. v. State of Assam, **2012 (119) AIC 45**; Union of India v. Sanjeev V. Deshpande, **AIR 2014 SC 3625**; Hira Singh & Ors. v. Union of India & Ors, **AIR 2020 SC 3255**; State of Punjab v. Rakesh Kumar, **AIR 2019 SC 84**; M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, **AIR 2021 SC 1918**; State of Andhra Pradesh v. Golconda Linga Swamy, **(2004) 6 SCC 522**; Supriya Jain v. State of Haryana, **(2023) 7 SCC 711**; Parbatbhai Aahir & Ors. v. State of Gujarat, **(2017) 9 SCC 641**; Rajesh Bajaj v. State of NCT of Delhi, **(1999) 3 SCC 259**; Central Bureau of Investigation v. Thommandru Hannah Vijayalakshmi, **(2021) 18 SCC 135**; S.M. Datta v. State of Gujarat, **(2001) 7 SCC 659**; Somjeet Mallick v. State of Jharkhand, **(2024) 10 SCC 527**; State by the Inspector of Police v. M. Maridoss & Anr., **(2023) 4 SCC 338**; Commissioner of Central Excise, Chandigarh-I v. Mahaan Dairies, **(2004) 11 SCC 798**; Principal Commissioner of Income Tax III-Bangalore v. M/s. Wipro Limited, **(2023) 15 SCC 455**; State of Haryana and others v. Bhajan Lal and others, **1992 Supp. (1) SCC 335 - referred to**

Ashok Kumar v. Union of India, **2015 (2) ALJ 193**; Vibhor Rana v. Union of India, **2021 SCC OnLine All 908 - distinguished**
 Union of India v. Ashok Kumar Sharma reported in **(2021) 12 SCC 674**; Directorate of Revenue Intelligence v. Raj Kumar Arora & Ors, **Criminal Appeal No.1319 of 2013 decided on 17.4.2025 - relied on**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985; Bharatiya Nyaya Sanhita, 2023; Drugs and Cosmetics Act, 1940; Drugs and Cosmetics Rules, 1945

List of Keywords

s. 80 of NDPS Act; Narcotic Drug; Schedule-I of Cosmetics Rules; Drugs and Cosmetics Act, 1940; s. 32(3) of Drugs and Cosmetics Act; Chapter IV of Drugs and Cosmetics Act; Licence / Permit / Authorisation, Manufactured Drug; Clause 35 of Notification dated 14.11.1985; Notification dated 15.08.2022 issued by Commissioner, Food Safety and Drugs Administration; Bharatiya Nyaya Sanhita, 2023 (BNS); Cognizable and Non-bailable Offence; Investigation in different districts; Deep investigation; Seizure; Contraband; Illegal trade; Fabricated documents; E-way bills; Non-existent firms; Stock registers; Transportation; Inter-State transfer; Non-interference at the stage of investigation; Abuse of process of law; Ends of justice; Dismissal of writ petitions.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 27966 of 2025)

Connected with other Matters

Criminal Misc. Writ Petition No. - 26006 of 2025;
 Criminal Misc. Writ Petition No. - 27128 of 2025;
 Criminal Misc. Writ Petition No. - 27700 of 2025;
 Criminal Misc. Writ Petition No. - 27806 of 2025;
 Criminal Misc. Writ Petition No. - 27953 of 2025;
 Criminal Misc. Writ Petition No. - 27968 of 2025;
 Criminal Misc. Writ Petition No. - 27985 of 2025;
 Criminal Misc. Writ Petition No. - 28339 of 2025;
 Criminal Misc. Writ Petition No. - 28377 of 2025;
 Criminal Misc. Writ Petition No. - 28393 of 2025;
 Criminal Misc. Writ Petition No. - 28628 of 2025;
 Criminal Misc. Writ Petition No. - 28667 of 2025;
 Criminal Misc. Writ Petition No. - 29022 of 2025;
 Criminal Misc. Writ Petition No. - 29116 of 2025;

Criminal Misc. Writ Petition No. - 29173 of 2025;
 Criminal Misc. Writ Petition No. - 29247 of 2025;
 Criminal Misc. Writ Petition No. - 29328 of 2025;
 Criminal Misc. Writ Petition No. - 26679 of 2025;
 Criminal Misc. Writ Petition No. - 28730 of 2025;
 Criminal Misc. Writ Petition No. - 27505 of 2025;
 Criminal Misc. Writ Petition No. - 29794 of 2025;
 Criminal Misc. Writ Petition No. - 29797 of 2025

From the FIR registered in Police Station Kotwali, Varanasi on 15.11.2025 which had given rise to Case Crime No.235 of 2025

Appearances for Parties

Advs. for the Petitioners:

Naman Agarwal, Sr. Advocate, Vivek Chaturvedi

Adv. for the Respondents:

GA

(Delivered by Hon'ble Siddhartha Varma, J.
 &
 Hon'ble Achal Sachdev, J.)

1. Various First Information Reports from the districts of Sonbhadra; Sant Ravidas Nagar; Basti; Ghaziabad, Kanpur Nagar; Jaunpur and Varanasi were lodged and they have been challenged by means of various writ petitions.

2. Criminal Misc. Writ Petition No.29173 challenges the FIR registered in Sonbhadra on 18.10.2025 which had given rise to Case Crime No.1054 of 2025 under sections 21 & 8 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") and sections 318(4) & 319(4) of Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as "BNS"). In the FIR there are 4 accused persons.

3. The FIR which was lodged in Ghaziabad on 4.11.2025 had given rise to Case Crime No.0691 of 2025 under sections 336(3), 319(2), 318(4), 3(5) of

BNS and sections 8, 22, 29, 37 and 60 of NDPS Act. In the FIR there were 17 accused persons. This FIR has been challenged in Criminal Misc. Writ Petition No.28339 of 2025 by Pappan Yadav; in Criminal Misc. Writ Petition No.26006 of 2025 by Abhishek Sharma and in Criminal Misc. Writ Petition No.26679 of 2025 by Aasif Mohammad.

4. Thereafter FIR dated 12.11.2025 which was lodged in the district of Kanpur Nagar and which had given rise to Case Crime No.0087 of 2025 was lodged against one Vinod Agarwal and he had filed Criminal Misc. Writ Petition No.27128 of 2025. One more FIR was lodged in Kanpur Nagar in which the accused persons were Smt. Manju Sharma and Abhishek Sharma and this FIR had given rise to Case Crime No.0090 of 2025. Manju Sharma and Dr. Abhishek Sharma filed Criminal Misc. Writ Petition No.29116 of 2025 challenging the FIR vis.-a-vis. them.

5. Another set of writ petitions was pertaining to the district of Jaunpur. The FIR dated 21.11.2025 which had given rise to Case Crime No.354 of 2025 was lodged against 14 accused persons. Against this FIR, Ankit Srivastava filed Criminal Misc. Writ Petition No.28628 of 2025; Mohd. Salman Ansari filed Criminal Misc. Writ Petition No.28377 of 2025; Anupriya Singh filed Criminal Misc. Writ Petition No.28393 of 2025; M/s. Milan Drug Centre through its proprietor Arun Prakash Maurya, M/s. Milan Medical Agency through its proprietor Om Prakash Maurya, M/s. Shi Medical Agency through its proprietor Ankul Kumar Maurya; M/s. Harsh Medical Agency through its proprietor Sanjeev Kumar Chaurasiya; M/s. Nigam Medical Agency through its proprietor Devek Kumar Nigam; M/s. S.N.

Medical Agency through its proprietor Smt. Mehroon Nisha; M/s. Gupta Trading through its proprietor Saurabh Kumar filed Criminal Misc. Writ Petition No.28667 of 2025; Shubham Jaiswal filed Criminal Misc. Writ Petition No.28733 of 2025. In the same district i.e. Jaunpur another FIR dated 30.11.2025 was lodged against 4 persons which had given rise to Case Crime No.0357 of 2025. This FIR was challenged by Arun Sonkar (correct name Arjun Sonkar) in Criminal Misc. Writ Petition No.29247 of 2025.

6. Again, in district Varanasi FIR dated 15.11.2025 was lodged against 28 persons which had given rise to Case Crime No.235 of 2025. Against this FIR, Pratik Mishra, Mukesh Kumar Yadav, Rishabh Yadav, Vivek Kumar Khanna and Ankush Singh filed Criminal Misc. Writ Petition No.27700 of 2025; Vishal Kumar Jaiswal, Divesh Jaiswal, Adarsh Pandey, Niraj Kumar Singh and Vikas Singh filed Criminal Misc. Writ Petition No.27806 of 2025; Bhola Prasad filed Criminal Misc. Writ Petition No.27953 of 2025; Niraj Seth and Tushar Agarwal filed Criminal Misc. Writ Petition No.27968 of 2025; Shubham Jaiswal filed Criminal Misc. Writ Petition No.27985 of 2025 and Dharmendra Kumar Agarwal filed Criminal Misc. Writ Petition No.27505 of 2025. In the same district another FIR being FIR dated 19.11.2025 was lodged which had given rise to Case Crime No.0343 of 2025. This FIR was challenged by Shubham Jaiswal in Criminal Misc. Writ Petition No.29328 of 2025.

7. The FIR dated 28.11.2025 lodged in Sant Ravidas Nagar (Bhadohi) which had given rise to Case Crime No.187 of 2025 was challenged in Criminal Misc. Writ Petition No.29022 of 2025 and the

FIR dated 22.11.2025 lodged in Basti and which had given rise to Case Crime No.0217 of 2025 was challenged in Criminal Misc. Writ Petition No.28730 of 2025.

8. Learned counsel who appeared for the petitioners in all the writ petitions were Sri Nipun Singh, Senior Advocate assisted by Sri Naman Agarwal, Ms. Sufia Saba, Sri Ashish Chitransh, Sri B.K.S. Raghuvanshi, Sri Shantanu, Sri Madhukar Maurya, Paritosh Joshi, Shashank Shekhar Misra, Abhijeet Mishra, Ghanshyam Yadav, Akshay Raghuvanshi and Sri Vivek Chaturvedi.

9. If we analyze the various FIRs then the allegations that can be gleaned out against the petitioners were as follows :

The FIR dated 18.10.2025 which was challenged in Criminal Misc. Writ Petition No.29173 of 2025 related to district Sonbhadra and was lodged under sections 319(2), 318(4) of BNS and sections 8 and 21 of NDPS Act. In it the first informant Sri Vinod Kumar Sav, Excise Inspector had alleged that when he, along with his team, in a Government Vehicle No.UP70AG1647 was keeping a vigil during the Dhanteras and Deepawali festival, then through some informer information had been received that two containers having intoxicating syrup bottles were coming from Hinduari and going to Shaktinagar. Upon getting this information, vehicles were checked. The containers registered as RJ11GC1710 and no.MH46AR6826 were intercepted. The drivers of these two containers along with their companions informed that they were carrying certain namkeen and chips packets and they were taking them from Ghaziabad to Jharkhand. When the police became

strict and asked them as to what was actually contained in the containers then the drivers and their companions told that in the containers, in between the chips packets and the snacks packets, ESKUF Cough Syrup bottles were kept and were being taken to Jharkhand. Upon getting this information, the Excise Inspector informed Sri Rajesh Kumar Maurya, the Drug Inspector and from the containers 399 sacks were found having 4787 cartons and in total there were 119675 bottles of the medicines. The invoice which the vehicle drivers were having were of 'Hot Mix Namkeen'. Upon getting information that the drug ESKUF Cough Syrup had Codeine as an ingredient, the bottles of the cough syrup were sealed and accordingly action was taken vis.-a-vis. the NDPS Act and other concerned Acts. In the FIR itself it was stated that the articles were being taken from Ghaziabad to Jharkhand.

10. Thereafter the police got active and information was sent to the Ghaziabad police and it was informed that a vehicle had been apprehended in Sonbhadra and with regard to it a case had been registered which had given rise to Case Crime No.1054 of 2025.

11. The first informant in the Ghaziabad case, Inspector Anil Kumar Rajput had lodged the FIR on 4.11.2025 and that had given rise to Case Crime No.0691 of 2025 and upon various enquiries being made information was got from a Mukhbir (informer) that in the Machhali Godam the owner of Bareilly Gorakhpur Transport namely Santosh Bhadana along with his friend Saurabh Tyagi were dealing with the cough syrup bottles and he had informed that these bottles were loaded at the godown and after hiding them in wheat, rice and other

articles, they were being smuggled to various places for being used as an intoxicant. Thereafter the Machhali Godam of Bareilly Gorakhpur Transport company was raided, where a 12 tyred truck and two tankers were found parked and in the vicinity in a Creta Car a person was seen sitting, who was supervising the loading and unloading of various cartons from the trucks. The person who was sitting in the Creta Car gave out his name as Saurabh Tyagi, son of Mukesh Kumar Tyagi and from him and his driver was recovered five mobiles with various telephone numbers. The whatsapp chats from his mobile numbers were fed in a pen drive. A laptop was also recovered along with 3 pendrives. Not only that, Rs.20,00,000/- were also recovered. Also recovered, were 4 seals showing the names of the following firms :

- (i) Darshana Enterprises;
- (ii) S N Pharma
- (iii) R S Pharma
- (iv) the other seal was with regard to the above three firms and their proprietors.

12. Also was found in the bag of the accused Saurabh Tyagi a card showing that he was a citizen of United Arab Emirates and that he was working as an Archive Clerk at Ramada Plaza Deira Hotel at Dubai. There were other cards also available with the accused Saurabh Tyagi and they were with regard to one Sanjit Chakraborti. Matter did not end there. On a 100 Rupee stamp paper, an agreement with one Vanya Enterprises was also found. The arrested person i.e. Saurabh Tyagi informed the police authority that he was having connections with Pappan Yadav who had a

firm called □Mederon Health Care□ and that he was dealing with the cough syrup. He also informed that the network with regard to the cough syrup was also having its tentacles in Varanasi where Shubham Jaiswal was dealing in the cough syrup illegitimately and he was sending those cough syrups to various destinations. He also told the police authorities as to how the fabricated bills were prepared and were used for the purposes of selling of the cough syrup for illegal purposes. The accused Saurabh Tyagi also ifnformed the police as to how the phones with fabricated IDs and SIM cards were used in the sale and purchase of the cough syrups. Information was also given as to how the e-way bills etc. were prepared for the other purposes but were used for the purposes of transporting the cough syrup.

13. Since information was received with regard to the carrying on of illegal trade of cough syrup in Varanasi, the police party informed the Varanasi police and there the FIR was lodged after certain raids etc. on 15.11.2025 against as many as 28 individuals and that had given rise to Case Crime No.0235 of 2025. Against the FIR filed at Varanasi, eight writ petitions were filed, the details of which have been already given in the very beginning. In the FIR which was lodged vis.-a-vis. Varanasi, it was essentially narrated in the FIR that one Shaily Traders of Ranchi, Jharkhand was transferring the cough syrup to as many as 38 firms and these 38 firms in their turn were selling/transferring the cough syrup to smaller distributors. The FIR which had given rise to Case Crime No.0235 of 2025 had also given the details of all the firms etc. and the articles which were apprehended from those firms. It had also stated as to how the articles were transferred to non-existent smaller retailers.

Also was mentioned the fact that the smaller retailers were quite often non-existent and that the cough syrup was thus clandestinely being transported to unknown destinations.

14. With regard to Jaunpur, FIR dated **21.11.2025** was lodged and that had given rise to **Case Crime No.0354 of 2025**. With regard to the cases at Jaunpur also, the FIRs indicated how the main contraband was taken from Shaily Traders, Jharkhand and thereafter transferred to as many as 12 firms and again thereafter given to smaller firms with doubtful credentials.

15. To the Criminal Misc. Writ Petition No.28628 of 2025 pertaining to district Jaunpur wherein the petitioner is Ankit Kumar Srivastava and to Criminal Misc. Writ Petition No.27953 of 2025 wherein the petitioner is Bhola Prasad, short counter affidavits have been filed by the learned Additional Advocate General on behalf of the State.

16. Learned counsel appearing for the petitioners has, in effect, submitted that in the cases at hand, FIRs were lodged under various sections of NDPS Act, BNS and Drugs and Cosmetics Act and that could not have been done in view of the judgments of this Court and that of the Supreme Court.

17. The FIR in the district of Sonbhadra was lodged under sections 318(4), 319(2) of BNS and sections 8 and 21 of NDPS Act. Similarly, FIR in the district of Basti was lodged under sections 276, 277, 278 318(4) of BNS. In S.R.Nagar it was lodged under sections 318(4), 338, 340(2), 206(b), 336(3) of BNS; In district Varanasi, two FIRs were lodged one as Case Crime No.0235 of 2025 under sections 26(D)

of NDPS Act and the subsequently added sections 8,21 and 29 of NDPS Act and under sections 61(2), 338, 336(2) and 340(2) of BNS. The other FIR had given rise to Case Crime No.03433 of 2025 under sections 8, 21 and 25 of NDPS Act. In Kanpur Nagar also two FIRs were lodged; one as Case Crime No.0087 of 2025 under sections 132, 318(4), 336(3), 338, 340(2) of BNS and another as Case Crime No.0090 of 2025 under sections 340(2), 318(4), 336(3), 338 of BNS and sections 21(c) and 26 NDPS Act. In district Ghaziabad FIR was lodged as Case Crime No.691 of 2025 under sections 3(5), 318(4), 319(2), 336(3) of BNS and section 8, 22 and 29 of NDPS Act. In district Jaunpur, two FIRs one being Case Crime No.354 of 2025 under sections 318(4), 336(3), 338, 340(2), 61(2) of BNS and another as Case Crime No.357 of 2025 under sections 318(4), 336(3), 338, 340(2), 61(2) of BNS were lodged.

18. He submits that under the NDPS Act, there was, under section 8, a prohibition to certain operations. He, therefore, drew the attention of the Court to section 8 of NDPS Act and, therefore, the same is being reproduced as under :-

“8. Prohibition of certain operations.-No person shall□

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.”

(emphasis supplied)

19. Since there is a prohibition under section 8(c) of the NDPS Act to produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance and further since there were certain exceptions made for the narcotic drug and psychotropic substances for being used for medicinal and scientific purposes after authorisation, he submitted that the articles which were under consideration i.e. the cough syrup

□Phensedyl□ which contained □codeine□, the case could not be covered under the NDPS Act. For this purpose, learned counsel for the petitioners also took the Court through the provisions of sections 2(xi), 2(xiv), 2(xvi) and 2(xxiii) of the NDPS Act which are being reproduced here as under :-

(xi) “manufactured drug” means-

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug,

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;

□□.

(xiv) □narcotic drug□ means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;

□□..

(xvi) □opium derivative□ means□

(a) medicinal opium, that is, opium which has undergone the processes

necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

□□...

(xxiii) □Psychotropic substance□ means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

20. Since after 2014, the concept of essential narcotic drug was also introduced, learned counsel for the petitioners Sri Nipun Singh took the Court through section 2(viia) of the NDPS Act and the same is also being reproduced here as under :

(viiia) □essential narcotic drug□ means a narcotic drug notified by the

Central Government for medical and scientific use;□

21. As per section 2(xi), □manufactured drug□ would mean only such drug which was covered under the definition of □manufactured drug□. He further submitted that such of those drug which the Central Government by notification in the Official Gazette had declared not to be a □manufactured drug□ would not come within the purview of the NDPS Act. He, thereafter submitted that under section 21 of the NDPS Act, if there is any contravention with relation to any manufactured drug and its preparation, then it was punishable under section 21 of the NDPS Act alone. Since, learned counsel for the petitioners relied upon section 21 of the NDPS Act, for showing the punishment which could have followed a conviction under the NDPS Act vis.-a-vis. □manufactured drug□, the same is being reproduced here as under :-

“21. Punishment for contravention in relation to manufactured drugs and preparations.-Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,□

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 4[one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial

quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.□

22. Learned counsel for the petitioners relied upon a notification numbered as □S.O. 826(E) dated 14.11.1985 which was issued as per section 2(xi) of the NDPS Act and stated that if Codeine which had a scientific name as Methyl Morphine would be a □manufactured drug□ but would be excepted from being a □manufactured drug□ if it was compounded with one or more ingredients and was containing not more than 100 milligrams of the drug per dosage unit. Since, learned counsel for the petitioners relied upon Clause 35 of the Notification dated 14.11.1985, the same is being reproduced here as under :-

“35. Methyl morphine (commonly known as □Codeine□) and Ethyl morphine and their sales (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration not more than 2.5 percent in

undivided preparations and which have been established in therapeutic practice.”

23. Learned counsel for the petitioners thereafter also relied upon a judgment of the Supreme Court in **Ashok Kumar vs. Union of India : 2015 (2) ALJ 193** and submitted that since the cough syrup in question i.e. Phensedyl was having dilutions and preparations with other compounds and also since codeine was not more than 100 mg. per dosage, therefore, it was not a □manufactured drug□ and also would not attract the provisions of the NDPS Act. He further submitted that the petitioners in all the writ petitions had licenses under the Drugs and Cosmetics Act, 1940 and the rules framed thereunder and, therefore, he submitted that as per the judgment of the Supreme Court in **Union of India vs. Ashok Kumar Sharma** reported in **(2021) 12 SCC 674** the offences which fell under Chapter IV of the Drugs and Cosmetics Act, 1940 **could not be dealt with under the NDPS Act.** He relied upon certain paragraphs of the judgment of the Supreme Court in **Union of India vs. Ashok Kumar Sharma** which had laid down that the Food Inspector alone was authorized to lodge a First Information Report and not any police officer and, therefore, no FIR could have been registered. Since, learned counsel for the petitioners relied upon paragraph nos.158, 158(1), 159, 160, 161, 162, 163, 164, 165, 166, 167, 168 of the judgment, the same are being reproduced here as under :

“158. There is another aspect which may have an important bearing on the issue. Under Section 36-AC of the Act, the offences as mentioned therein which include some of the offences under Chapter IV of the Act are declared cognizable and non-bailable. The provision imposes

restriction on the arrested person being released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application and when the Public Prosecutor opposes the application, the court is to be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit an offence. This limitation, is apart from the limitations in CrPC, *inter alia*. Now, the police officer acting under CrPC even proceeding for a moment on the basis that it is sufficient that a mere memorandum of arrest as required under CrPC is prepared and further there is compliance with other provisions of CrPC also, would it suffice is the question that would arise in the following manner? We have noted from the provisions of the Act and the Rules that it is the Drugs Inspector who is empowered and duty-bound to investigate the complaint about violations of Acts and Rules. He is the person charged with a duty of prosecuting the offenders. If the police officer is merely to be granted a power of arrest and without having any power of investigation then how would it be possible for the police officer to make any investigation under the Act and if no investigation is possible, how would the police officer be in a position to be of any assistance to the Public Prosecutor and, therefore, to the court in the disposal of an application for bail? In other words, it would be based on the records of investigation and material collected by the investigating officer that a court in a case would decide as to whether bail is to be granted or not. How would the police officer seek a remand for carrying out investigation which he cannot do? If the Act and the Rules do not contemplate investigation by a police officer, then, conferring the power of arrest on the police

officer, would, in fact, frustrate the working of the Act. On the other hand, if it is the Drugs Inspector who can arrest, the following consequences would follow:

158.1 He has the requisite technical qualifications to properly investigate and prosecute the offender.

159. Declaring the power to arrest with the Inspector, is not to be understood as proclaiming that the Inspector is bound to arrest any person. The provisions of CrPC, relating to arrest, would necessarily have to be followed by the Drugs Inspector. In fact, he is obliged to bear in mind the law, as declared by this Court in *D.K. Basu*, and the peril of defying the same, would be to invite consequences, *inter alia*, as are provided therein. As far as the arrest, not being mentioned in Section 34-AA, as forming a ground for visiting the delinquent officer with penalty, it may be noticed that there is a residuary power in Section 34-AA and it would cover any act. We notice that Section 34-AA(d) provides that if any Inspector, exercising powers under the Act or the Rules made thereunder, commits, as such Inspector, any other act, to the injury of any person without having reason to believe that such act is required for the execution of his duty, he shall be punishable with fine which may extend to one thousand rupees.

160. Regarding the power for seeking and ordering a remand under Section 167, we would apply the principles laid down by this Court in *Deepak Mahajan* and the same principles would apply.

161. This process of interpretation would produce the result of harmonising two seemingly irreconcilable commands from the law-giver. This

interpretation commends itself to us for the reason that the investigation into offences, under Chapter IV of the Act, would commence, be carried out and would culminate in, in the safe hands of the competent and qualified statutory authority, as designated by law.

It would also avoid an outside agency like a police officer, being obliged to register an FIR, for the reason that where arrest has to be made, an FIR is to be registered, and, when the registering of the FIR carries with it an unattainable object of preferring a final report under Section 173 CPC, as far as the police officer is concerned. We make it clear that if a police officer is approached with regard to a complaint regarding commission of an offence falling under Chapter IV of the Act, he is not to register an FIR unless it be that a cognizable offence, other than an offence falling under Chapter IV of the Act, is also made out.

He must make over the complaint to the competent Drugs Inspector so that action in accordance with law is immediately taken where only offences under Chapter IV are made out.

162. As far as the arrest contemplated under Section 41 CrPC is concerned, in case a cognizable offence, falling under Chapter IV of the Act, is committed, either in the presence of the Drugs Inspector, or in respect of which offence, a police officer would have power to arrest, as provided therein viz. covered by the situations contemplated under Section 41(ba), the Drugs Inspector would be entitled to effect the arrest. We are arriving at this conclusion on the basis that since the procedure under CrPC is to be read as applicable, except to the extent that

a different procedure is to be provided under the Act, and since there is no procedure or power otherwise provided in the Act in regard to arrest, the powers and procedure available to a police officer, with the limitations on the said power, as laid down in D.K. Basu, as also as contained in CrPC, would be applicable.

163. By way of following Deepak Mahajan, we hold that the Drugs Inspector, under the Act, is invested with certain powers similar to a police officer. Still further, we would hold that the word "investigation" cannot be limited only to a police investigation, as has been noted in Deepak Mahajan. Thirdly, we find that the power to arrest a person must indeed flow from the provisions of a statute. The statutory provision under the Act is Section 22(1)(d). The arrested person, under the Act, would be an accused person to be detained under Section 167 (2) CrPC. No doubt, the police officer is bound to provide assistance to the Inspector in case of need to effectuate the arrest where there is resistance or likelihood of resistance. No doubt, in regard to the arrest in relation to offences falling under Chapter IV of the Act, which do not fall under Section 36-AC, the power of arrest would depend upon the provision in the Schedule to CrPC.

164. We again reiterate that the existence of the power to arrest with the Drugs Inspector is not to be understood as opening the doors to making illegal, unauthorised or unnecessary arrest. Every power comes with responsibility. In view of the impact of an arrest, the highest care must be taken to exercise the same strictly as per the law.

The power of arrest must be exercised, recognising the source of his

authority, to be Section 22(1)(d) of the Act, which is for carrying out the purpose of Chapter IV of the Act or any Rules made thereunder.

165. Section 33-P of the Act, reads as follows:

"33-P. Power to give directions.- The Central Government may give such directions to any State Government as may appear to the Central Government to be necessary for carrying into execution in the State any of the provisions of this Act or of any Rule or Order made thereunder."

We notice that the Central Government is conferred with powers to give directions to the State Government for the purpose of carrying into execution, in the State, any of the provisions of the Act or any Rule or Order made thereunder. It is for the Central Government to consider the question whether it can, under the said provision, issue directions in regard to the power of arrest, which we have found, subject to what we have stated in this judgment.

166. Further, Section 58 CrPC provides that the officers-in-charge of police stations are to report cases of all persons arrested without warrant as provided therein. We make it clear that the Drugs Inspector must, apart from other relevant provisions of CrPC, comply with the requirement of reporting. In view of the need to safeguard the interest of persons, who may be proceeded against by the Drugs Inspector, we also hold and direct that the Drugs Inspector will immediately, after arrest, make a report of the arrest to his superior officer.

167. It has been brought to our notice that FIRs have been filed in regard

to offences under Chapter IV of the Act. In the view we have taken, no further investigation can be done by the police officer.

However, it is in the interest of justice that the FIRs are made over by the police officers to the Drugs Inspector concerned at the earliest. We are persuaded to issue such directions in the exercise of our powers under Article 142 of the Constitution of India.

168. It would appear that on an understanding of the provisions, arrests would have been effected by police officers in regard to the cognizable offences under Chapter IV of the Act. Having regard to the fact that we are resolving this controversy on a conspectus of the various provisions of the Act and CrPC, we are inclined to direct that this judgment, holding that police officers do not have power to arrest in regard to cognizable offences under Chapter IV of the Act, is to operate from the date of this judgment. □"

24. Learned counsel for the petitioners next submitted that in most of the cases, the Food Inspector or the Excise Inspector (informers) had lodged the FIRs under various sections of BNS. He submits that as per section 2 of the Drugs and Cosmetics Act, 1940, the provisions of the Act would be in addition to, and not in derogation of, the Dangerous Drugs Act, 1930 and/or of any other law for the time being in force. He, therefore, submitted that the FIR which had mentioned other sections of other enactments was a malicious exercise on the part of the informers and thus the FIRs be quashed. Learned counsel for the petitioners thereafter relied upon the judgment of this Court in **Vibhor Rana vs. Union of India** :

2021 SCC OnLine All 908 and submitted that since the composition of the drug Phensedyl cough syrup was covered under Clause 35 of the Notification dated 14.11.1985, the syrup was not a narcotic drug and any dealing in this drug would not be subjected to the provisions of the NDPS Act. He further submitted that the lodging of the FIR under the other sections of the BNS was a malicious exercise which ought not to have been done. Learned counsel for the petitioners relying upon the two notifications of the Drug Controller General of India dated 26.10.2005 and 1.3.2009 further had submitted that the Drug Controller General of India had also in so many words by these notifications stated that for medicines which were using codeine as an ingredient and were not covered by the Entry 35 of the Notification of the Government of India dated 14.11.1985 then the prosecution under the NDPS Act could not be done. Learned counsel for the petitioners also submitted that if the account registers etc. were not being maintained, the case would only fall under the various provisions of the Drugs and Cosmetics Act, 1940.

25. Learned counsel for the petitioners also relied upon a judgment of the Supreme Court in **State of Jharkhand vs. Dr. Nishkant Dubey & Ors. (Criminal Appeal No.5476 of 2024 decided on 21.1.2025)** and submitted that in that case, the Court had held that when a particular Act had provided a particular method by which the case had to be dealt with then it should be dealt with by the provisions of that Act alone. Learned counsel for the petitioners further relied upon Rule 97 of the Drug Rules, 1945 and stated that as per Rule 97(e), the phensedyl drug was containing the label of "Rx" and that meant that there was no narcotic

substance in the medicine. He also relied upon Rule 97(f) to state that if the narcotic drug or psychotropic substance was substantially there then the "NRx" would have been written. He, therefore, submitted that when there was no narcotic drug in the medicine then the NDPS Act definitely ought not to have been applied. He further submitted that at various points of time, the State Government has been trying to regulate the flow of the medicines but whenever it tried to do so, orders were stayed by this Court. He submits that when the Government Order dated 15.8.2022 was issued by the officials of the State Government then on 15.2.2023, the High Court stayed the same. Further when on 21.12.2023 again the State Government tried to interfere in the domain of the Central Government then the High Court stayed the same on 15.3.2024.

26. Sri Imran Ibrahim who appeared for one of the petitioners has also made submissions relying upon section 17 of the BNS and stated that a person was justified to do an act he could legally do and by mistake he had committed some crime then it would be considered that he did the act in good faith.

27. Learned Additional Advocate General Sri Anoop Trivedi on behalf of the State assisted by Sri Pankaj Saxena and Sri Paritosh Malviya, learned Additional Government Advocates has submitted that the FIR is not an encyclopedia of all the occurrences. He submitted that the investigation was going on and that various wrong deeds of the petitioners had been unearthed. He has submitted that the FIR were lodged under various sections of BNS and NDPS Act and vis.-a-vis. them the investigation was going on and as and when the offences committed by the

petitioners were discovered, sections were being added for the purpose of the investigation.

28. In the counter affidavit which he had filed in Criminal Misc. Writ Petition No.27953 of 2025 and 28628 of 2025, there are certain paragraphs which were relied upon by the learned Additional Advocate General and as per him were of great importance for the decision of the case. In Criminal Misc. Writ Petition No.27953 of 2025, learned Additional Advocate General relied upon paragraph nos.17 to 20 of the short counter affidavit and, therefore, they are being reproduced here as under :-

“17. That it is also relevant to mention that this Hon'ble Court vide its order dated 11.12.2025 passed in Criminal Misc. Writ Petition No. 28638 of 2025 (Nilesh Kumar Srivastava Versus State of U.P. and others) pleaded to dismiss the writ petition after hearing the case on merits. A copy of order dated 11.12.2025 passed in Criminal Misc. Writ Petition No. 28638 of 2025 (Nilesh Kumar Srivastava Versus State of U.P. and others) is being annexed as Annexure-4 to this affidavit

18. That for kind perusal of this Hon'ble Court, a flow chart of illegal trade of Codein base cough syrup, which clearly shows that how sham and fraudulent transportation had been made from M/s Shailey Traders to 38 Firms (Layer-1) of District Varanasi and subsequently transported to other Firms of District Varanasi. A large conspiracy has been made in illegal trade of Codein base cough syrup for the use as Narcotic Drugs. A copy of flow chart is being annexed as Annexure-5 to this affidavit.

19. That it is pertinent to mention that huge recovery of Codein base cough

syrup has been made by the Police in Commissionerate Varanasi and case crime no. 343 of 2025 under section 8/21/25 NDPS Act, Police Station Rohaniya, Commissionerate Varanasi and case crime no. 313 of 2025 under section 8/21/22/29 NDPS Act Police Station Ramnagar, Commissionerate Varanasi has been registered and investigation is going on. An entry to this effect has been made in C.D. No. 20 dated 11.12.2025. A Copy of FIRs of case crime no. 343 of 2025 and case crime no. 313 of 2025 as well as copy of C.D. No. 20 dated 11.12.2025 are being herewith and marked annexed as Annexure-6 to this affidavit respectively.

20. That during investigation Section 8/21/29 NDPS Act as well as Section 61(2), 338, 336(3), 340(2), 318(4) BNS has been added. An entry to this effect has been Court made in C.D. No. 6 and 15 dated 30.11.2025 and 18.12.2025.”

29. In Criminal Misc. Writ Petition No.28628 of 2025, paragraphs, as per the learned Additional Advocate General, which were of importance, were paragraph nos.17 to 25 and they are being reproduced here as under:-

“17. That it is also relevant to mention that this Hon'ble Court vide its order dated 11.12.2025 passed in Criminal Misc. Writ Petition No. 28638 of 2025 (Nilesh Kumar Srivastava Versus State of U.P. and others) pleaded to dismiss the writ petition after hearing the case on merits. A copy of order dated 11.12.2025 passed in Criminal Misc. Writ Petition No. 28638 of 2025 (Nilesh Kumar Srivastava Versus State of U.P. and others) is being annexed as Annexure-4 to this affidavit

18. That for kind perusal of this Hon'ble Court, a flow chart of illegal trade

of Codein base cough syrup which clearly shows that how a large conspiracy has been made to illegal trade and use a Narcotic Drug. A copy of flow chart is being annexed as Annexure-5 to this affidavit.

19. That during the course of investigation, the investigating officer also investigated the transportation of alleged trade of Codein base cough syrup, at primarily stage, it has been found that no transportation of Codein base cough syrup has been made from District Ranchi (Jharkhand) to District Jaunpur.

20. That it is stated that during investigation the documents furnished by the Firm in B Layer to the Drug Inspector were analyzed and spot inspection were conducted. It was found that at the address of Kedar Medical Agency, a Hotel is being run. At the address of M/s Shakashya Firm there is one residential house and there is no medical store. As far as Shree Medical is concerned, no such medical store is found in the address given, however, the investigating officer recorded the statement of landlord who has confirmed that no medical establishment is situated in this place nor in the vicinity.

21. That it is stated that the reviewing a Firm of Layer B have been found a small closed room and upon verification from the neighbours, it reveals those rooms never get open and no business is conducted ever.

22. That it is stated that documents furnished to Drug Inspector have been found to manufactured and forged.

23. That it is stated that upon further verification of aforesaid forged

documents very shocking revelation came to know that these 12 Firms in B-Layer has allegedly sold the drugs, in question to 15 Firms, situated in 7 different districts. Upon physical verification it was found that almost all the Firms in C-Layer are absolutely not existence and as such it is established that the documents showing the sell to from these Firms to B-Layer Firms are forged and manufactured. Surprisingly two of the Firm in the B-Layer are also in existence in C-Layer, meaning thereby the Firms have again purchased the drug in question from other B-Layer Firms.

24. That it is stated that so far as documents pertaining to transportation from State of Jharkhand to District Jaunpur, a team of Police visited Jharkhand and investigated the owner of some Trucks and found that those Trucks have never gone to Jaunpur, in this regard a deep investigation is going on.

25. That it is stated that not only the investigating officer has found that almost all the Firms in C-Layer are the end Firms in district Ghazipur, Varanasi, Kanpur etc. the investigation in different districts in respect of such sale and purchase is required to be co-related.□

30. Learned Additional Advocate General during the course of arguments relying upon the judgment of the Supreme Court in **Directorate of Revenue Intelligence vs. Raj Kumar Arora & Ors [Criminal Appeal No.1319 of 2013 decided on 17.4.2025]** submitted that an offence under section 8(C) of the NDPS Act could have been said to be made out even when the accused was dealing with the psychotropic substances mentioned in the Schedule of the NDPS Act which were not figuring in the Schedule-I of the Rules

thereunder. Learned Additional Advocate General submitted that in the judgment of Directorate of Revenue Intelligence (supra) a specific question was framed to that effect which was as under :-

“i. Whether an offence under Section 8(c) could be said to have been made out when an accused □ deals with □ psychotropic substances mentioned in the Schedule to the NDPS Act but not figuring in Schedule I of the Rules thereunder. □

31. He submits that in paragraph nos.53 to 56 of the above judgment, the answer had been given and therefore, paragraph nos.53 to 56 are being reproduced here as under :

“53. Section 8 of the NDPS Act prohibits certain operations and reads as thus:

8. Prohibition of certain operations. - No person shall-

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance

with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

(Emphasis supplied)

54. The mandate under Section 8 is that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship (hereinafter collectively referred to as □ **deal in/dealing in** □) any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder. In a case where any such provision imposes any requirement by way of licence, permit or authorisation, the narcotic drugs and psychotropic substances must also be dealt in accordance with the terms and conditions of such licence, permit or authorisation. The term □ psychotropic substance □ mentioned in Section 8 must be seen in light of Section 2(xxiii) which refers to the Schedule to the

Act and all the psychotropic substances mentioned therein. Additionally, to bring a case within the exception carved out under Section 8, each of the conditions specified therein must be satisfied. In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, **it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes AND; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder AND; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any.**

55. It is just not enough to prove or establish that the narcotic drug or psychotropic substance is capable of being used for a medical or scientific purpose. That would give unnecessary leeway to persons to indiscriminately deal with narcotic drugs and psychotropic substances under the garb that they could also be potentially used for medical or scientific purposes. Moreover, several of these drugs and substances are inherently of such a nature that they have widespread medicinal and scientific applications. **Therefore, an expansive interpretation of the exception that the mere potential for usage of the narcotic drug or psychotropic substance, for medical or scientific purpose, is sufficient would run counter to the object of the Act which seeks to act as a deterrent to the widespread dealing in narcotic drugs and psychotropic substances.** What must, therefore, be proved to take the benefit of the exception is that the narcotic drug or psychotropic substances was being dealt in for a specified and real medical or scientific

purpose, in the manner and to the extent provided by the provisions of the Act, the rules and orders made thereunder and, in case such provisions imposes any requirement by way of licence, permit or authorisation, in accordance with the terms and conditions of such licence, permit or authorisation.

56. **Therefore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a purpose other than medical or scientific purposes, an offence under Section 8(c) of the NDPS Act would be made out.** Furthermore, if any psychotropic substance mentioned in the Schedule to the Act is being dealt with for a medical or scientific purpose, but not in accordance with other provisions of the Act, rules, orders or, the terms and conditions of the licence, permit or authorisations, if any, then also, an offence under Section 8(c) of the NDPS Act could be said to have been made out. **It is only when the exception is complied with entirely or wholly, that an accused can lay claim to the benefit provided under the said provision.**”

(emphasis supplied)

32. Learned Additional Advocate General thereafter relying upon that very judgment submitted that if the quantity as it was in this case, was very large and it did not appeal to reason as to why such a huge quantity was being dealt with specially when there was a notification of the Commissioner Food Safety and Drugs dated 15.8.2022 which had provided as to how much of a codeine based cough syrup could be used by the CNF agent, the wholeseller and retailer. Since, learned Additional Advocate General relied upon

the Notification dated 15.8.2022, the relevant portion of it is being reproduced here as under :

कार्यालय आयुक्त, खाद्य सुरक्षा एवं औषधि
प्रशासन
सेक्टर सी, अलीगंज, लखनऊ, उ०प्र०

सं०: डूग/8322/ लखनऊ
दिनांक 15/08/2022

कार्यालय ज्ञाप

स्वापक एवं मनः प्रभावी पदार्थों का उपयोग औषधियों के रूप में किया जाता है जिनकी उपलब्धता जनसामान्य के उपयोग के लिए आवश्यक होता है। परन्तु, कतिपय व्यक्तियों/फर्मों द्वारा निहित स्वार्थों एवं धन कमाने की लालच में स्वापक एवं मनः प्रभावी औषधियों का दुरुपयोग नशे के रूप में किया जाता है। इस प्रकार के औषधियों का दुरुपयोग प्रायः कम उम्र के बच्चों द्वारा करने के कारण उनके स्वास्थ्य एवं मन पर बुरा प्रभाव पड़ता है और सामाजिक कुरीतियों को बढ़ावा मिलता है। जनपद स्तर पर किये जा रहे प्रवर्तन कार्यों एवं हाल ही में पकड़े गये अवैध स्वापक एवं मनः प्रभावी औषधियों से यह स्पष्ट होता है कि कतिपय औषधि विक्रेताओं द्वारा उक्त औषधियों का अत्यधिक मात्रा में भण्डारण एवं बिक्री अवैध ढंग से किया जा रहा है, जबकि मरीजों के लिए वास्तविक खपत काफी कम है। विभिन्न स्रोतों से संकलित किये गये सूचनाओं एवं प्रवर्तन के समय अभिरक्षा में लिये गये स्वापक एवं मनः प्रभावी औषधियों पर सम्यक विचारोपरान्त यह निष्कर्ष मिलता है कि स्वापक एवं मनः प्रभावी औषधियों के दुरुपयोग को रोकने के लिए व्यापक जनहित में विभिन्न प्रतिष्ठानों में इनके भण्डार एवं बिलिंग की अधिकतम सीमा निर्धारित किया जाये।

अतः सम्यक विचारोपरान्त औषधि नियमावली, 1945 के नियम 51 एवं 52 के अन्तर्गत समस्त औषधि निरीक्षकों को निर्देशित किया जाता है कि निम्न तालिका के स्तम्भ-2 में अंकित औषधियों के भण्डारण एवं बिलिंग की अधिकतम सीमा तालिका

के स्तम्भ-3, 4 व 5 में अंकित विवरण के अनुसार सुनिश्चित करें-

क्र. सं.	औषधि का विवरण	विक्रेता का प्रकार	भण्डारण हेतु अधिकतम सीमा	एक दिन में किसी फर्म/व्यक्ति को की गयी बिलिंग की अधिकतम सीमा
1	2	3	4	5
1.	Codeine based cough syrup 100ml	कम्पनी डिपो एवं सी० एण्ड एफ० एजेन्ट	कोई सीमा नहीं	500 100
		थोक विक्रेता	1000x100 ml	100x100 ml
		फुटकर विक्रेता	100x100 ml	1x100ml
2.	Codeine based cough syrup 50ml	कम्पनी डिपो एवं सी० एण्ड एफ० एजेन्ट	कोई सीमा नहीं	500x50ml
		थोक विक्रेता	1000x50 ml	100x50ml

		फुटकर विक्रेता	100x50ml	1x50ml
3.	Codeine based cough syrup (Any other pack size)	कम्पनी डिपो एवं सी० एण्ड एफ० एजेंट	कोई सीमा नहीं	500 Bottles
		थोक विक्रेता	1000 Bottles	100 Bottles
		फुटकर विक्रेता	100 Bottles	1 Bottle
...				
...				
...				
...				
...				
...				

(ए०के० जैन)

औषधि अनुज्ञापन एवं नियंत्रण प्राधिकारी,
उ०प्र०
तद्दिनांक,

33. Learned Additional Advocate General stated that even though this notification had been stayed by the High Court but one can guess the enormity of the matter. He states that when only one bottle could have been given on prescription then it does not stand to reason that lakhs of bottles had been found missing after they left the main source i.e. Ranchi. Learned

Additional Advocate General also passed on in a sealed cover a communication of the Food Safety and Drug Administration, Uttar Pradesh which indicated that in Varanasi alone 2,23,92,311 bottles were recovered. It may be kept as a part of the record. He, therefore, submitted that even if notification has been stayed, the enormity of the activities of the accused persons could be gaged.

34. Learned Additional Advocate General, therefore, submitted that looking at the enormity of the entire racket which was prevailing in the entire State and thereafter also in all the neighbouring States namely the State of West Bengal, Bihar, Jharkhand and Tripura, it could with confidence be said that the chemical codeine which was an ingredient of the cough syrup was not being used for medicinal or scientific purposes. He, therefore, submitted that as per the above judgment of the Supreme Court in **Directorate of Revenue Intelligence (supra)**, it could not be said that if codeine based cough syrup was being dealt with then the case should be dealt with only under the Drugs and Cosmetics Act but it would also be dealt with under the NDPS Act and other laws of the land. Learned Additional Advocate General, therefore, relied upon paragraph no.90 of the above judgment and the same is being reproduced here as under :-

“90. On a conspectus of the foregoing discussion on the scheme of the NDPS Act and its rules along with the D&C Act and the rules made thereunder, the position of law can be succinctly stated as follows:

i. A bare reading of Section 2(xxiii) of the NDPS Act defining a

“psychotropic substance” would indicate that all the items listed in the Schedule to the Act along with its salts and preparations fall within the purview of “psychotropic substance”. The term “psychotropic substance” mentioned in Section 8 must be seen & understood in light of Section 2(xxiii) which refers to the Schedule to the Act and all the psychotropic substances mentioned therein.

ii. Section 8(c) while prohibiting the “dealing in” of all psychotropic substances mentioned under the Schedule to the Act, carves out an exception i.e., provides for a situation wherein the dealing in of psychotropic substances would not amount to an offence. However, those conditions forming part of the exception carved out under Section 8 must be read conjointly and not individually. In other words, for the accused to take the plea that his dealing in the narcotic drug or psychotropic substance does not constitute an offence under Section 8, it must be proved that the drug or substance was being dealt with (a) for medical or scientific purposes **AND**; (b) in the manner and to the extent provided by the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder **AND**; (c) in accordance with the terms and conditions of the licence, permit or authorisation, if any, required under the provisions of the NDPS Act or the NDPS Rules or the orders made thereunder.

iii. The NDPS Rules, 1985 have been brought into being by the Central Government in exercise of the powers under Sections 9 and 76 of the NDPS Act, respectively. The underlying object of the NDPS rules is to “permit and regulate” certain activities for carrying out the purposes of the NDPS Act and not to

“prohibit” those activities. The NDPS rules must not be understood as laying down standards different from or inconsistent with the substantive provisions of the NDPS Act, especially Section 8 and the Schedule to the NDPS Act.

iv. Chapter VI of the NDPS Rules, inter alia, states that the import into and export out of India of all psychotropic substances, including those only mentioned under the Schedule to the Act, must be accompanied by a valid import certificate and export authorisation. However, the import and export of substances enumerated in Schedule I of the Rules is restricted to a pre-determined set of purposes as explained under Chapter VIIA, irrespective of having obtained an import certificate or export authorisation under the other rules of this Chapter.

v. Chapter VII indicates that the manufacture of all psychotropic substances, including those mentioned only under the Schedule to the Act must be in accordance with the conditions of licence issued under the D&C Rules. Despite there being a general rule absolutely prohibiting the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of any of the psychotropic substances which find mention in Schedule I appended to the Rules, still the above activities can be done vis-à-vis the substances mentioned in Schedule I appended to the Rules, provided such activities are in accordance with other provisions of the Chapter which generally apply to all psychotropic substances, and for the limited purposes mentioned under Chapter VIIA.

vi. The manufacture of all psychotropic substances mentioned under

the Schedule to the Act, and those mentioned under Schedule I of the Rules (provided they are manufactured only for the purposes elaborated under Chapter VIIA), in violation of the conditions of licence of manufacture issued under the D&C Act and its rules would amount to a contravention of Rule 65 of the NDPS Rules and thereby Section 8 of the NDPS Act itself. In other words, due to the operation of Rule 65, a violation of the condition of licence under the D&C Act read with its Rules would ipso facto tantamount to a violation of the NDPS Act read with its Rules.

vii. Furthermore, no person shall possess any psychotropic substance, including those mentioned only under the Schedule to the Act for any of the purposes covered by the D&C Rules, unless he is lawfully authorised to possess such substance for any of the said purposes under the NDPS rules. Therefore, Schedule I substances can be possessed only for the purposes mentioned under Chapter VIIA. All other substances mentioned only under the Schedule to the Act can be possessed for the purposes mentioned under Chapter VIIA and also for the purposes falling under the broad umbrella of "medical or scientific purposes" as mentioned under Section 8 of the NDPS Act. The above is in addition to the fulfilment of the requirements under the D&C Rules.

viii. The underlying idea that resonates throughout the NDPS rules is that dealing in any of the psychotropic substances mentioned under Schedule I of the NDPS Rules must strictly be in accordance with the NDPS Rules **AND ONLY** for the purposes enumerated under Chapter VIIA of the NDPS Rules. The substances not figuring under Schedule I of

the Rules but listed in the Schedule to the Act must also abide by the requirements cast upon by the NDPS Rules. The difference as regards these substances, however, is that while they may be dealt with for the purposes enumerated under Chapter VIIA of the NDPS Rules, they can also be dealt with for other "medical and scientific purposes". Whether the accused has dealt with it within the confines of the expression "medical or scientific purposes" would be determined on the facts and circumstances of each case.

ix. Therefore, the substances under Schedule I to the Rules are more strictly restricted and the remaining psychotropic substances under the Schedule to the Act are more leniently restricted. The different levels in restriction could be seen as the primary reason behind providing two different schedules, i.e., one under the Act and another under the Rules.

x. Several decisions of this Court including Hussain (supra), Ouseph alias Thankachan (supra), Ravindran alias John (supra), Sanjay Kumar Kedia (supra), D. Ramakrishnan (supra) and Sanjeev V. Deshpande (supra) have held that an offence under Section 8 of the NDPS Act can be made out even in respect of substances only mentioned under the Schedule to the NDPS Act and absent under Schedule I of the NDPS Rules. The outlier amongst these decisions was Rajesh Kumar Gupta (supra) which was subsequently overruled in Sanjeev V. Deshpande (supra).

xi. To say that no offence would be made out in a case where an accused deals with a substance mentioned only under the Schedule to the Act, would have the consequence of rendering the entire

Schedule to the Act useless, unnecessary and nugatory.

xii. Rajesh Kumar Gupta (*supra*) assumed that the prohibitory power could only be traced to Rules 53 and 64 of the NDPS Rules respectively, and stated that Rules 53 and 64 of the NDPS Rules respectively, were a genus and the other rules following in their respective Chapters were species thereof. Therefore, since Rules 53 and 64 respectively, only related to the substances listed under Schedule I of the Rules, it was held that the dealing in of substances not finding a mention in Schedule I of the Rules and only listed under the Schedule to the Act, would be unregulated by the Rules and thus, would not amount to an offence under Section 8(c).

xiii. On the other hand, Sanjeev V. Deshpande (*supra*) overruled Rajesh Kumar Gupta (*supra*) by explaining that it is Section 8(c) of the NDPS Act which prohibits various activities with respect to psychotropic substances and the source of this prohibitory power cannot be attributed to Rules 53 and 64 respectively. Rules 53 and 64 are in the nature of an exception to the general scheme of the NDPS Rules. While Rules 53 and 64 state that the substances under Schedule I of the Rules cannot be dealt with in any manner, the other substances i.e., those mentioned under the Schedule to the Act, are also regulated under the other rules in the respective Chapters of the NDPS Rules.

xiv. However, what we understand as also being the essence of the scheme of the NDPS Rules is that, it does not absolutely prohibit the dealing in of the substances mentioned under Schedule I of the Rules as held in Sanjeev V. Deshpande

(*supra*). These substances figuring in Schedule I of the Rules can also be dealt with but only for the limited purposes mentioned under Chapter VIIA of the NDPS Rules. This is evident from the re-phrasing of the NDPS Rules which was effected on 25.03.2015, which according to us, has not changed the meaning of the Rules but only altered its language.

xv. Section 80 states that the provisions of the NDPS Act or the Rules made thereunder shall be in addition to, and not in derogation of the D&C Act and the Rules made thereunder. Therefore, when an offence under the D&C Act is made out or can potentially be made out, the accused can also be charged or prosecuted for an offence under the NDPS Act or vice-versa. The object sought to be achieved under both the legislations is also distinct i.e. the NDPS Act is a special law enacted to regulate the operations relating to narcotic drugs and psychotropic substances with a view to curb and penalise the usage of drugs by persons for intoxication etc., whereas the D&C Act was enacted to prevent substandard, adulterated and spurious drugs from entering the medical market and to maintain high standards in medical treatment. **Hence, offences under both the enactments can also be said to have been constituted simultaneously, where the circumstances so require.**

ii. Whether the decision in Sanjeev V. Deshpande (*supra*) should operate with prospective effect?

a. An overruling decision generally operates retrospectively. □

35. Still further, learned Additional Advocate General relying upon paragraphs 156 to 163 of the above judgment

submitted that the NDPS Act would come into operation when codeine was being used in such a vast and enormous quantity. He submits that looking into the enormity of the matter, the case had to be investigated into under all the sections of the various Acts under which the FIRs were lodged. Learned Additional Advocate General in this regard also relied upon the judgments of the Supreme Court in **Md. Sahabuddin & Ors. vs. State of Assam : 2012 (119) AIC 45; Union of India vs. Sanjeev V. Deshpande : AIR 2014 SC 3625; Hira Singh & Ors. vs. Union of India & Ors. : AIR 2020 SC 3255; and State of Punjab vs. Rakesh Kumar : AIR 2019 SC 84.**

36. Learned Additional Advocate General also relying upon the judgments of Supreme Court in **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra : AIR 2021 SC 1918; State of Andhra Pradesh vs. Golconda Linga Swamy : (2004) 6 SCC 522; Supriya Jain vs. State of Haryana : (2023) 7 SCC 711; Parbatbhai Aahir & Ors. vs. State of Gujarat : (2017) 9 SCC 641; Rajesh Bajaj vs. State of NCT of Delhi : (1999) 3 SCC 259; Central Bureau of Investigation vs. Thommandru Hannah Vijayalakshmi : (2021) 18 SCC 135; S.M. Datta vs. State of Gujarat : (2001) 7 SCC 659; Somjeet Mallick vs. State of Jharkhand : (2024) 10 SCC 527; State by the Inspector of Police vs. M. Maridoss & Anr. : (2023) 4 SCC 338; Commissioner of Central Excise, Chandigarh-I vs. Mahaan Dairies : (2004) 11 SCC 798 and Principal Commissioner of Income Tax III-Bangalore vs. M/s. Wipro Limited : (2023) 15 SCC 455** submitted that if a cognizable case was made out from the reading of the FIR then no interference was warranted in the writ petition.

37. He then further submitted that if the FIR upon the investigation was found to be such in which the investigation was imperative and a cognizable case was made out then no interference was warranted in the writ petition. In the instant case, he has submitted that a large number of cough syrup phensedyl having the chemical codeine was being dealt with by various petitioners as stockists and sub-stockists and that the manufactured articles were being brought from the State of Jharkhand into the State of Uttar Pradesh and various fraudulent documentation had been created by various drug dealers across the State. He submits that e-way bills were such that the transportation was being done of snacks and chips but in fact the bottles containing the cough syrup were being transported. He further submitted that persons who were dealing with the transferring of the cough syrup were having fabricated IDs and were also having telephone numbers/SIM cards on the basis of fake IDs. He has further submitted that the State-wide racket was unearthed and that 128 FIRs, if not more, had been got registered. He submitted relying upon the judgment of the Supreme Court in **Directorate of Revenue Intelligence (supra)** that even licencees who were having licenses under the Drugs and Cosmetics Act, 1940, the accused persons had to be investigated vis.-a-vis. their roles in the preparations of the fabricated documents and their roles in the carrying of phensedyl bottles illegally from Ranchi, Jharkhand to the State of Uttar Pradesh and thereafter also to West Bengal and thereafter to Bangladesh. He states that the petitioners in almost all the cases were named in the FIR, the investigation is in progress and that any interference at this stage would be a great hurdle in the progress of investigation. He submits that if interference in the writ petition is done then

there would also be a danger of the loss of evidence etc. Learned Additional Advocate General relied upon the judgment of the Supreme Court in **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335** and *M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra*, AIR 2021 SC 1918 for bolstering his argument with regard to non-interference by this Court.

38. In State of Haryana & Ors. vs. Bhajan Lal & Ors., the Supreme Court has held :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

39. Also, the judgment of the Supreme Court in **M/s. Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra** had laid down the law as under :-

"33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the

investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.□

40. Learned Additional Advocate General also submitted that as per section 32(3) of the Drugs and Cosmetics Act, 1940, the police could not be prevented from prosecuting the petitioners under the BNS etc. under which the offence had been committed. He, therefore, relied upon section 32(3) of the Drugs and Cosmetics Act which is being reproduced here as under :-

"32. Cognizance of offences :

1. No prosecution under this Chapter shall be instituted except by -

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) any person aggrieved; or

(d) a recognised consumer association whether such person is a member of that association or not.

2. Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

3. Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any

other law for any act or omission which constitutes an offence against this Chapter.”

(emphasis supplied)

41. He also relied upon section 80 of the NDPS Act which is being reproduced here as under :-

“80. Application of the Drugs and Cosmetics Act, 1940 not barred.— The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.”

42. Having heard learned counsel for the petitioners in the above writ petitions and the learned Additional Advocate General, we are of the view that the petitioners reliance upon the decision of this Court in **Ashok Kumar vs. Union of India** reported in **2015 (2) ALJ 193** and the judgment of the Supreme Court in 2001 (12) SCC 164 would not be of any help to the petitioners. In fact the judgment of this Court in **Vibhor Rana (supra)** also would not be of any help to the petitioners. Definitely, the article which was being dealt with was Phensedyl which as per Clause 35 of the Notification dated 14.11.1985 would not be considered as a □manufactured drug□ under the NDPS Act. Also, we are of the view that since the license was under the Drugs and Cosmetics Act, 1940, the judgment of the Supreme Court in the case of **Union of India vs. Ashok Kumar Sharma** reported in **(2021) 12 SCC 674** would be applicable to the case of the petitioners, had the other fraudulent acts which the petitioners had committed, not been committed by them.

43. In view of the judgment of the Supreme Court in **Directorate of Revenue Intelligence (supra)** we are definitely of the view that phensedyl medicine which has codeine as a component which was being used in such enormity as was clear from the reading of the FIR then definitely we are of the view that the case had to be investigated into under all the sections of all the Acts under which the FIRs had been lodged.

44. Definitely we find that transferring of Phensedyl cough syrup was being done from Jharkhand to the State of Uttar Pradesh by e-way bills which were not in the proper category of carrying of drugs but were for the purposes of carrying of snacks and namkeen. We have also come across the FIRs stating that the medicinal articles were brought from the State of Jharkhand after concealing them in various grains namely wheat and rice. Not only that, we also find that the persons who were dealing with those articles namely Phensedyl cough syrup were having fabricated citizenship cards, Aadhar cards etc. etc. If fabrication was there as is evident from the FIR then definitely cases of the petitioners would be covered under the various other sections of BNS as well.

45. We also find that quite often the sub-stockists to whom the various main stockists were transferring the articles, were either not in existence or were such stockists who were not maintaining their stock registers etc. properly. We are also of the view that as per section 32(3) of the Drugs and Cosmetics Act, the petitioners could be prosecuted under □any other law for any act or omission which constitutes an offence against this Chapter.□ Also section 80 of the NDPS Act gives the

liberty to prosecute under the NDPS Act along with the Drugs and Cosmetics Act.

46. The question thus which throughout was raised by the learned counsel for the petitioners that the drug phensedyl which has codeine as an ingredient could not be considered as a □manufactured drug□ and that action could not be taken under the NDPS Act and other enactments, is thus suitably answered herein above in the judgment. The answer to this question is also readily available in the judgment of the Supreme Court in **Directorate of Revenue Intelligence (supra)**. The enormity of the entire matter has to be investigated and, therefore, no question for interference in the FIRs arises.

47. Having observed as above, we part with the case by observing that even though we have not interfered with the case, the investigating agencies would with all sagaciousness, investigate the case and would not in any manner at any point of time indulge in any malicious activity.

48. With these observations, all the writ petitions stand dismissed.

(2025) 12 ILRA 839
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE NALIN KUMAR SRIVASTAVA, J.

Criminal Appeal No. 1345 of 2015
 Alongwith
 Criminal Appeal No. 3888 of 2014
 And
 Criminal Appeal No. 4448 of 2014

Kale **...Appellant**
State of U.P. **Versus** **...Respondent**

Issue for consideration

Consequences of an ante-timed FIR for the prosecution and in which cases are they attracted.

Headnotes

Section 304 read with Section 34 of the Indian Penal Code , 1860-FIR in this case to be ante-timed- not a case where the first informant was chasing or begging the police to lodge his FIR- unreliable dock evidence- witnesses speaking contradictory, inconsistent and inherently unreliable- identity of the assailants- and the manner of assault- do not inspire confidence - prosecution have not been able to prove the case against the appellants beyond all reasonable doubt.

Appeal allowed.(E-9)

Case Law Cited

1. Vadivelu Thevar v. State of Madras, AIR 1957 SC 614
2. Tahir and others v. State of U.P., 2019:AHC-LKO:27021-DB
3. Anand Mohan v. State of Bihar, (2012) 7 SCC 225
4. State of M.P. v. Mansingh, (2003) 10 SCC 414
5. Kaushal Kumar Upadhyay v. State of U.P., (2020) 6 All LJ 266
6. Raju alias Balachandran and others v. State of Tamil Nadu, (2012) 12 SCC 701
7. Edakkandi Dineshan alias P. Dineshan and others v. State of Kerala, (2025) 3 SCC 273

List of Acts

Indian Penal Code, 1860

List of Keywords

Ante-timed FIR, major contradictions, bear some animosity or grudge

Appearances of parties

Counsel for Appellant : Kundan Rai, Mohammad Zakir, P.S. Pundir, Rakesh Kumar Singh, Rakesh Ojha, Sunil Kumar
 Counsel for Respondent : Govt. Advocate

(Delivered by Hon'ble J.J. Munir, J.)

1. This judgment will decide the present Criminal Appeal and the two connected Criminal Appeals Nos.3888 of 2014 and 4448 of 2014. All the appeals arise out of the same crime, where the three appellants stood their trial jointly. They were convicted and sentenced to varying terms for the same offences. All the appeals have been heard together with Criminal Appeal No.1345 of 2015 being formally treated as the leading case. The appellants were tried before Mr. Musharraf Hussain, the then Additional Sessions Judge, Court No.1, Bulandshahr vide Sessions Trial No.1316 of 2010 (arising out of Crime No.157 of 2010), under Section 326 read with Section 34 and Section 304 read with Section 34 of the Indian Penal Code (for short, 'IPC'), Police Station Khurja Dehat, District Bulandshahr. They were convicted and sentenced by the learned Trial Judge vide judgment and order dated 04.09.2014, passed in the sessions trial aforesaid, in the following manner:

Sr. No.	Name of convict	Charge	Sentence	Fine (in Rs.)	Default sentence
1	Kale	326/34 IPC	10 years RI	10,000/-	Six months
		304/34 IPC	Life Imprisonment	10,000/-	Six months
2	Bablu	326/34 IPC	10 years RI	10,000/-	Six months
		304/	Life	10,0	Six

		34 IPC	Imprisonment	00/-	months
3	Anil	326/34 IPC	07 years RI	10,000/-	Six months
		304/34 IPC	10 years RI	10,000/-	Six months

2. Nanak Chand, a resident of Village Dharpa, Police Station Khurja Dehat, District Bulandshahr, lodged a First Information Report (for short, 'FIR') at 6.30 a.m. with Police Station Khurja Dehat, District Bulandshahr saying that in the night intervening 13/ 14.08.2010, his wife Smt. Ram Kumari, sons Rupesh and Chandra Mohan, were asleep in the verandah outside his house. The informant, Nanak Chand was asleep in the barnyard (Gher), where his animals are housed. At 1.00 o'clock in the wee hours, residents of his village, Bablu son of Bhule, Anil son of Ram Charan Jatav and Kale son of Chhote Lal, a resident of Village Achchheja Khurd, District Bulandshahr, assaulted his sleeping wife and children, throwing acid from a bucket, in consequence of which the victims, who had received severe acid burns, wailed and raised a commotion. Upon hearing all these sounds, he woke up. His daughter, Babita, who was already awake in order to attend the call of nature, told him that she had seen and identified the appellants, Bablu, Anil and Kale clearly committing the crime. A lot of natives of the village gathered. The informant and other residents of the village conveyed his injured wife and children to the Government Hospital, District Bulandshahr, where he got them admitted for treatment. The informant's wife, Ram

Kumari and Rupesh, his son, were referred by the District Hospital to a higher centre in Delhi.

3. It is said in the FIR that in the year 2006, two of the appellants, Bablu and Kale, had ravished his daughter 'A', in connection whereof they were convicted and sentenced by the Court to ten years imprisonment. It was just a few months back that they had come out of prison. It is on this account that they harboured animosity against the informant and for the said reason assaulted his wife and children, employing acid.

4. The aforesaid FIR was registered as Crime No.157 of 2010, under Section 326 IPC. Later on, during treatment at the Guru Teg Bahadur Hospital, Delhi (for short, 'the GTB Hospital'), the informant's wife succumbed to her injuries on 20.08.2010. The informant through a report dated 25.09.2010 informed the Police about the development. This led the Police to add the offence punishable under Section 304 IPC to the crime vide G.D. No.21 dated 25.09.2010 at 5.30 p.m.

5. Immediately after the crime was registered and the victims conveyed to the District Hospital, Bulandshahr, they were medically examined there on 14.08.2010 at 2.40 a.m.

6. The Doctor found on the person of Ram Kumari @ Raj Kumari, the informant's wife, 55% burns, caused by some chemical. These were opined to be of fresh duration and advised to be kept under observation.

7. The other injured, Rupesh, the informant's son was examined by the Doctor at the District Hospital on

14.08.2010 and his injuries too were opined to be caused by some chemical burns of fresh duration. These injuries were also advised to be kept under observation.

8. The third injured and the other son of the informant, Chandra Mohan, was examined at the District Hospital on 14.08.2010. In his case too, the injuries were opined to be caused by some chemical, which were of fresh duration. These were opined to be kept under observation.

9. It may be noticed that while the burns sustained by Smt. Ram Kumari @ Raj Kumari were opined by the District Hospital Doctor to be 55% and the injuries of the other victim, Rupesh, as 50% burns, the burn percentage in the case of the informant's other son, Chandra Mohan, was found to be 10%.

10. After the informant's wife and the deceased victim, Ram Kumari @ Raj Kumari, passed away on 20.08.2010, her cadaver was subjected to autopsy at the University College of Medical Sciences & GTB Hospital, Shahdara, Delhi, where she had died during treatment. The autopsy was held on 21.08.2010. There are very detailed observations of the Autopsy Doctor in the postmortem report about the nature of injuries sustained and other matters. The cause of death opined is "*Shock as a result of antemortem infected corrosion burns (chemical) involving fifty percent of total body surface area*".

11. The Police, after investigating the case, filed a charge sheet against the three appellants on 17.11.2010. The Magistrate took cognizance on 18.11.2010. In due course, the case was committed to the Sessions on 01.12.2010. The learned

Additional Sessions Judge, Court No.1, Bulandshahr, before whom the case came up for framing of charge, framed two charges against the appellant, Kale and the two other convicts, Bablu and Anil jointly, charging them on the first count under Section 326 read with Section 34 IPC, and, on the second, under Section 304 read with Section 34 IPC.

12. Eight witnesses were examined by the prosecution in support of their case, three of fact and five formal. PW-1 is Nanak Chand, the first informant; PW-2 is Rupesh, a victim and an injured witness of the occurrence; and, PW-3 is Babita, an eye witness, who is the deceased's daughter and the two injured victims's sister. PW-4, Dr. Rajiv Verma is the doctor, who examined the victims, when they were brought in at the District Hospital, Bulandshahr for necessary medical attention; PW-5 is Dr. Meghali Kelkar. She is a doctor at the G.T.B. Hospital, Delhi and has carried out the autopsy; PW-6 is Om Singh, a Sub-Inspector of Police, who was posted at Police Station Mansarovar Park, Delhi at the relevant time, when the deceased Raj Kumari passed away during treatment at G.T.B. Hospital, Delhi; PW-7, Satyapal Singh, was a Sub-Inspector of Police, posted at the relevant time at Police Station Khurja Dehat. He is the Investigating Officer of the case, who filed the charge-sheet. PW-8, Jai Prakash, is a Constable Clerk, posted at the relevant time at P.S. Khurja Dehat, who got the check FIR drawn up on his dictation and made the relevant G.D. entry upon registering the FIR.

13. The following documents were produced by the prosecution to establish their case:

Sr. No	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 14.08.2010 lodged with the Police Station Khurja Dehat, District Bulandshahr and proved by PW-1, Nanak Chand
2	Ex. Ka-2	Written report dated 25.09.2010 lodged with the Police Station Khurja Dehat, District Bulandshahr and proved by PW-1, Nanak Chand
3	Ex. Ka-3	Injury report of Chandra Mohan dated 14.08.2010 proved by PW-4, Dr. Rajiv Verma
4	Ex. Ka-4	Injury report of Rupesh dated 14.08.2010 proved by PW-4, Dr. Rajiv Verma
5	Ex. Ka-5	Injury report of Ram Kumari dated 14.08.2010 proved by PW-4, Dr. Rajiv Verma
6	Ex. Ka-6	Postmortem Report of Ram Kumari, dated 21.08.2010, proved by PW-5, Dr. Meghali Kelkar
7	Ex. Ka-7	Information regarding death of Ram Kumari dated 21.08.2010, proved by PW-6, SI Om Singh, then posted

		at Police Station Mansarovar Park, Delhi
8	Ex. Ka-8	Statement of the informant, Nanak Chand regarding death of his wife, Ram Kumari at G.T.B. Hospital, Delhi, dated 21.08.2010, proved by PW-6, SI Om Singh
9	Ex. Ka-9	Statement of Sanjiv, identifying the deceased, Ram Kumari, dated 21.08.2010, proved by PW-6, SI Om Singh
10	Ex. Ka-10	Statement of Kishan Lal, identifying the deceased, Ram Kumari, dated 21.08.2010, proved by PW-6, SI Om Singh
11	Ex. Ka-11	Order of the Station House Officer dated 15.11.2010 transferring the investigation to PW-7, SI Satyapal Singh
12	Ex. Ka-12	Charge sheet, proved by PW-7, SI Satyapal Singh
13	Ex. Ka-13	<i>Check</i> FIR dated 14.08.2010, proved by PW-8, Jai Prakash, then posted as Constable Clerk at P.S. Khurja Dehat
14	Ex. Ka-14	GD Entry No.7, proved by PW-8, Jai Prakash,

		then posted as Constable Clerk at P.S. Khurja Dehat
15	Ex. Ka-15	Site Plan of the place of incident dated 15.08.2010, proved by PW-8, Jai Prakash, then posted as Constable Clerk at P.S. Khurja Dehat

14. No witness was examined by the defence or documentary evidence produced.

15. Heard Mr. Rakesh Kumar Singh along with Mr. Mohammad Zakir, learned Counsel for the appellant in Criminal Appeal Nos.1345 of 2015 and 3888 of 2014, Mr. Rakesh Kumar Pandey, learned Counsel for the appellant in Criminal Appeal No.4448 of 2014, and Mr. Shashi Shekhar Tiwari and Mr. Anil Kumar Mishra, learned Additional Government Advocates along with Mr. K.K. Nishad, learned State Law Officer appearing on behalf of the State.

16. Upon hearing learned Counsel for the parties, we find that the evidence on record, relative to the charges, can be conveniently considered in the following manner.

The genesis of and the motive for the crime

17. It is common ground between parties that out of three convicted appellants, two, to wit, Kale and Bablu were charged, tried, convicted and sentenced for the offence of ravishing the informant's daughter □A□ by the learned

Sessions Judge. This offence was committed by the two appellants, Bablu and Kale in the year 2006. Both the appellants received a term sentence of ten years each. They were out on bail pending appeal, when the present offence was committed.

18. It is argued on behalf of the appellants by the learned Counsel that their implication in the present crime is motivated because despite being convicted and sentenced on charges of ravishing the informant's daughter, which too were, according to the appellants, false charges, they have been admitted to bail by this Court pending appeal. It is to spite the appellants that they have now been framed in the present case. The offence here is one that is blind, committed in the dead of night while the victims, the informant and all family members were fast asleep. The perpetrators are very different men than the appellants, who committed the offence by night for their own reasons, but the informant, who harbours grudge and ill-will against the appellants for their perceived involvement in the rape of his daughter, nominated them in the present crime without the slightest of truth to the allegations.

19. Mr. S.S. Tiwari, learned A.G.A. has stoutly refuted this submission and says that there is a prompt reporting of the heinous crime, which excludes every possibility of a false implication.

20. It is true that two, out of the three appellants, Kale and Bablu, were indeed involved in an earlier crime against the informant's family, where the latter's daughter was ravished by the two. They were convicted and sentenced for the offence of gang-rape with each of them, receiving a

term of ten years rigorous imprisonment along with a fine of Rs.5000/- each. In addition, they were ordered to suffer an additional term of three months in the event of default in payment of the fine imposed.

21. The involvement of the two appellants in the case of gang-rape could be thought of as the motive for the informant to falsely implicate them, to wit, Kale and Bablu, particularly as these two, after being convicted by the learned Trial Judge, were enlarged on bail by this Court pending appeal. On the other hand, the motive to commit the crime, could well emanate from the appellants' grudge, resulting from their conviction. It is for this reason that the relevant fact of motive is always regarded as a matter, that may establish the prosecution or work to probabalize the defence.

22. In every case, and so also here, which side the weight of motive would tilt scales, depends on the other facts established in the case. Motive is, therefore, a relevant fact, that has to be seen in the totality of other facts proved by evidence to see which way it really works in a given case. In this case, we would consider the substantive evidence about other relevant facts, more fundamental to a prosecution based on an eye-witness account before opining which way motive has played its role, to wit, if it has led to the crime or a false implication for the appellants. Accordingly, this would be considered later on in this judgment.

The FIR and the circumstances attending its registration; if it is ante-timed

23. According to the FIR, the crime was committed at 1:00 a.m. on 13/14.05.2010, that is to say, in the wee hours at Village Dharpa, P.S. Khurja

Dehat, District Bulandshar. In the attack by throwing of acid, said to have been committed by the appellants, the informant's wife and two sons sustained injuries. The injured were conveyed in a commercial vehicle, popularly called a TATA-407, to P.S. Khurja Dehat. The policemen at the police station are said to have advised the informant to rush the injured to the Government Hospital, Bulandshahr in order to save their life. The doctors of the District Hospital, Bulandshahr, finding the condition of Smt. Raj Kumari and Rupesh to be serious, referred them to the GTB Hospital. The FIR is shown to have been registered at 6.30 a.m. in the morning upon being lodged by the first informant, Nanak Chand.

24. It is submitted by the learned Counsel for the appellants that the FIR is clearly ante-timed and not at all a spontaneous account of the occurrence. Learned Counsel for the appellants have invited the attention of the Court to the testimony of Nanak Chand, PW-1, which he says, clearly shows that the FIR was lodged after the informant had got his wife admitted to the GTB Hospital and returned home to his village in Bulandshahr. It was scribed by Sanjay Kumar at the police station, where many people from the informant's village and elsewhere had reached upon hearing the news. The FIR was lodged after due consultation about quarter to nine in the morning. It is, thus, argued that the FIR, which is shown to be registered at 6.30 a.m., is clearly an ante-timed document, lodged after consultation and premeditation; not a prompt and spontaneous report of the crime.

25. Mr. Tiwari, the learned A.G.A., has submitted that the FIR was lodged at 6.30 in the morning by the informant, a fact

duly proved by PW-3, Jai Prakash, the Constable Clerk, who drew up the check FIR and made a G.D. Entry thereof in the records of the police station at 6.30 a.m. on 14.08.2010. He submits that it is for the said reason that the learned Trial Judge, before whom the same argument about the FIR being an ante-timed document was advanced, rejected it.

26. There is nothing said in the examination-in-chief by the first informant, PW-1, about the time when the FIR was lodged, though he proved the written information by his testimony recorded in the dock, which was marked as Ex. Ka-1. In his cross-examination done by learned Counsel appearing for the appellant, Bablu, PW-1, Nanak Chand, has stated the fact that he has passed his intermediate examination. He is, therefore, a reasonably educated man; certainly a literate and not a rustic.

27. In his cross-examination on behalf of the appellant, Anil, PW-1, Nanak Chand, has stated:

"मैं चुटैलो को लेकर पहले खुरजा-देहात थाने गया था। थाना वालो ने हमें बुलन्दशहर अस्पताल भेजा था। हमारे साथ कोई सिपाही थाने से साथ नहीं आया था। थाना वालो ने हमें चिट्ठी लिखकर नहीं दी थी। बुलन्दशहर अस्पताल मे थोड़ा बहुत इलाज हुआ था उसके बाद रेफर कर दिया था। बुलन्दशहर अस्पताल वालो ने रेफर स्लिप दी थी। हम सुबह 9 बजे दिल्ली अस्पताल में पहुँच गये थे।"

(emphasis by Court)

28. Further, in his cross-examination at the instance of the appellant, Anil, PW-1 has said:

"जब मैं पहले दिन Admit के पश्चात अपने गांव लौटकर आया था तो F.I.R लेखक संजय मेरे गांव मे घर पर मौजूद मिला था। फिर मैने व गांव के अन्य लोगो ने सलाह मशवरा करके रिपोर्ट लिखाई थी।"

(emphasis by Court)

29. Further on, Nanak Chand, PW-1, when cross-examined on behalf of the appellant, Kale, stated:

"मैं चुटैलों के साथ घटना के दिन उन्हें लेकर अस्पताल गया था। चुटैलों को बुलन्दशहर की पुलिस ने अस्पताल में दाखिल किया था। हमने पुलिस को रिपोर्ट की थी। रिपोर्ट रात्रि में 2 बजे की थी। मेरे परिवार मे संजीव का चचिया ससुर FIR लेखक संजय कुमार निवासी गिरधरपुर है। इसको बुलाने के लिए हमने अपने गांव धरपा से समय करीब डेढ़ बजे रात्रि मे फोन किया था। लेखक संजय कुमार समय करीब 7 बजे सुबह अपने गांव गिरधरपुर से मेरे गांव धरपा में आया था। मैं दिल्ली अस्पताल से अपने गांव लौटा था और करीब पौने 8 बजे मुझे संजय मेरे गांव धरपा मे मिला था। थाना खुरजा देहात मै, संजय और गांव के बहुत सारे लोग इस घटना की इत्तला में करीब पौने 9 बजे दिन पहुँचे थे।"

30. PW-8, who is the Constable Clerk at Police Station Khurja Dehat at the relevant time and drew up the check FIR, besides making the relative G.D. Entry in the Station House Diary regarding registration of the case, has testified in his examination-in-chief to the following effect:

"दिनांक 14.8.10 को मैं थाना खुरजा देहात पर बतौर कान्सटेबिल क्लर्क तैनात था। उस दिन मैने मुकदमा अ० स० 157/2010 अन्तर्गत धारा 326 IPC बनाम

बबलू आदि की चिक FIR इस मुकदमे के वादी नानक चन्द की तहरीर के आधार पर सिपाही क्लर्क सुदामा से कम्प्यूटर पर बोल-बोल कर टाईप करायी थी असल चिक FIR आज मेरे सामने है। जो पत्रावली पर कागज संख्या 4A/ 1 व 4A/2 है इस पर प्रदर्श क-9 डाला गया।

इस मुकदमे का खुलासा मैने उसी दिन एक ही Process मे G.D. No 7 समय 6.30 AM पर असल G.D. के साथ तैयार किया था असल G.D. आज साथ लाया हूँ। जो मेरे हस्तलेख व हस्ताक्षर में है असल G.D से मिलान करके प्रमाणित करता हू। इस पर प्रदर्श क-10 डाला गया।"

31. In his cross-examination, PW-8, Constable Clerk, Jai Prakash, has stated:

"यह कहना सही है कि इस तहरीर से पहले उस दिन कोई अपराध दर्ज नहीं किया गया है और ना वाद मे हुआ यह कहना भी गलत है कि मुकदमा की दर्जगी विरोधाभाशी समय में की गयी है G.D संख्या 7, 6.30 AM मेरे हस्तलेख मे है और GD संख्या 8 समय 7.00 AM बजे सुबह मेरे साथ तैनात रहे CC मुरसलीन के हस्तलेख मे है।"

32. Upon a perusal of all this testimony, what is apparent is that Nanak Chand, PW-1, who is the first informant, is by no means an illiterate man. It cannot be said that he has no understanding of the clock or that he could not understand the hour of the day, when he lodged the FIR. It cannot also be said that he would not be able to read the time of registration shown on the check FIR. In fact, he has correctly read the time of registration of the FIR, and, therefore, never mentioned it in his examination-in-chief. In his cross-examination at the instance of the

appellant, Anil, it has come out that PW-1 proceeded with the victims first to the P.S. Khurja Dehat, where looking to the critical condition of the injured, the policemen asked him to rush them to the District Hospital, Bulandshahr. The doctors at the District Hospital, Bulandshahr, assessing the critical condition of the victims, referred them to a higher centre in Delhi. They gave a referral slip as well. It has further figured in his cross-examination that travelling from the District Hospital, Bulandshahr, he reached the hospital in Delhi at 9.00 a.m. It has then further on come in PW-1's testimony during cross-examination on behalf of Anil that after he got the victims admitted, he returned back to his village, where the scribe of the FIR, Sanjay, was waiting at his home. He then, in consultation with other residents of the village, got the FIR scribed.

33. It has further on come in PW-1's cross-examination, also done at the instance of the appellant, Kale, that the witness had gone along with the victims to the hospital. The victims were got admitted by the Bulandshahr Police to the hospital. He had reported the matter to the Police. Here, he has said that the report was lodged at 2.00 a.m. It is next said that a relative of his, Sanjay Kumar, a resident of Village Gurdharpur, is the scribe of the FIR. This scribe was informed over telephone by PW-1 at 1.30 a.m. The scribe, Sanjay Kumar, reached Village Dharpa from his Village Girdharpur at 7.00 o'clock in the morning. PW-1, who had by then gone to Delhi with the victims, returned to his village at about 7.45 in the morning, where he met Sanjay. PW-1, along with Sanjay and many other residents of the village, proceeded to P.S. Khurja Dehat, where they reached to lodge the FIR at about 9.00 o'clock in the morning.

34. PW-1 is the first informant and his testimony, apart from being wayward about the time, when the FIR was registered, is certain about one fact that the FIR was not lodged, or for that matter registered, at 6.30 in the morning. A wholesome reading of his testimony would place the registration of the FIR some time about 9.00 a.m., or may be a little later. PW-1 is categorical that from the police station, where he had initially gone along with the patients, he proceeded to the District Hospital, Bulandshahr. After some superficial management, the victims were referred to the GTB Hospital. The informant went to Delhi. He has categorically said that he reached his village back at about quarter to eight in the morning, where the Scribe, Sanjay Kumar was waiting for him. It is but obvious that the FIR must have been scribed after quarter to eight. PW-1 has also categorically said that the first informant, in the company of the scribe and others, reached P.S. Khurja Dehat at 9.00 o'clock. Elsewhere, it has figured that the FIR was written outside the police station. This would lead to an inference about the time of lodging the FIR being anything after 9.00 a.m. on 14.08.2010.

35. If every other detail is discounted, in the face of the Constable Clerk's grand authority justifying entries made by him in public records, it cannot be accepted that PW-1, who had come back from Delhi, reaching his village at about quarter to eight in the morning hours of 14.08.2010, could, by any means, have got the FIR lodged at P.S. Khurja Dehat at 6.30 in the morning. That time of the day would not be supported by the time taken in the onward journey reckoned from the victims' house to P.S. Khurja Dehat, and then to the District Hospital, Bulandshahr,

the time spent there in the administration of some superficial treatment, the onward journey from District Hospital, Bulandshahr to the GTB Hospital, located in Delhi, and the return journey that PW-1 undertook to reach his village in District Bulandshahr. The time, that PW-1 has indicated of his arrival back home in his village as 7:45 a.m., is apparently realistic and correct, given the distances involved, of which judicial notice may be taken.

36. There is no way that PW-1, undertaking all this journey and the steps involved in consulting doctors at the District Hospital, Bulandshahr, then at Delhi getting the victims admitted to the GTB Hospital and returning back home to his village in Bulandshahr, from where he proceeded to the police station, could ever have lodged the FIR at 6.30 in the morning of 14.08.2010.

37. We are convinced that by any stretch of human capability, the FIR in this case could never have been lodged by the first informant at 6.30 in the morning of 14.08.2010.

38. The testimony of PW-8, the Constable Clerk, Jai Prakash, is untruthful about the time of registration of the FIR and is nothing more than an affirmation of false official record about the time of registration. The fact that no earlier FIR, other than the one giving rise to Crime No.157 of 2010, was registered on 14.08.2010, G.D. Entry No.7 made at 6.30 a.m., relating to the said crime, was a matter of no difficulty for the Police. The next crime was registered, or so to speak the next G.D. Entry of the day was made at 7.00 a.m. vide G.D. Entry No.8. Therefore, the affirmation of time of registration of the FIR and the relative G.D. Entry by the

Constable Clerk, will be of little help to the State in justifying the time of registration of the FIR. The FIR in this case is clearly ante-timed. And, we hold accordingly.

If the ocular testimony of PW-1, PW-2 and PW-3 is relevant and consistent

39. In order to bring home the charge, the prosecution have examined three witnesses of fact, to wit, Nanak Chand, PW-1, Rupesh, PW-2 and Kumari Babita, PW-3. Nanak Chand is the first informant and claimed himself to be a witness of res gestae. In his examination-in-chief, he has stated:

"घटना दिनांक 13/14.8.2010 को लगभग रात के एक बजे की है। मैं अपने पशुओं के पास सो रहा था। मैंने घर से चीख पुकार सुनी, मेरी लडकी बबीता भगी हुई आई, मुझसे बोली कि रूपेश, राजकुमारी व चन्द्रमोहन तेजाब से जले हुये पडे है। बबलू s/o भूले, अनिल s/o रामचरन व काले s/o छोटे लाल ने तेजाब बाल्टी से रूपेश, राजकुमार व चन्द्रमोहन के ऊपर डाला है। यह बात मुझे बबीता ने बताई थी। मैंने रूपेश राजकुमारी व चन्द्रमोहन को तेजाब से जले हुये देखा था।"

40. In his cross-examination done on behalf of the appellant, Bablu, PW-1 has said:

"यह कहना गलत है कि मैंने घटना ना देखी हो। घटना की बात मुझे सबसे पहले बबिता ने बताई थी। बबिता ने घटना में तुरन्त बाद ही मुझे बताया था। बबिता पेशाब करने आई थी। रात में सड़क ही पर नाली में पेशाब करते है। घटना के समय रात को लगभग 1 बजे का समय था। मेरे शोर पर मोहल्ले के किशन लाल, संदीप, जयपाल, डागू आदि आ गये थे। उपरोक्त लोगों

के नाम मैंने दरोगाजी को नहीं बताये थे। मैं घायलों के लेकर सबसे पहले खुरजा देहात थाने गया था। TATA 407 वाहन से गये थे। थाने वालों ने इलाज कराने के लिए चिट्ठी नहीं दी थी। थाने से सिपाही साथ नहीं गया था। थाने में सिपाहियों ने कहा था कि इन्हे बचाना है तो तुरन्द बुलन्दशहर अस्पताल चले जाओ।

मैंने मुल्जिमान को तेजाब डालते हुए नहीं देखा, मुल्जिमान को मैंने भागते हुए पहचाना था।"

(emphasis by Court)

41. PW-1 was also cross-examined on behalf of the appellant, Anil, where he has stated:

"जब मैंने मुल्जिमान को देखा था, मुल्जिमान के मुंह पर डाढ़ा नहीं बन्धा था।

मैंने मुल्जिमान को पीछे से भागते हुए देखा था। मुल्जिमान चारों तरफ को देखते हुए भागे थे तभी मैंने उन्हें पहचाना था। रात उजाली थी।"

42. PW-1 has also been cross-examined on behalf of the appellant, Kale. There, he has stated:

"जब घटना के बाद रोवा-रात मची थी तब मेरी लड़की ने बताया था कि पड़ोसियों ने तेजाब डाल दिया है।"

43. The aforesaid testimony places it beyond cavil that this witness, by no means, is a witness of the occurrence, though he claims to have seen happenings, that are relevant as *res gestae* under Section 6 of the Indian Evidence Act, 1872 (for short, *the Evidence Act*). The testimony of PW-1 in his examination-in-chief to the

effect that it was the appellants, who had thrown acid on the deceased and the two other victims, and, he was told of the fact by Babita, is hearsay. The assertion of the witness in his cross-examination to the effect that it is incorrect to say that he had not seen the occurrence and that he was informed about it by Babita, is again not relevant. But, later on, in his cross-examination, he has said explicitly that though he did not see the appellants throw acid upon the victims, he saw them run away and recognized them. The fact that PW-1 saw the appellants run away from the scene of crime and also saw the three victims with acid burn injuries, put together, is relevant, if proved. Elsewhere, during his cross-examination extracted hereinabove, PW-1 has said that he saw the backside of the appellants as they ran away. He has further said that the appellants were looking on all sides as they escaped, and, therefore, he could recognize them in the moonlit night. The testimony of this witness, who was sleeping in the yard with his animals, and woken up by his daughter, Babita, after the event, does not inspire confidence about the fact that he saw anything of the occurrence or the assailants as they escaped. The victims had already sustained injuries and were writhing in pain.

44. According to this witness, Babita, his daughter, who had woken up and gone to answer the call of nature, using an open drain next to their house as a privy, if it can be called that, came over running to him and apprised him of the incident. PW-1 had woken up, hearing the cries for help coming from his house, when Babita, as already said, told him of the incident and the fact that the perpetrators were Bablu, Anil and Kale, who had thrown acid on Rupesh, Raj Kumari and Chandra Mohan.

He would have taken, if not minutes, a few seconds, to come out of his slumber. There were his wife and sons, wailing in pain. That is the first thing, which would have caught his attention and, in fact, that is what happened too. The assailants made a quick get away. There is no case of any further aggression or assault. It is, therefore, very unlikely that this witness saw anything of the assailants as they ran away. The description that the assailants were looking around, while making good their escape, virtually as if inviting PW-1 to identify them in the moonlit night, is a fact hard to believe. This witness, therefore, saw nothing of the occurrence or anything relevant as *res gestae*. He just saw the trail of injury and agony left behind by the perpetrators.

45. The second witness, PW-2, Rupesh, is the most relevant witness. He is a survivor of the dastardly attack and a *fortiori* an injured witness. He has testified in his examination-in-chief on 21.03.2013, thus:

"घटना दिनांक 13/14.8.2010 रात्री के एक बजे की है मैं व मेरी मम्मी राजकुमारी @ रामकुमारी मेरा भाई चन्द्रमोहन बहन बबीता घर के अन्दर बरामदे में सो रहे थे बब्लू पुत्र भूल्ले अनिल पुत्र राम चरन निवासी गांव धरपा के निवासी है काले पुत्र छोटे लाल निवासी गांव अच्छेजा खुर्द के निवासी है इन तीनों ने एक बाल्टी तेजाब मेरे ऊपर डाला था मेरे शरीर में एक दम आग सी जल गयी थी जैसे मैंने खीची मारी तो मेरी मम्मी एक साथ खड़ी हो गयी तो काले के हाथ से बाल्टी पकड़ी तो बब्लू ने लात मारकर खाट पर गिरा कर मम्मी पर दो बाल्टी तेजाब डाल दिया जिसमें मैं मेरे भाई चन्द्रमोहन पर छीटे आये थे जिससे वह जांघे पर जला है। उसके बाद मैं अपने घर मेरे पापा श्री नानक चन्द पुत्र सचेडू सिंह घर के सामने भैसो के पास

घेर में सो रहे थे इन तीनों को भागते हुये मेरे पापा ने देखा तीनों के हाथ में तेजाब की बाल्टियां थी मैंने व मेरी मम्मी व मेरे भाई चन्द्रमोहन, बहन बबीता और मेरे पापा ने अच्छी तरह से पहचान लिया था।

46. There is then a Court observation, recorded about this witness, to the following effect:

कोर्ट ओबर्जवेशन- साक्षी के चेहरे की बायीं भाग पूरी गर्दन बायीं ओर का कान सम्पूर्ण छाती बाये हाथ की कोहनी से लेकर गर्दन तक का भाग दाहिना हाथ तथा छाती के पीछे गर्दन से लेकर कमर पर दोनों पुटों के बीच उसकी त्वचा बुरी तरह जली हुई है। वादी आंखों की दोनों पलकों तथा भौं जल जाने के कारण सफेद हो गयी है तथा आंखों की पुतली आदि पूरी तरह जल चुकी है। साक्षी ने बताया कि उसकी आंखों से दिखायी नहीं पड़ता है। और पेट के नीचे दोनों जांघों पर भी जलने के सूखे हुये घाव हैं।"

47. PW-2, Rupesh, has said in his cross-examination:

"तेजाब हमारे ऊपर सोते समय हमारे चारपाइयों के ऊपर ही डाल दिया था तेजाब भरी बाल्टी लोहे की थी जिस समय मेरे ऊपर तेजाब डाल दिया था उसी वक्त मुझे काफी जलन हुयी मेरी एक आंख से दिखना बन्द हो गया और कान से सुनना बन्द हो गया।"

48. Again, PW-2 in his cross-examination done on behalf of the appellant, Bablu, has said:

"घटना के समय लाईट आ रही थी बरामदे में भी लाईट जल रही थी। घटना के समय मैंने मुल्जिमान को तेजाब डालते देखा था। घटना के समय हम लोग सो रहे थे घटना के समय सो रहे थे मुझे कुछ पता नहीं।"

(emphasis by Court)

49. Although, this witness has given a graphic description of the occurrence, describing it in minute detail, it has to be borne in mind that he is a person, who woke up in consequence of the burning sensation, resulting from the splash of acid on his body attributed to the appellants. It led him to shriek in pain, which caused the deceased, Raj Kumari, his mother, to suddenly wake up, stand straight and hold back the bucket carrying the active agent. Thereupon, the appellant, Bablu, kicked her, which made her fall back on the bed. The said appellant then emptied two buckets of acid on the deceased's body. It is asserted in the examination-in-chief that the assailants were seen by this witness, his brother, Chandra Mohan, and sister, Babita, besides their father, the first informant.

50. It is said in his cross-examination that a bucket, full of acid, was thrown on him, which caused him a strong burning sensation, loss of vision in one eye and loss of hearing. It is rather unlikely that with impairment of his vital sensory organs, including loss of vision in one eye and hearing, he could, in the distress and turmoil of the moment, identify the appellants with certainty. In the later part of his cross-examination, the witness has reiterated that he had seen the appellants throw acid on the victims, including himself. At the tail-end of the thoroughly done cross-examination, he has said that at the time of occurrence, the place was well-lit with an electric light and he had seen the appellants throw acid on the victims (including himself). He has then said that they were asleep and he did not know anything. The last noted words in his cross-examination cast the die for his testimony, rendering it entirely unreliable, the

inherent worth of this witness notwithstanding.

51. PW-3 is the last witness of fact, and, of immense importance. She is the sole witness, whose testimony cannot be held vitiated by sleep or slumber. She was fully awake and had gone over to an open drain, adjacent to the victims, to ease herself.

52. This witness in her examination-in-chief has given a graphic account of the occurrence in the following words:

"घटना दिनांक 13/14-8-2010 समय लगभग एक बजे की है। मैं अपने घर के बरामदे में सो रही थी उसी बरामदे मेरे साथ मेरा चन्द्रमोहन रूपेश, माँ राजकुमारी @ रामकुमारी भी सो रहे थे मैं पेशाब करने के लिए उठी तो मैंने देखा कि बब्लू, अनिल काले मेरे भाई रूपेश व मेरी माँ और चन्द्रमोहन के ऊपर बाल्टी से तेजाब डाल रहे थे मेरे भाई रूपेश ने शोर मचाया मैं पेशाब कर रही थी। तो मैं उठी मेरा भाई अनिल से चिपट गया मेरे भाई ने अनिल की नाक में घुस्सा मारा था मेरी माँ बब्लू से लिपट गयी थी मेरा भाई नल पर भाग गया था। अनिल ने बाल्टी लेकर तेजाब मेरी माँ के ऊपर गेर दिया (डाल दिया) जिसकी छींटे मेरे छोटे भाई चन्द्रमोहन पर भी आयी थी मैं भागकर अपने पापा जो सड़क के पल्ली ओर सो रहे गयी मैंने उन्हें हल्ला मचा कर उठाया वह आये उन्होंने देखा कि तेजाब में झुलस गये थे मैंने भागते हुये बब्लू, अनिल व काले को देखा था यह भूले के घर में भाग गये थे।"

53. This witness in her cross-examination on behalf of the appellants, Anil and Kale, has stated:

"मैं पेशाब के लिए उठी थी पेशाब से अपनी चारपाई को लौटत. समय मेरे भाई रूपेश, फिर मेरी माँ राजकुमारी की चीख आयी

थी। इस चीख के कितने मिनट बाद में मैं अपने पिता नानक के पास पहुंची थी यह मैं नहीं जानती। मैं व मेरे पिता जी घटना के बाद अपने घर में एक साथ ही आये थे।"

54. This witness has further on said in her cross-examination:

"हमारे घर के पास मुल्जिम अनिल का घर है और थोड़ी दूरी पर ही बब्लू का घर है काले का गांव हमारे गांव घरपा से 5 किलोमीटर दूर है। इस घटना से पूर्व हमारे घर काले का आना जाना और काले के घर हमारा आना जाना नहीं था व्याह शादी में भी हमारा और काले का आना जाना नहीं है काले का नाम मुझे किसी ने बताया नहीं था काले टाटा का ड्राइवर था। यह कथन कि मेरा भाई अनिल से लिपट गया मेरे भाई ने अनिल की नाक में घुसा मारा था मेरी मां बब्लू से लिपट गयी थी मेरा भाई नल पर भाग गया था अनिल ने वाल्टी लेकर तेजाब मेरी मां के ऊपर डाल दिया "दरोगा को बताया था नहीं लिखा है तो कोई वजह नहीं बता सकती। मैंने दरोगा जी को यह कथन किया था कि चन्द्र मोहन पर छीटे आयी थी मैंने भाग कर अपने पापा जो सड़क के पार सो रहे थे। मैंने उन्हें हल्ला मचाकर उठाया वह आये उन्होंने देखा कि तेजाब में झूलस गये थे" अगर यह कथन मेरे व्यान में अंकित दरोगा ने नहीं लिखा है। तो मैं इसकी कोई वजह नहीं बता सकती। यह कहना भी गलत है कि यह बयान में आज पहली बार अपने वकील साहब की कानूनी सलाह से गलत रूप से दे रही हूँ।"

55. The testimony of this witness, given her circumstances, would be of immense value because she is not one of the victims, who woke up from sleep in consequence of the assault by throw of acid. She was already awake in connection with her own engagement and is otherwise a natural witness. A reading of her

testimony, however, shows that on its own terms, it does not bring forth a coherent version of the occurrence. She has said in her examination-in-chief that she had woken up to attend the call of nature, and, thereupon, saw Bablu, Anil and Kale, the appellants, pour acid upon her brother Rupesh, mother Raj Kumari and Chandra Mohan, her other brother, employing a bucket. This would suggest that she saw the assault, as she had just got up from bed to leave for the privy or toilet. If that were the situation, there is no reason why the appellants would have not assaulted her first, or in the same act.

56. In the next breath, this witness says that her brother, Rupesh, raised alarm, which she heard, as she was relieving herself, which made her leave the imperative pursuit. Her testimony in the next leg suggests that she went back to the scene of crime and saw her brother, Rupesh, hug Anil and then box him on the nose. Her mother, this witness saw, hug Bablu, presumably again to save herself. The witness's brother rushed to a hydrant or other source of water. It is next said that this witness saw the appellant, Anil, pour acid on her mother, the splashes whereof landed on her younger brother, Chandra Mohan. It is at this stage that this witness says that she rushed to her father across road, raising alarm. When her father came along with her, the three victims were already scorched by the corroding acid. At this point, this witness says that she saw the appellants, Bablu, Anil and Kale, make good their escape. They chose their escape route via Bhule's house.

57. The inherent fallibility of this witness's testimony comes from the facts, already noted. If she saw the assault, as she woke up to go over and answer the call of

nature, she could not have possibly gone away in her pursuit, leaving the scene of assault, where the perpetrators were pouring acid on the three victims. Also, if she had woken up and seen the assailants, going about their evil deed, she too would have been assaulted. The part of the testimony, which says that after seeing the assault, she went over, as if it were, to answer the call of nature, which she abandoned upon hearing her brother raise alarm, is difficult in the nature of things to imagine or believe as a truthful account. She could not have seen the assault, gone to relieve herself and then abandon it upon hearing her brother call rescue. These contradictions have not at all been explained during her reasonably detailed cross-examination at the instance of the appellants. These inherent fallacies, therefore, vitiate her testimony as a dependable account of the occurrence on its own worth.

58. The locus classicus in regard to the quality of an eye-witness's testimony is **Vadivelu Thevar v. State of Madras, AIR 1957 SC 614**, where it has been held:

“11. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way □ it may convict or may acquit on the testimony of a single

witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial □ □ □ □.

59. Though, this principle was laid down regarding the dependability of a solitary witness, but the fact remains that if witnesses more than one are there and all of them, or both of them, as in this case, of their own evidence contradict themselves on material facts or give an inherently unreliable account of the occurrence, they would fall in the category of unreliable witnesses. Invariably, an injured witness is entitled to greater weight than others and his evidence cannot be lightly discarded, but this does not mean that an injured witness, who goes back on the entire prosecution version, saying that he was asleep when the assault took place and does not know anything, is to be believed, nevertheless. This is the case here with the testimony of PW-2.

60. PW-3 has been shown by us to have given out an account that is inherently unbelievable and self-contradictory. She is an unreliable witness for that reason alone. A similar view was expressed in a Bench decision of this Court in **Tahir and others v. State of U.P., 2019:AHC-LKO:27021-DB**, where their Lordships rejected the testimony of a solitary injured witness and after considering a wealth of authority about vitiation of the credit of a witness on account of contradictions, exaggerations or improvement, held:

“31. This Court is conscious and aware of the fact that it is dealing with the

evidence of a witness who is claiming to be an injured witness of the crime and generally the evidence of an injured witness is considered at a higher pedestal than other witnesses as he is a stamped witness. But keeping in view the whole testimony of PW-1 Ram Sewak we are unable to accept the same as reliable and truthful and it appears that the true account of the occurrence has been suppressed by PW-1 Ram Sewak and truth and false hood are so intermixed in his evidence that they could not be separated and the only course available is to discard the evidence of this witness. Therefore, keeping in view the inherent inconsistencies in his evidence it is in the interest of justice that his untruthful and unreliable testimony must be discarded. In view of above discussion we are not inclined to accept the unreliable testimony of solitary witness PW-1 Ram Sewak. Once the Testimony of this solitary eye witness has been found to be not reliable there is no other evidence on record which may come to the rescue of the prosecution and the case of the prosecution, due to the inherent weakness, in the testimony of PW-1 Ram Sewak, is bound to collapse. The testimony of PW 1 Ram Sewak falls short of the requirement of proof of the charge beyond all reasonable doubt. The Appellants are thus entitled to the benefit of doubt in the facts and circumstances of the case. The contrary view taken by the trial Court is against the weight of the evidence on record and the exposition of law cited at the Bar and traversed herein above. The trial Court appears to have committed a manifest error in appreciating the evidence of solitary eye witness and has ignored the material contradictions and inherent inconsistencies appearing on the surface of his evidence. Resultantly the Judgment and order of conviction of the trial Court

could not stand and is liable to be set aside.”

61. We would not reach our conclusions about the truthfulness of the prosecution just at this. We ought examine the matter further because we have in hand a dastardly crime committed in a place, that is to say, the victims' home, where the witnesses, who have testified, are natural and one of them is injured. In the present aspect of that analysis, we think we ought compare the evidence of PW-2 and PW-3 on the most material of relevant facts.

62. While the injured witness, PW-2, Rupesh, has described the manner of assault saying that all the three appellants poured a bucket full of acid on his body, which led to a severe burning sensation and he shrieked, causing his mother to suddenly get up and hold the bucket, carrying the acid in Kale's hand, Bablu kicked his mother, causing her to fall on the cot and it was he (Bablu), who poured two buckets of acid on her. By contrast, PW-3 describes the occurrence in the manner that when she got up, she saw all the three appellants pour the corrosive substance on all the three sleeping victims. Her brother, Rupesh, raised alarm and she saw him hug the appellant, Anil, and then box him on the nose. According to this witness, her mother hugged the other appellant, Bablu, while her brother, Rupesh, the victim made off to a nearby hydrant. It was then that the appellant, Anil poured a bucket full of acid, upon her mother, the deceased, the splashes of which were received by her younger brother, Chandra Mohan.

63. Now, these two accounts of the occurrence are not ones that carry minor contradictions of detail. These are also not

accounts of the occurrence seen from a different vantage or at different points of time by the two witnesses. Both the accounts are about the principal assault by throwing acid, which was in one or two acts, to be precise, two. Whereas according to PW-2, all the three appellants poured acid on him, according to PW-3, they did so simultaneously, assaulting all the three victims. PW-2 credits assault by pouring or throwing acid upon the deceased victim, Raj Kumari, to the appellant Bablu, in very definitive terms, whereas PW-3 credits that assault to the appellant Anil. PW-3 has said that, after attempting to ward off the assault or receiving the first splash of acid, PW-2 rushed to a hydrant, there is no mention of the fact, even in the slightest measure in the testimony of PW-2. PW-3 credits the injured witness, PW-2, with the act of hugging the appellant Anil and boxing him on the nose, apparently to save himself, whereas no whisper of these acts to ward off the attack figure in the injured witnesses' own testimony.

64. Though, there are many varying accounts by these two witnesses about where and how they were sleeping, it is noteworthy that PW-2, the injured witness, says that his cot was positioned at a distance of one foot from his mother's cot, whereas his brother Chandra Mohan's cot was laid just adjacent to their mother's, the deceased victim. He further says that PW-3, his sister, slept on the same cot as his brother Chandra Mohan. By contrast, PW-3, Babita, says that there were four cots laid out in the verandah. Her cot was separate from the others. She never slept on either of her brothers' cot or that of her mother.

65. In her statement under Section 161 Cr.P.C. made before the Police, PW-3

has stated that she was sleeping on the roof of her house. She was confronted with the fact, about which she said that she did not say so to the Investigating Officer and does not know how he has mentioned it that way. It is in this background that it becomes doubtful, whether she was sleeping at all in the verandah, there being material contradiction about the positioning of her cot and the number of cots laid there. If the fact, whether she was sleeping in the verandah, is doubtful, the manner in which she has described witnessing the occurrence also becomes doubtful.

66. The other contradiction between PW-2 and PW-3, one an injured witness and other an eye-witness, are material and go to the root of the matter. We have mentioned these hereinabove.

67. The two accounts of the occurrence witnessed at the same time by the injured witness and PW-3, speak about material facts differently, such as who assaulted the deceased with the acid throw, the fact about PW-2, the injured witness, boxing one of the assailants on the nose, and then running over to a hydrant, which figure in the testimony of PW-3, but not in that of PW-2 at all. These show the witnesses speak very inconsistently about the manner of assault. The fact that the three assailants were named by the two eye-witnesses alone, PW-2 and PW-3, would not prove the guilt of the appellants beyond all reasonable doubt, given other relevant facts to be shortly noticed, which make the law require the prosecution evidence to be cautiously approached and carefully scrutinized.

An overall perspective and conclusions

68. We have already held the FIR in this case to be ante-timed. If a prosecution that is founded on an ante-timed FIR, ought be thrown out on that ground alone, is a very relevant question in this case. If not, what are the consequences of an ante-timed FIR for the prosecution and in which cases are they attracted, is a question closely related. The question was considered by the Supreme Court in **Anand Mohan v. State of Bihar, (2012) 7 SCC 225**, where it was held:

“57. We now come to the main contention on behalf of the defence that the High Court should have totally discarded the prosecution story once it held that the evidence creates a reasonable suspicion about the FIR being antedated and ante-timed.

58. In none of the cases cited by the defence, we find that this Court has discarded the entire prosecution story only on the ground that the FIR was antedated and ante-timed. In *Ganesh Bhavan Patel v. State of Maharashtra* [(1978) 4 SCC 371 : 1979 SCC (Cri) 1] relied on by the defence this Court considered the inordinate delay in recording the statements of witnesses under Section 161 CrPC and other circumstances along with the fact that the FIR was lodged belatedly without proper explanation and then held that the prosecution case was not reliable. Again, in *Marudanal Augusti v. State of Kerala* [(1980) 4 SCC 425 : 1980 SCC (Cri) 985] cited by the defence, this Court disbelieved the prosecution story not because of unexplained delay in the dispatch of the FIR to the Magistrate only but also because the FIR which contained graphic details of the occurrence with the minutest details did not mention the names of the witnesses and

there were other infirmities to throw serious doubt on the prosecution story.

59. In *Awadhesh v. State of M.P.* [(1988) 2 SCC 557 : 1988 SCC (Cri) 361 : AIR 1988 SC 1158] relied on by the defence, besides finding that the delay in lodging the FIR was suspicious, this Court also found that the empty cartridges were recovered from the place of occurrence one day after the incident and the medical evidence established that the witnesses had not actually seen the incident and considering all these circumstances this Court held that the prosecution had not proved the case beyond reasonable doubt.

60. This Court has, on the other hand, held in *State of M.P. v. Mansingh* [(2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] that if the date and time of the FIR is suspicious, the prosecution version is not rendered vulnerable but the court is required to make a careful analysis of the evidence in support of the prosecution case. □

69. The principle then appears to be that for the mere fact that the FIR is found to be ante-timed, the prosecution would not collapse. The ante-timing of the FIR would have to be considered with other relevant facts. If the prosecution by their evidence establish a well-knit case, the ante-timed FIR may not vitiate it. An ante-timed FIR casts a shadow of suspicion on the prosecution case, because advantage of the earliest version of the occurrence is lost and some premeditation, and may be even manipulation of some facts, is inferable. Notwithstanding that if the dock evidence is flawless and consistent, witnesses do not contradict each other on material particulars, establish their presence on the scene of crime and given an account, that is corroborated by other

evidence, an ante-timed FIR would not be fatal.

70. But, where there are inconsistencies in evidence, witnesses contradict or give an inherently improbable account of the occurrence in the dock and the cross-examination, which discredits their version or the witnesses themselves, an ante-timed FIR may cast the die against the prosecution. On a more refined principle, as held in **State of M.P. v. Mansingh, (2003) 10 SCC 414**, an ante-timed FIR requires the prosecution evidence to be scrutinized more carefully, or so to speak, approached with caution. After all, a prompt FIR, shown to be lodged according to its apparent tenor in the G.D., though not substantive evidence, is an assurance about the earliest and truthful account of facts being before the Court.

71. The principle has been further explained and the ante-timing of an FIR differentiated into two classes – one that is inconsequential, and, the other that may affect the prosecution – in the Bench decision of this Court in **Kaushal Kumar Upadhyay v. State of U.P., (2020) 6 All LJ 266**. In **Kaushal Kumar Upadhyay (supra)**, following the Supreme Court in **Anand Mohan (supra)**, it was remarked:

“9. An ante-timed report, is a report which does not appear to have been lodged at a time when it is purported to have been lodged. It is well settled in view of me judgment of the Apex Court in **Anand Mohan v. State of Bihar, (2012) 7 SCC 225: (2013 Cri LJ 2644 (SC))** that prosecution case cannot be thrown merely on the basis of ante-timed FIR, provided the prosecution case is successfully established on the basis of other cogent and substantive evidence. A report could be

ante-timed for 2 reasons, first where the police itself was negligent/lackadaisical in entertaining the report or where the police with design/collusion of the informant with a view to implicate innocents entertains report not at a time when it is purported to have been lodged. The former is to be ignored as an investigational default, giving no advantage to the accused while the latter could be a ground to bring the prosecution case under suspect. Each case will have to be decided on its own merits□□□.□

72. This is not a case, where the first informant was chasing or begging the police to lodge his FIR. Rather, it was registered as and when it was presented to the Police. The difficulty is that the time schedule between the events involving the commission of crime, the conveying of the victims to the District Hospital, Bulandshahr and further on to Delhi with the informant returning to his native Village Dharpa, Bulandshahr, then holding consultation and finally proceeding to the police station to lodge the FIR, place the time when he actually lodged it, way beyond the recorded time of its registration. We have already dealt with this issue in much detail earlier in this judgment. Thus, the FIR here is one which belongs to that category of ante-timing that might affect the prosecution.

73. This is not a case, where the two eye-witnesses, one of them injured, whose testimony could have been damning, have delivered evidence of sterling quality. We have already held in the earlier part of this judgment that PW-2, who is the injured witness and whose presence is, therefore, inherently not doubtful, has said at the end of his inculpatory testimony that at the time of occurrence, all of them were asleep and he does not know anything. His testimony

has, therefore, lost all its worth standing by itself. Likewise, the testimony of PW-3, Babita, who is the informant's daughter and a sister of the injured, carries an account that we have noticed to be inherently flawed and not worth credence.

74. Then these two witnesses, PW-2 and PW-3, have materially contradicted each other about the manner of assault to the extent that the identity of the assailant, who delivered the fatal acid bath to the deceased victim is different. There are other major contradictions in their testimony that have already been noticed and need no repetition. It is for this reason and others given, that we have held that the evidence of the witnesses may not prove the appellants' guilt beyond reasonable doubt.

75. Now, when one views this unreliable dock evidence in the background of an ante-timed FIR, where there is at least a time difference of three hours, in the time shown when the FIR was registered, and the time when it could actually have been registered the earliest, much suspicion shrouds the prosecution case. Also, one cannot ignore in the background of the ante-timed FIR and the witnesses speaking contradictory, inconsistent and inherently unreliable, the fact that the FIR was much ante-timed, because the informant, PW-1, could never have lodged it at the hour of the day, when it is shown to have been registered.

76. It is also noteworthy that in the account of facts, leading up to the lodging of the FIR by the informant, he has admitted in his cross-examination that when he came back to his village from Delhi, the scribe of the FIR was already there at the informant's home. He has

most noticeably said that he and other residents of the village lodged the FIR after consultation amongst themselves. The ante-timing of the FIR in this case, therefore, is suggestive of adjustment and twisting of facts, may be wholesome mis-statement, which ultimately led the eye-witnesses to speak inconsistent and unreliable in their dock evidence.

77. Now, the question arises why would at all there be a false implication attempted by the informant and other witnesses, who are his closest blood-relatives; his children. It is here that we have to judge whether the motive attributed to the appellants to commit the crime could indeed have worked with the other edge of the double edged sword and served as the cause for the informant to falsely implicate.

78. It is at this stage that we must briefly consider the stand of each of the appellants in their statement under Section 313 Cr.P.C.

79. The appellant, Kale, in answer to the last question under Section 313 Cr.P.C., has said (quoting the question):

"प्रश्न- आपको कुछ और कहना है?

उत्तर- मैं बिल्कुल निर्दोष हूँ। मेरे छोटे छोटे दो बच्चे हैं। मुझे स्थानीय रंजिश के कारण झूठा फसाया गया है। मेरी कोई शिनाख्त भी नहीं कराई गई है। मैं घटना वाले गाँव का रहने वाला भी नहीं हूँ। न मैं उस दिन वहाँ गांव में मौजूद था।"

80. Likewise, the appellant, Bablu, in answer to the law question in his statement under Section 313 Cr.P.C. has said (question quoted):

"प्रश्न- आपको कुछ और कहना है?

उत्तर- मैं बिल्कुल बेकसूर हूँ। मुझे पुरानी रंजिश व गांव की पार्टी बंदी के कारण झूठा फंसाया गया है। पुरानी सजा के विरुद्ध हमारी अपील हाई कोर्ट में चल रही है। जिसमें हम जमानत पर हैं।"

81. The appellant, Anil, who was not an accused in the case of rape brought by the informant, relating to one of his daughters, has said in answer to the last question in his statement under Section 313 Cr.P.C. has said (question quoted):

"प्रश्न- आपको कुछ और कहना है?

उत्तर- कूड़ा डालने को लेकर मेरा विवाद वादी से हो गया था। इसी कारण मुझे इस मामले में झूठा फंसाया गया है। मैं बिल्कुल निर्दोष हूँ न किसी घटना में शामिल था, न वहां मौजूद था।"

82. We are mindful of the principle that in a case based on direct evidence, the existence of motive to commit the crime is of little or no relevance. It is relevant to help the prosecution, if a motive exists to assure the Court that the accused is indeed guilty. Nevertheless, in a case that has its genesis in an ante-timed FIR of the second category that we have noticed, where the witnesses are close family members of the victims and have come up with a rather inconsistent and improbable account of the occurrence, the existence of a possible motive to falsely implicate, would have its weight. Every blood-relative, who is a witness, cannot be regarded partisan or interested. A witness becomes interested, if being a relative and may be for some reason as well, he bears some kind of grudge, ill-will or animosity against the accused and would want him convicted. A relative witness is not synonymous with an

interested witness and this position of the law is well settled. In judging the credibility of witnesses, it is also a well regarded principle that a relative of the victim would be the last person to see an innocent convicted and the perpetrator going scot-free. Therefore, being a relative, does not of itself make a witness interested. Rather, it entitles him to weight, if his account is found to be truthful, consistent and probable. If, however, a relative witness has some motive to falsely implicate, particularly a grudge or animosity against the accused, his evidence has to be received with a degree of caution and scrutinized with great care.

83. The principles applicable to the appreciation of evidence of relatives, who bear some animosity or grudge against the accused, have been elaborately discussed and summarized with reference to earlier authority by the Supreme Court in *Raju alias Balachandran and others v. State of Tamil Nadu*, (2012) 12 SCC 701. In *Raju* (supra), it was observed by the Supreme Court:

"Discussion

19. Before us, only two contentions were advanced by the learned counsel for the appellants. Firstly, it was contended that since PW 5 Srinivasan was a related and interested witness, his evidence must be closely scrutinised, and if his testimony is put to close scrutiny, it will be quite clear that he ought not to be believed. Secondly, it was contended that the prosecution case was doubtful since there was no evidence except the unreliable testimony of PW 5 Srinivasan.

20. The first contention relates to the credibility of PW 5 Srinivasan. It was

said in this regard that he was a related witness being the elder brother of Veerappan and the son of Marudayi, both of whom were victims of the homicidal attack. It was also said that he was an interested witness since Veerappan (and therefore PW 5 Srinivasan) had some enmity with the appellants. It was said that for both reasons, his testimony lacks credibility.

21. What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan v. Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] . It was held that: (SCC p. 754, para 7)

“7....True, it is, she is the wife of the deceased; but she cannot be called an □interested□ witness. She is related to the deceased. □Related□ is not equivalent to □interested□. A witness may be called □interested□ only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be □interested□.□

22. In light of the Constitution Bench decision in *State of Bihar v. Basawan Singh* [AIR 1958 SC 500 : 1958 Cri LJ 976] , the view that a □natural witness□ or □the only possible eyewitness□ cannot be an interested witness may not be, with respect, correct. In *Basawan Singh* [AIR 1958 SC 500 : 1958 Cri LJ 976] , a trap witness (who would be a natural eyewitness) was considered an interested witness since he was □concerned in the success of the trap□. The Constitution Bench held: (AIR p. 506, para 15)

“15. ... The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.□

23. The wife of a deceased (as in *Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593]), undoubtedly related to the victim, would be interested in seeing the accused person punished□in fact, she would be the most interested in seeing the accused person punished. It can hardly be said that she is not an interested witness. The view expressed in *Kalki* [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] is too narrow and generalised and needs a rethink.

24. For the time being, we are concerned with four categories of witnesses□a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the

evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

25. In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution.

26. In *Dalip Singh v. State of Punjab* [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145] this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused—each case has to be considered on its own facts. This is what this Court had to say: (AIR p. 366, para 26)

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 relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping

generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.□

27. How the evidence of such a witness should be looked at was again considered in *Darya Singh v. State of Punjab* [AIR 1965 SC 328 : (1965) 1 Cri LJ 350 : (1964) 3 SCR 397]. This Court was of the opinion that a related or interested witness may not be hostile to the assailant, but if he is, then his evidence must be examined very carefully and all the infirmities taken into account. It was observed that where the witness shares the hostility of the victim against the assailant, it would be unlikely that he would not name the real assailant but would substitute the real assailant with the □enemy□ of the victim. This is what this Court said: (AIR p. 331, para 6)

“6. There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal courts to examine the evidence given by such

witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. □ [I]t may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of the enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. □

28. More recently, in *Waman v. State of Maharashtra* [(2011) 7 SCC 295 : (2011) 3 SCC (Cri) 83] this Court dealt with the case of a related witness (though not a witness inimical to the assailant) and while referring to and relying upon *Sarwan Singh v. State of Punjab* [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] , *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211] , *Prahalad Patel v. State of M.P.* [(2011) 4 SCC 262 : (2011) 2 SCC (Cri) 205] , *Israr v. State of U.P.* [(2005) 9 SCC 616 : 2005 SCC (Cri) 1260] , *S. Sudershan Reddy v. State of A.P.* [(2006) 10 SCC 163 : (2006) 3 SCC (Cri) 503] , *State of U.P. v. Naresh* [(2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , *Jarnail Singh v.*

State of Punjab [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107] and *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302] it was held: (*Waman case* [(2011) 7 SCC 295 : (2011) 3 SCC (Cri) 83] , SCC p. 302, para 20)

□20. It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care. □

29. The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in *Dalip Singh* [(1953) 2 SCC 36 : AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145] and pithily reiterated in *Sarwan Singh* [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] in the following words: (*Sarwan Singh case* [(1976) 4 SCC 369 : 1976 SCC (Cri) 646] , SCC p. 376, para 10)

“10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied

that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. □ □

84. The principles in **Raju** have been followed by the Supreme Court as recently as in **Edakkandi Dineshan alias P. Dineshan and others v. State of Kerala, (2025) 3 SCC 273**.

85. Now, in the present case, we have two eye witnesses, one an injured, and, the other, who claims to have seen the appellants commit the crime. We have found on a careful scrutiny of their evidence that though they were inmates of the house and one of them had sustained severe injuries in the assault, their account of the occurrence, including the identity of the assailants, is inherently doubtful and the two accounts carry contradictions about the manner of assault.

86. The identity of the assailants, who threw acid on the deceased and the manner of assault, do not inspire confidence about the truthfulness or reliability of the accounts of the occurrence by these two witnesses. The rather improbable account of the occurrence by the two eye-witnesses and the contradictions amongst themselves, when viewed in the foreshadow of the motive against two of the three appellants, that the first informant, PW-1, and his family members, that is to say, PW-2 and PW-3 had, it is perilous to accept the prosecution case as one supported by testimony that is free from blemish and dependable.

87. The motive for the informant and his family members, to wit, PW-2 and PW-3, the eye-witnesses, to falsely implicate the appellants, is the fact that these men were charged with ravishing the

first informant's daughter and convicted in that case. In these circumstances, for the first informant and the two eye-witnesses, who are blood-relatives of the victim in the earlier case, to falsely implicate the appellants, Kale and Bablu, if they did not see the assailants of this case at all, cannot be ruled out. PW-2, who is an injured witness, has acknowledged at the end of his testimony that all of them were asleep and did not know anything. Therefore, for the victims, it was a blind case, where they did not know who were the assailants. The witnesses, placed in these circumstances, harboured, as they would, a good amount of animosity against appellant Nos.1 and 2 on account of these two men being involved in ravishing the informant's daughter and the witness's sister are interested witnesses. Their testimony, therefore, which is otherwise found inherently unreliable, improbable and contradictory, cannot at all be accepted.

88. So far as the motive against the appellant, Anil, is concerned, it has figured in the cross-examination of PW-3, Babita, that there was some dispute and sharp exchange of words between him and the first informant over the issue of dumping garbage. The witness has said that her father, the informant, bears animosity against Anil. The Trial Court has discarded this consideration for a motive because the learned Judge thought that animosity is something which the informant, PW-1, could have himself spoken of and not his daughter.

89. We do not think that that is a correct approach to the understanding of the informant's motive. An animosity of this kind is known to one and all in the family, spoken of to family members, felt and shared by them. It is not something that

is absolutely unknown to others and known only to the first informant, who is said to have quarrelled with the appellant, Anil. The only doubt that may arise is if a neighbourhood quarrel was motive enough to implicate in such a case. Once we have found that nobody knew anything about the identity of the assailants with the eye-witnesses giving inherently improbable and contradictory accounts, the feeling of vengeance and frustration that the informant and other members of the family would have felt, could be motive enough to implicate the appellant, Anil too, against whom they bore a grudge.

90. The fact that the grudge, if any, was on a trivial cause, which could not lead to a false implication in such a serious case, would be a consideration very relevant, if the informant or any member of his family had seen the real assailants and known their identity. If their identity was unknown and it was a blind case, false implication of the appellant Anil, alongside others, whatever grudges were harboured against him, could be motive enough to falsely implicate. This is certainly a strong possibility and probability.

91. This fact taken together with an ante-timed FIR, that was admittedly lodged after consultation with residents of the village, probalises a tainted prosecution against the appellants.

92. All that we have said about the doubt created as to the prosecution on account of an ante-timed FIR, a motive to falsely implicate, would have been of little consequence, if the eye-witnesses had broadly and consistently proved the prosecution case. But, once they have failed to do that, the possibility of a motivated implication, accentuated by an

ante-timed FIR, puts the prosecution case under a shadow of grave doubt.

93. It is too well settled for a principle of the law that in a criminal case, after all, it is the prosecution, who have to establish the case beyond all reasonable doubt, and, it cannot be held proved on probabilities or weaknesses of the defence.

94. In the totality of circumstances, we hold that the prosecution have not been able to prove the case against the appellants beyond all reasonable doubt. They are entitled to the benefit of doubt.

95. In the result, these appeals succeed and are allowed. The impugned judgment and order dated 04.09.2014 passed by the Additional Sessions Judge, Court No.1, Bulandshahr in Sessions Trial No.1316 of 2010 (arising out of Crime No.157 of 2010), under Section 326 read with Section 34 and Section 304 read with Section 34 IPC, Police Station Khurja Dehat, District Bulandshahr, is hereby set aside. The appellants are in jail. They shall be released from prison forthwith unless wanted in any other case.

96. Before being released, the appellants shall execute personal bonds in the sum of Rs.25,000/- each under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

97. Let the lower court records be sent down to the Trial Court concerned.

(2025) 12 ILRA 865
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.12.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 2849 of 1987

Virendra		...Appellant
	Versus	
State of U.P.		...Respondent

Issue for Consideration

Matter pertains to whether the prosecution had proved beyond reasonable doubt that the surviving appellant Onkar, along with the co-accused, committed the murder of Rajendra under S. 302 read with S. 34 of the IPC, in view of the delay in lodging the F.I.R., presence of the police at the place of occurrence during the night, existence of village partybandi arising out of Gram Pradhan election, and the evidentiary value of interested witnesses.

Headnotes

Indian Penal Code, 1860 - S. 302/34 - Criminal Trial - Murder - Appreciation of Evidence - Common intention - Conviction challenged - Enmity and Party-bandhi - Unexplained delay in lodging FIR, despite police presence at the spot during the night, held to cast serious doubt on prosecution version - Evidence - Interested Witnesses - Conviction based solely on testimony of related witnesses without independent corroboration held unsafe, particularly where material facts are concealed - Investigation - Partybandi and Village Rivalry - Existence of partybandi arising from Gram Pradhan election considered relevant in assessing false implication - Benefit of Doubt - Acquittal - Where prosecution fails to establish guilt beyond reasonable doubt, accused entitled to benefit of doubt.

Held: The FIR lodged belatedly with no explanation for the delay casts a serious doubt over the prosecution case - denial by P.W.1 and

P.W.2 regarding police presence during the night, contrary to police evidence, "appears unnatural, which goes to show that they are hiding true facts from the Court - existence of partybandi due to Gram Pradhan election furnished motive for false implication - Prosecution witnesses being only close relatives, and non-examination of independent witnesses despite availability, rendered their testimony unreliable - prosecution failed to explain material inconsistencies regarding second part of incident, use of ballam, setting fire, and conduct of villagers and police - The involvement of appellant/convict in the offence appears to be highly doubtful" and prosecution "failed to prove its case beyond reasonable doubt - Appeal allowed; conviction and sentence set aside; surviving appellant Onkar acquitted under Section 302 read with 34 IPC. (Paras 37, 40-43, 48-49, 54-57) (E-7)

Case Law Cited

Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393; Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Arms Act, 1959

List of Keywords

Delay in F.I.R.; Partybandi; Interested Witness; Common Intention; Benefit of Doubt; Country-made Pistol; Unknown Dacoits; Gram Pradhan Election

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising out of judgment and order dated 02.12.1987 passed by the Special/Additional Sessions Judge, Bulandshahar, in Sessions Trial No. 61 of 1986, Police Station Ahmad Garh, District Bulandshahr.

Appearances for Parties

Advs. for the Appellant:

Mr. Krishna Kant Dubey

Advs. for the Respondents:

Mr. Ghanshyam Kumar, learned A.G.A.-I for the State

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by the appellants, namely, Virendra, Onkar and Ajab Singh @ Bali, against the judgment and order dated 02.12.1987 passed by Mr. N.P. Verma, the then learned Special/Additional Sessions Judge, Bulandshahr, in Sessions Trial No.61 of 1986, under Section 302 read with Section 34 of the Indian Penal Code (for short I.P.C.), Police Station Ahmad Garh,

2. By the impugned judgment and order, the appellant Virandra has been convicted and sentenced to undergo imprisonment for life and a fine of Rs.2000/- for the offence punishable under Section 302 I.P.C. In default of payment of fine, he has been ordered to undergo rigorous imprisonment for one year. The other appellants, Onkar and Ajab Singh @ Bali have been convicted and sentenced to undergo imprisonment for life and a fine of Rs.2000/- each for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. In default of payment of fine, they have been directed to undergo rigorous imprisonment for one year each.

3. During the course of the hearing of this criminal appeal, appellants Virendra and Ajab Singh @ Bali have died, and the appeal stands abated against them vide order dated 17.07.2018. This appeal has been heard at the instance of the surviving appellant, Onkar Singh, alone.

4. Brief facts of the prosecution case are that the informant, Ram Ji Lal, son of Leeladhar, resident of village Satbara, Police Station Ahmad Garh, District Bulandshahr, filed a written first information (Ex.Ka-1) on 11.02.1985 at 6:30 a.m. at Police Station Ahmad Garh, stating therein that the marriage of Dayawati, daughter of Rajpal and grand

daughter of Devi Ram, was to be solemnized on 13.02.1985. On 10.02.1985, Devi Ram (brother of the informant) went to Bulandshahr to purchase articles for the marriage. In the night at about 8:45 p.m., the informant was lying in the Dewari, while his nephew Rajendra was lying in a room (kotha). In the courtyard, Smt. Shakuntla (wife of Rajendra), Smt. Mehar Shri (wife of Rajpal), Smt. Dayawati (daughter of Rajpal) and some other women of the locality were singing wedding songs. A lantern was lit there, and the main door of the house open. The convicts Virendra, Onkar, and Ajab Singh alias Bali entered the informants house. Virendra Singh caught hold of the informant and asked about the gun belonging to his brother Devi Ram. The informant replied that Devi Ram had taken it along with him to Bulandshahr. Meanwhile, Onkar and Ajab Singh alias Bali caught hold of Rajendra and Ajab Singh alias Bali, attacked him with a lathi. The women ran inside the room. The informant, Rajendra and others raised alarm and caught hold of the assailants, but they managed to free themselves and ran outside. In the process, a woollen coat and a woollen sheet from the convicts was snatched. In the pocket of the said coat, a loaded country-made pistol was kept. They bolted the door from inside. Shortly thereafter, all the three accused climbed on their roof through the adjacent house of one Tirkhi. The informant also climbed on the roof. Virendra pulled the dried grass from thatch and set it afire near the staircase. Hearing the commotion, villagers arrived at the spot. Some of them opened fire using their licensed weapons and surrounded the informants house to approach the miscreants. Ram Avtar Singh, Kunwar Sen, Hari Singh, Kanti Prasad, and others raised alarm. Rajendra fired two shots from the

jangla (window) and said from within the house that no miscreants were inside, asking them to open the door (from the outside) and save him. In the meantime, Onkar attacked Rajendra with a spear (bhala) from the munder (roof edge) but it was caught by Rajendras wife. Thereafter, Virendra fired at Rajendra with his country-made pistol from the roof-top, causing him injuries. He fell down and died on the spot. After murdering Rajendra, the appellants fled towards the south. The informant went to the police station with the snatched woolen coat, woolen sheet, country-made pistol and cartridges which were taken in custody and a memo (Ext.Ka-2) was prepared. Upon the information laid an FIR was registered as Case Crime No.13 of 1985, Section 302 I.P.C and Section 25 Arms Act, at Police Station Ahmad Garh.

5. The investigation was carried out by P.W.4, Kalyan Singh Yadav, Station Officer (S.O.) P.S. Ahmad Garh, who prepared the inquest report of the deceased and sent the body for post-mortem examination. The Investigating Officer inspected the place of occurrence and prepared its site-plan (Ext. Ka-10). He also collected plain earth and blood-stained earth from the place of occurrence and prepared its memo (Ext.Ka-11). In addition, he collected dried grass stems and kept them in separate sealed boxes, marked as Exhibits 9, 10, and 11. He further collected ash from the fire at the spot and sealed them in a separate box and prepared its recovery memo (Ext. Ka-12). He also prepared the supurdagi nama (Ext. Ka-13) for the lantern, which was stated to have been lit in the house at the time of the incident.

6. P.W.3, Dr. D.B. Singh, conducted the post-mortem examination on the

deceaseds cadaver on 12.02.1987 at 3:30 p.m. He found five ante-mortem injuries on the dead body and opined that the cause of death was shock due to excessive bleeding.

7. After recording the statements of witnesses and collecting other evidence, the Investigating Officer filed a charge-sheet under Section 302 IPC against Virendra, Onkar and Ajab Singh @ Bali before the competent court.

8. The concerned court took cognizance of the offence and summoned the accused. They appeared before the Court and the court furnished them copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter committed the case to the Court of Sessions on 29.01.1986.

9. The accused persons appeared before the Court of Sessions, where Virendra was charged with the offence punishable under Section 302 of the Indian Penal Code (IPC), and Onkar and Ajab Singh @ Bali were charged with the offence punishable under Section 302 read with Section 34 of the IPC. All the accused persons pleaded not guilty and claimed to be tried.

10. The prosecution examined six witnesses in support of the prosecution case: P.W.1, Ramji Lal (brother of the deceased), P.W.2, Shakuntla (wife of Rajendra), P.W.3, Dr. D. B. Singh (conducted post-mortem examination), P.W.4, Kalyan Singh Yadav (Investigating Officer), P.W.5, Constable Daya Chand (scribe of Chik F.I.R.) and P.W.6, Constable Bishambar Singh (carried dead body to post-mortem house).

11. P.W.1, Ramji Lal, is uncle of the deceased Rajendra and also the first

informant in this case. He has said in his testimony that he was present at the time of the incident. It has come in his statement that there was enmity between the accused and the informant with regard to election of the Gram Pradhan. In that election, Aidal, father of accused Virendra, contested and Devi Ram had supported his rival Bahori, who won the election. Therefore, the accused bore grudge against the informant and his family. P.W.1 further deposed that the marriage of Rajpals daughter was fixed for 13.02.1985. On 10.02.1985, at about 8:45 p.m., Devi Ram had gone to Bulandshahr, and the informant was lying in his Dubari, while the door of the house was open. Rajendra was inside the house in the eastern Kothri. In the courtyard, Shakuntla, Mohar Shree and other women of the locality were singing wedding songs and a lantern was lit there. The appellants Virendra, Onkar, and Bali entered their house. Virendra caught hold of the informant and asked for the gun belonging to Devi Ram (his brother). The informant said that Devi Ram had taken the gun along to Bulandshahr. Thereafter, Bali and Onkar went inside the house. Bali was carrying a lathi, Onkar had a country-made pistol on him, concealed in his coat and Virendra was also armed with a country-made pistol. Bali struck Rajendra with the lathi and dragged him into the courtyard. Thereupon, Rajendra, his wife Shakuntala, and Mohar Shree caught hold of Onkar and Bali. Virendra also ran inside and they caught hold of all three appellants. The appellants tried to run away and in the process, Onkar's coat and Bali's shawl (chadar) were snatched. The accused then ran outside the house. The informant bolted the door from inside and climbed onto the roof from the staircase. The appellants also climbed on the roof through the house of Tirkhi. Upon hearing the alarm, the villagers gathered

outside the house. Thereafter, all the appellants took some dried grass (phoos) and set it on fire on the staircase. Rajendra, from inside the house, told the villagers that there were no miscreants inside and also fired 2-3 rounds from the jangla (window). When Rajendra saw fire on the staircase, he shouted for help and came out into the courtyard. Then Onkar attacked him with a ballam (spear), which was caught by Rajendra's wife. The informant told Virendra that Virendra Bhai, he is not a miscreant, he is my nephew, Rajendra. Don't shoot him. Even then, Virendra shot him, and thereafter, the appellants fled.

12. P.W.1, Ramji Lal, has also deposed that he identified all the accused in the light of a lantern and the light from the fire. Rajendra died on the spot. At about 4:00 a.m., he got a written report scribed by Ram Avatar and put his thumb impression on it. The witness has proved the written information (Tahrir) (Ex. Ka-1) and has stated that he brought the tehrir, as well as the snatched coat, the shawl (chadar), country-made pistol, and cartridges to the police station, where the concerned constable took them into his possession and completed the necessary formalities. He also proved the coat and shawl (chadar) and said that these belonged to the appellant, Onkar, and the country-made pistol and cartridges were found inside the pocket of his coat.

13. P.W.2, Smt. Shakuntla, wife of Rajendra (deceased), has supported the prosecution case and stated that on the fateful night, at about 8:45 p.m., she, along with her sister-in-law (Jethani) Mohar Shree, her niece Dayawati, and other women of the locality were singing wedding songs in the courtyard of her house. A lantern was lit there. Her father-

in-law, Ramji Lal, was in the Debari and her husband was lying down in the Kothari. The appellants, Virendra, Bali, and Onkar came over there. Virendra asked Ramji Lal for Devi Rams gun, to which he said that Devi Ram had taken it along with him to Bulandshahr. Then Onkar dragged her husband out of the Kothari, and accused Bali assaulted her husband with three lathi blows on his head. Thereafter, she, her husband, and Ramji Lal caught hold of the appellants. They tried to run away, and in the process, a coat and a shawl (chadar) was snatched away from them. The accused ran outside the house, and her father-in-law bolted the door from inside. The women of the locality, who were singing wedding songs ran inside the kotha. The appellants climbed onto their roof from Tirkhis kothari. Her father-in-law, Ramji Lal, also climbed onto the roof from the staircase. Her husband fired two round of shots from the jangla. The villagers surrounded the house, and someone bolted the door from outside. Thereafter, all the appellants collected some dried grass (phoos) and set it a fire on the staircase. The appellant, Onkar assaulted her husband with a spear (ballam), but she caught hold of it, due to which it did not hit him. Then Virendra shot her husband, as a result of which he fell to the ground and died. She identified the appellants by the light of the lantern and the burning fire.

14. P.W.3 Dr. D. B. Singh, has conducted the post-mortem examination upon the deceased Rajendras body on 12.02.1987 at 3:30 p.m., and found the following ante-mortem injuries:-

(i) *Lacerated wound measuring 1" $\frac{1}{3}$ " scalp deep on the left side of the head, 4" above the left eyebrow.*

(ii) *Two abraded contusions, each measuring " ", situated " apart on the left side front of the head, about " above injury no. 1.*

(iii) *Multiple gunshot wounds of entry present over an area of 11" 5" towards the right and left sides of the upper front of the chest, extending downwards to the front of the neck and left shoulder. One large wound measuring 2" 1" chest cavity deep was found near the middle of the left collar bone, surrounded by several small wounds, each about " ", skin to muscle deep.*

(iv) *Abrasion measuring 2" 2" on the front lower part of the right knee.*

(v) *Abrasion measuring 2" 2" on the front lower part of the left knee.*

During the internal examination, the left collar bone and second rib were found fractured, and both pleura were lacerated. The upper and middle lobes of the right lung were also lacerated.

15. In the opinion of the doctor, the cause of death was shock as a result of excessive bleeding from ante-mortem injuries. He recovered eleven pellets from the lungs, which he sealed in an envelope and handed over to the constable. Dr. D. B. Singh proved the post-mortem report (Ext. Ka-3) and the clothes of the deceased (Ext. 5, 6, and 7). He opined that injuries No. 1 and 2 could have been caused by a lathi, Injury No. 3 was caused by a gunshot, and Injuries No. 4 and 5 were caused by friction.

16. P.W.4, Kalyan Singh, Station Officer, is the Investigating Officer of this case. He has stated that he recorded the

statements of the informant and other witnesses. Upon reaching the spot, he found the dead body of the deceased lying in the informants courtyard. He further said that he recorded the statements of Smt. Shakuntala and Ramji Lal and prepared the inquest report, which he proved as Ext. Ka-5. He also prepared the photo nash, challan nash, letter to the C.M.O., a letter to the R.I., and a sample seal, which he proved as Ext. Ka-6 to Ext. Ka-9. He further stated that he inspected the place of occurrence and prepared the site plan, which he proved as Ext. Ka-10. From the place of occurrence, he collected plain earth, blood-stained earth, and dried grass (phoos), which were proved as Ext. 9, 10, and 11 respectively. He also collected ashes from the staircase and the roof, which he proved as Ext. 12. The supurdaginama of the lantern, recovered from the place of occurrence, was proved as Ext. Ka-13. After completing the investigation, he submitted the charge-sheet against the appellants, which he proved as Ext. Ka-14. He further said that a separate case was registered under Section 25 Arms Act, but as no evidence was found in support, he submitted a final report therein. P.W.4 has also deposed at the trial that on 10.02.1985, at about 10:30 p.m., Aidal Singh, son of Pope Singh, who is the father of the accused Virendra and Jogendra son of Maharaj Singh, arrived at the police station by truck and provided certain information, which was entered in G.D. No. 28 at 10:30 p.m. He has proved a copy of the said G.D. entry as Exhibit Kha-1. On the basis of this information, Sub-Inspector Lal Singh Tomar, Constables Dayanand Tyagi, Tope Singh, and Ramesh Chand were sent to village Satbara by the same truck. When he himself reached the house of the informant, the aforesaid police officials were already present there. He has admitted that in the

year 1982, there was party-bandhi in village Satbara due to the Gram Pradhan election, one party belonged to Bahori Pradhan and the other to Aidal Singh.

17. P.W.5, Constable Dayanand, is a formal witness. He has scribed the chik FIR on the basis of the written report (Ext. Ka-1) submitted by the informant and entered its gist in G.D. No. 6 dated 11.02.1985. He has proved the chik FIR as Ext. Ka-15 and the copy of the G.D. as Ext. Ka-16.

18. P.W.6, Constable Bishambar Singh, is a formal witness, who has taken the dead body of Rajendra Singh from Satbara to post-mortem house, Bulandshahr for autopsy. He reached Bulandshahr in two hours. It took him some time in police lines. Thereafter, relevant papers were handed over to the doctor, belatedly at 12 noon.

19. The prosecution have produced the following documents during the trial:-

A written report (Exhibit Ka-1), recovery memo regarding the country-made pistol, cartridges, woollen coat, and bed sheet (Exhibit Ka-2), post-mortem report (Exhibit Ka-3), chik report (Exhibit Ka-4), inquest report of the deceased (Exhibit Ka-5), photo nash (Exhibit Ka-6), challan nash (Exhibit Ka-7), letter to C.M.O. (Exhibit Ka-8), letter to R.I. (Exhibit Ka-9), site-plan (Exhibit Ka-10), recovery memo regarding plain earth and blood-stained earth (Exhibit Ka-11), recovery memo regarding ash (Exhibit Ka-12), supurdaginama regarding the lantern (Exhibit Ka-13), charge-sheet (Exhibit Ka-14), chik FIR (Exhibit Ka-15), G.D. No.6 dated 11.02.1985 at 6:30 a.m. (Exhibit Ka-16), G.D. No.8 dated 11.02.1985 at 7:30 a.m., (Exhibit Ka-17) and G.D. No.24

dated 11.02.1985 at 19:30 p.m. (Exhibit Ka-18).

20. The statements of the appellants were recorded under Section 313 of the Code of Criminal Procedure (for short the Cr.P.C.), where they denied the prosecution case. It was admitted that the marriage of Dayawati, daughter of Rajpal, was scheduled for 13.02.1985. They also stated that they had been falsely implicated in this case due to partybandi and that the Investigating Officer had wrongly submitted the charge-sheet against them. They also filed written statements, wherein it was stated that the village Pradhan and the informant with the help of police, had lodged a false report against them. According to them, the real facts were that some unknown dacoits came to the house of Ramjilal, and due to the alarm raised, the dacoits could not commit any loot. This information was given by Aidal Singh and Jogendra Singh at the police station the same night and the police arrived there at about 11:00-11:30 p.m. in the night. The police inquired about the incident, and the people informed them that it had been committed by unknown dacoits. It was also stated that the FIR was lodged belatedly. The witnesses are inimical to them. Ramji Lal is on good terms with Pradhan Bahori and Bahori got them falsely implicated in this case. The deceased, appellant Bali stated that he had nothing to do with the chadar or the gun. He further stated that the unknown dacoits committed marpeet (assault) and murder of Rajendra, and upon information furnished by Jogendra and Aidal Singh, the police reached the house of Ramjilal the same night. He was on inimical terms since 1969 with the deceased appellant, Virendra due to a land dispute between him and Chattri Singh @ Chatar Singh, a brother of full blood

Virendras grandfather of accused. Virendra has stated that he never told Devi Ram that he would not allow Devi Ram to keep his gun. Some unknown dacoits entered Devi Rams house to commit dacoity. Rajendra and others raised alarm. A gun was fired, and the villagers surrounded Devi Rams house confining the dacoits inside. Aidal Singh and Jogendra Singh informed the police the same night and the police reached the spot at about 11:00 11:30 p.m. In the meantime, the dacoits committed marpeet with Rajendra and shot him dead. The deceased appellant Virendra also said that due to partybandi and enmity arising out of the election of the village Pradhan, he had been falsely implicated in this case. The defence has produced certain documents in support of this contention.

21. The Court examined C.W.1 constable Ramesh Chandra and C.W.2 I.O. Kalyan Singh Yadav (after recalling him). C.W.1, Ramesh Chand (Constable) deposed that on 10.02.1985, he was posted at Police Station Ahmad Garh. On that date, he himself along with Constables Top Singh, Dayanand Tyagi, Subhash, and Davendra had reached village Satwara at 11-12 night. There, they reached the house of Ramji Lal and found that Rajendra, the nephew of Ramji Lal, was lying dead. People were saying that Virendra, Onkar and Bali had killed him. S.I. Lal Singh stayed there during the night and kept up inquiring about the incident. At 8-9 a.m. the Kotwal reached there after that they returned to the police station. The villagers were heard to say that dacoits had come to the house of Ramji Lal and killed Rajendra and the appellants were member of the gang of dacoits.

22. C.W.2 Kalyan Singh Yadav (Investigating Officer), in his re-

examination, stated that at 10.30 p.m. on the date of incident, Aidal Singh and Jugendra Singh gave information that Ramji Lals house has been surrounded and firing is going on. Thereafter S.I. Lal Singh Tomar proceeded to the place of occurrence the same night at 10.30 p.m. vide G.D. No.28 dated 10.2.1985 and returned at 8:00 a.m. on 11.2.1985 recorded in G.D. No. 10. He has proved a copy of the return G.D. as secondary evidence (Ex. C-1). Aidal Singh is the appellant, Virendras father and Jugendra Singh is the appellant, Onkars brother.

23. The learned Trial Court, after hearing the arguments of both parties and examining the evidence on record, convicted the appellant, Virendra under Section 302 I.P.C. and appellants, Onkar and Ajab Singh @ Bali under Section 302 read with Section 34 I.P.C. and sentenced each of them to the terms already indicated above.

24. Feeling aggrieved by the impugned judgment and order dated 02.12.1987, this appeal has been filed by all three convicts.

25. During the course of the hearing of this criminal appeal, appellants Virendra and Ajab Singh @ Bali have died, and the appeal was ordered to **abate** at the instance vide order dated 17.07.2018. Therefore, the appeal has been heard at the instance of the surviving appellant, Onkar alone.

26. Heard Mr. Krishna Kant Dubey, learned Counsel for the appellant and Mr. Ghanshyam Kumar, learned A.G.A.-I for the State and perused the record.

27. Learned counsel for the appellant has submitted that learned Trial Court has not

properly appreciated the evidence on record, and thus, the impugned conviction and sentence are not sustainable. It is further submitted that the alleged incident occurred in the night of 10.02.1985, and upon receiving information, some police officials arrived at the place of occurrence around 11:00-12:00 the same night. The FIR was lodged the next morning at 6:30 a.m., and there is no explanation for the delay in lodging the FIR. It is next submitted that there was also delay in conducting the post-mortem examination of the deceased, which has not been explained by the prosecution. This raises serious doubt about the prosecution case. It is next contended that some unknown dacoits committed the offence and fled the place of occurrence, and later, the informant, with the help of the village pradhan and the police, lodged a false report against the appellants due to partybandi and enmity in connection with village pradhan election.

28. Learned counsel for the appellant has also submitted that if according to the prosecution, the motive of the appellants was to loot Devi Rams gun and they were informed that Devi Ram had taken his gun to Bulandshahr, the appellants would have returned without event. Moreover, if they had intention to murder Rajendra, then they would have done so at the very first instance when, according to the prosecution, they entered the informants house and asked about the gun and beaten Rajendra. Thus, the entire story of the prosecution is doubtful. It is also submitted that according to the prosecution, at the time of the incident some women of the locality were inside the house singing wedding songs. However, none of them had been examined in support of the prosecution case. P.W.1 and P.W.2 are family members of the deceased and, therefore, are highly interested witnesses.

29. It is true for a principle that close family members are not expected to tell

falsehood about the complicity of a man in the crime, because they would not wish that the true offender to go unpunished and, therefore, not speak inculpatory about an innocent man falsely. This principle, however, has no application to a case where the evidence shows that nobody saw anything, and against the ones implicated, the family members of the deceased had a grudge or scores to settle. It is in cases, such as these, that a family member of the deceased can verily be called an interested witness.

30. On the other hand, it is submitted on behalf of the State that the prosecution story is proved beyond reasonable doubt. There is no unexplained delay in lodging the F.I.R. The offence was committed in the night and the F.I.R. was lodged the next morning. Due to fear the informant did not go to the police station to lodge the FIR. The place of occurrence is established. Rajendra was killed. P.W.1 and P.W.2 have witnessed the incident and their testimony is consistent and reliable. Their testimony can not be doubted on the ground that they are relatives of the deceased. There is no reason why the appellants would be falsely implicated in this case. The appellants came at the informants house to commit murder and their relatives went to the police station in advance to mislead the police by giving it the color of a dacoity by unknown men.

31. Upon a consideration of evidence adduced by both the parties and the rival submissions, let us see whether the prosecution has been able to prove its case beyond reasonable doubt. In a criminal case the burden of proof always lies upon the prosecution. The prosecution case is that appellants/convicts came over to the informant's house and committed maarpeet, set the staircase on fire and murdered

Rajendra, the informants nephew, by shooting him dead inside the house. The defence case is that it was some unknown dacoits who came to the informants house to commit dacoity. They beat up Rajendra and when they failed in their attempt they shot him dead and fled away from the spot. Due to party bandi and enmity arising from the village Pradhan election, the appellants have been falsely implicated in this case with the aid of incumbent Pradhan, acting in connivance with the Police.

32. Thus in the present case murder of the deceased Rajendra in the informants house on the fateful night is not disputed by the defence. The defence case is that they were not involved in the commission of the offence. The inquest report of the dead body was prepared at the spot, the next day i.e. 11.2.1985 at 12.30 p.m. The post-mortem was conducted on 12.2.1985 at 3.30 p.m. Thus there is a delay of more than 24 hours in sending the body for post-mortem and this delay is not well explained by the prosecution. According to P.W.3 Dr. D.B. Singh there were 05 antemortem injuries on the body of the nature of lacerated wound, abrasions, multiple gunshot wounds of entry over left side of chest and the cause of death was shock and excessive bleeding as a result of antemortem injuries. In the opinion of the doctor the death may have been caused on 10.2.1985 at 8.45 or 9 p.m. and gunshot injury no.3 was sufficient in the ordinary course of nature to cause death. The I.O. has collected plain earth and blood-stained earth from the place of occurrence which corroborates the ocular testimony regarding the place of occurrence. In view of the above, the place of occurrence is established and the fact that the deceased was murdered inside the house by firearm injuries.

33. Let us see whether the appellants/convicts committed the offence

as alleged by the prosecution. As per the prosecution the incident took place on 10.02.1985 at about 8:45 p.m. at the house of the informant, Ramji Lal, in village Satbara, Police Station Ahmad Garh, District Bulandshahr. The FIR was lodged the next morning at 6:30 a.m. by the informant. According to the Chik FIR the distance from the place of occurrence to the police station is about 7 kilometers. A perusal of the FIR shows that it does not contain any explanation regarding the delay. The first submission on behalf of the appellants is that there was delay in lodging the FIR and no explanation for the delay has been given which raises serious doubts about the prosecution case and as the assailants were unknown to the informant so he has falsely implicated the appellants due to partybandi and enmity arising out of village Pradhan elections.

34. P.W.1 the informant Ramji Lal has stated that at about 4 a.m. the tehrir was written by Ram Autar at his dictation and on that basis he lodged the FIR. On the other hand the I.O. Kalyan Singh has stated on oath that the father of the accused Virendra, namely Aidal Singh, alongwith one Jogendra, brother of co-accused Onkar, had reached Police Station Ahmad Garh the same night at 10.30 p.m. by truck and informed the police that the house of Ramji Lal is surrounded by miscreants (badmaash) and there ongoing assault by gunfire. The said information was duly entered in the General Diary of the police station and Sub-Inspector Lal Singh Tomar, along with three other police officials, proceeded by the same truck to village Satbara. P.W.4, I.O. Kalyana Singh has stated that S.I. Lal Singh Tomar, Head Constable Dayanand Tyagi, Constable Top Singh, and Constable, Ramesh

Chandra were sent from the police station to the said village, Satbara, the same night.

35. The Court has examined C.W.-1, Constable, Ramesh Chandra, who accompanied S.I. Lal Singh Tomar to village Satbara. He has stated that they reached the village at about 11-12 in the night and went to the house of Ramji Lal, where his nephew Rajendra was found lying dead. He further stated that they stayed in the village throughout the night and returned to the police station when the Station Officer (Daroga) arrived there at about 8-9 a.m., the next morning.

36. In view of the above evidence, it is clear that after the alleged incident, the police reached the house of the informant at about 11:00 p.m. to 12 midnight the same night, upon information by relatives of the appellants Virendra and Onkar. The police remained present in the village throughout the night and saw the dead man lying in the informants house. If the assailants were known to the informant and so to the Police, then it is quite unusual that neither the informant lodged any F.I.R. during the night nor the police started investigation into this crime till the next morning. Despite presence of the police in village the entire night, the informant did not go to the police station to lodge the FIR the same night. The presence of police should have removed the fear, if any, the informant had in proceeding to police station to lodge an FIR. It was quite unnatural for him to wait for the night to be over and lodge the FIR the next morning.

37. It is also relevant to note that P.W.1, Ramji Lal and P.W.2, Shakuntala, the wife of the deceased, are the only two public witnesses examined by the

prosecution. Both of them are relatives of the deceased. Surprisingly, both of them have denied that the police had reached their house the same night. P.W.1 has stated that the police did not reach the village before the report was lodged. He has denied that the Police came to his house at 11:00 or 11.30 p.m. He has expressed ignorance about the fact that Aidal Singh and Jogendra went to police station and called the Police. P.W.2 has stated that no policeman came to her house at 11-12 in the night. The Police came the following morning at 8-9 a.m. The above statements of P.W.1 and P.W.2 are contrary to the evidence of Police Officials, who have said that the Police came to village the same night at 11-12. So denial of the Polices presence on the fateful night in the village by P.W.1 and P.W.2 appears unnatural, which goes to show that they are hiding true facts from the Court. Thus, there is unexplained delay in lodging the FIR.

38. The effect of delay in lodging the FIR has been discussed by Supreme Court in various pronouncements. In **Thulia Kali v. State of Tamil Nadu 1972 (3) SCC 393**, it was held by the Supreme Court that delay in lodging the First Information Report often results in embellishment which is a creature of after-thought. On account of delay the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version and an exaggerated account of the correct story as a result of deliberation and consultation. It is also held that in order to avoid all criticisms of the defence, it is therefore essential that the delay in lodging of the First Information Report should be satisfactorily explained.

39. Further, the Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P.,**

(1994) 5 SCC 188, has observed in para 12 of the report:

“FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during

inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR."

40. In view of the legal position that emerges from the above discussion, the FIR lodged belatedly with no explanation for the delay casts a serious doubt over the prosecution case.

41. The Investigating Officer has stated on oath that since 1982, due to the election of the village Pradhan, there has been partybandi in village Satbara. One faction supports Bahori Pradhan and the other stands by Aidal Singh, the father of the appellant, Virendra Singh. It has come in the statement of P.W.1, Ramji Lal, that he and Devi Ram had supported Bahori Pradhan, who won the Pradhan election, while the appellant Virendra's father, Aidal Singh, lost the election. Therefore, from the above evidence, it is clear that there is partybandi in the village, and due to the election of the Pradhan, both parties were not on good terms with each other. Thus there was reason for the informant to falsely implicate the appellants in this case.

42. The prosecution has produced P.W.1, Ramji and P.W.2, Shakuntala as the only witnesses of fact. Out of them, P.W.1 is the informant and uncle of the deceased and P.W.2, Shakuntala is the wife of deceased. Both are related witnesses and hence what are called interested witnesses. Their evidence is to be carefully examined, particularly when there were other women and also some villagers present at the time

of incident near the place of occurrence. Surprisingly, the prosecution has not examined any independent witness. Though both the above witnesses have supported the prosecution case and are mostly consistent in their testimony regarding some facts but the attending circumstances, other evidence contrary to it and concealment of important facts by these witnesses, raises doubt over their testimony. Thus, their testimony is not reliable. P.W.1 has stated that he did not see miscreants assault Rajendra with a lathi and he himself was not beaten by them. The I.O. has stated that P.W.2 Shakuntala did not tell him that Virendra caught hold of her husband and asked for the gun. Shakuntala also did not tell him that Onkar dragged her husband into the courtyard and Bali hit Rajendra with a lathi. Thus it appears that her statements before the Court on these points are

43. Here, it is also relevant to note that the Investigating Officer has admitted that in Case Diary No.III, he had recorded that there was no evidence against the accused, and they were arrested merely because their names were mentioned in the FIR. He has further stated that different persons were giving different versions regarding the incident. Some were also saying that the accused were not involved in the offence. He has also stated that other women who were singing wedding songs were also interrogated but they were not arrayed as witness because they stated that the incident has occurred but did not name any person while others were saying otherwise. C.W.1 Constable, Ramesh Chandra has also stated that villagers were saying that dacoits ravaged Ramji Lal's house and killed Rajendra and that appellants, Virendra, Bali and Onkar were also among those dacoits (bandits). He has also stated

that they did not go to the appellants house to apprehend them. The statement of C.W.1 is contrary to the statement of P.W.1 and P.W.2, who have not stated that some dacoits came and killed Rajendra. Additionally, if the names of the appellants were divulged to the Police the same night, why the Police never went to their house to apprehend them or inquire of them, is not clarified by the prosecution. It creates doubt about the prosecution case and gives weight to the defence that with regard to the incident the names of assailants were not known to anybody.

44. It is relevant to note that the appellants reside in the same village. It is not the case of the prosecution that the accused entered inside the informants house with their faces covered with masks. Therefore, according to the prosecution itself, there was no intention on the appellants part to conceal their identity while committing the alleged offence. According to the prosecutions case, after entering the house, the appellant, Virendra asked the informant Ramji Lal for Devi Rams gun, saying that they would not allow Devi Ram to keep the gun. P.W.1, Ramji Lal, stated that he informed them that the gun was not with him and had been taken by Devi Ram to Bulandshahr. In this regard, the learned counsel for appellant submits that if the appellants intention was to take the gun belonging to Devi Ram they would have left after learning that it was not in the house. There was no reason for them to remain in the house, and thereafter, commit the said crime. It is also submitted that if the common intention of the appellants was to kill Rajendra then they could have easily killed him or attempted to kill in the very first instance when they had entered the house, armed

with lathi and country-made pistols and even caused lathi blows to Rajendra.

45. According to the prosecution case, the incident occurred in two parts. In the first part, the accused entered inside the informants house and demanded the gun, which the informant told them was not there. They then beat up Rajendra with lathi and when the inmates of the house tried to capture them, they fled the house. The second part is that after leaving the house, they climbed on the roof of the informants house from Bahoris adjacent house. The appellant, Onkar attacked Rajendra with a ballam (spear) unsuccessfully from the roof, whereas the appellant, Virendra shot Rajendra, also from the roof. According to the statements of P.W.1, Ramji Lal and P.W.2, Shakuntala, the appellants pulled out the dried grass from the thatch and set it on fire on the staircase. The aforesaid version of the prosecution is hard to believe.

46. It has come in evidence that after the first incident, the informant, Ramji Lal, bolted the house from inside, and the villagers surrounded it; some of them also opened fire. Some villagers were also on the roof. According to P.W.1 when the appellants ran outside the house he bolted the door from inside and climbed on his roof and raised alarm. Then appellants, Virendra, Onkar and Bali also climbed on the roof from the adjacent house of Tirkhi. He has also stated that he remained on the roof till the assailants remained there. Some villagers were also on the roof. Before the appellant, Virendra opened fire, the roof was dug by villagers to rescue the children. Kanti, Kunwar Sain, Hari Singh and Ram Avtar, the villagers were also on his roof. According to P.W.1 when the appellant,

Virendra shot Rajendra, he himself was standing close to Virendra and said that he told Virendra that "वीरेंद्र भाई ये बदमाश नहीं है, मेरा भतीजा राजेंद्र है इसको गोली मत मार, मेरे इतना कहने पर भी वीरेंद्र ने उसको गोली मार दी. "The above statement of P.W.1 shows that he is concealing material facts. There is no earthly reason why he would say to the appellant Virendraये बदमाश नहीं है'. It shows that some miscreants (badmaash) came there whose presence is deliberately concealed by P.W.1 and P.W.2. P.W.1 has also stated that some villagers were saying that बदमाश अंदर है' and the deceased was saying that कोई बदमाश अंदर नहीं है. He has also said that the appellants were on the roof and Virendra was aiming to shoot Rajendra and he himself was standing close to Virendra. It is surprising that appellant, Virendra did not do any harm to informant though he was standing on the roof near them. In this regard the statement of P.W.2, Shakuntala is material wherein she has stated that when the miscreants were on the roof then her husband, Rajendra was saying that " If the appellants were involved in the crime, residing in the same village and not covering their face and had come asking for gun then certainly appellants were known to the deceased prior to the incident. So there was no occasion for him to have asked his wife to save him for once and that he had identified the appellants whom he would take care of in the morning. This creates doubt if the appellants were at all involved in the offence.

47. Further, if the intention of the accused was to commit Ragendras murder, there was no need for them to set fire to the staircase by drawing dried straw from the thatch. It is also relevant to mention that it has come in evidence that a hole was found dug in a portion of the roof of the

informants house. It is submitted on behalf of appellants that this hole was made by unknown dacoits to commit dacoity. But according to P.W.1, the hole was made by the villagers to rescue the children trapped inside the house. However, there is no evidence that any child was actually taken out through this hole. There is no evidence regarding how many children were inside the house. P.W.1, further stated that the hole in the roof was made by villagers prior to Virendra shooting the deceased. If the informant and the appellants were on the roof at the same time with some villagers and till then the appellant, Virendra had not opened fire killing the deceased then the digging of a hole on roof by the villagers appears quite unnatural and it would have taken some time also. Whereas it would have been much easier for the villagers to unbolt the door of the house from outside and rescue the inmates. There is also no evidence from the prosecution to show that the fire was near the main door of the house, preventing the inmates from opening it from inside. Therefore, the entire story put forward by the prosecution appears to be highly unnatural whereas the version of defence appears quite probable.

48. It is also relevant to mention that the Police remained in the village during the entire night, but there is no evidence to show that they went to the appellants house to inquire about the incident or apprehend them. Had it come to the knowledge of the Police the very night that the appellants had committed the offence, the Police would certainly have gone to their house to apprehend them. It is further relevant that the appellants were arrested two days later from their own house in the same village by the Investigating Officer. If the appellants had actually committed the offence, they would have absconded and

fled houses rather than stay back to be arrested.

49. It is also pertinent to note that, as per the prosecution, the appellants had entered the informants house armed with a country-made pistols and a lathi. The evidence reveals that during the second incident, when appellants were on the roof, the appellant, Onkar allegedly attacked with a ballam (spear). The prosecution have not explained how and from where the ballam came into possession of the appellants, as they were not stated to be armed with such a weapon at the time of entering in the informants house. It is also relevant to note that P.W.1 and P.W.2 have stated that they did not see the village Pradhan, Bahori, during the night, and it is the case of the appellants that they have been falsely implicated in this case at the instance of Bahori, the village Pradhan. It has come in evidence that during the incident a large number of villagers had surrounded the house of the informant and some of them were also on roof and later the Police also reached there and remained in the village the entire night, inquiring about the incident. But, in view of testimony of P.W.1 and P.W.2, it is surprising and quite unnatural that Bahori, the village Pradhan did not reach at the place of occurrence until morning and came there after the Police had left the place. It is not the case of the prosecution that Bahori pradhan was not present in the village during the fateful night. It shows that P.W.1 and P.W.2 are hiding the presence of Bahori, the village pradhan, before the Court which gives weight to the defence case that in connivance with Bahori pradhan the appellants were falsely implicated in this case; and, to hide his active role in lodging the concocted FIR, his presence at the place of occurrence

during the night was deliberately suppressed.

50. It is submitted on behalf of the prosecution that in a pre-planned manner the appellants came over to the informants house to commit murder and their relatives, Aidal Singh and Jogendra went to the police station in advance to mislead the Police by giving it the colour of a dacoity by unknown offenders.

51. This submission is hard to believe. It is very unlikely that under a stratagem two persons would go to the police station in advance to inform the police that a dacoity was being committed and take the Police to the spot with them, while others sharing a common intention would commit murder in the manner stated by the prosecution to give it the colour of a dacoity. If this were the case, the appellants would have concealed their identity and committed murder at the first instance itself, and if their attempt was foiled by the inmates of the house, they would have run away rather than climb on the roof and attempt again in front of the informant and the villagers who had surrounded the house and some of them, including the informant, were standing on the roof also. If the appellants were not hiding their identity then there was no reason for their relatives to go to the police station in advance and bring the police with them because their intention to give it the colour of a dacoity would not have served the purpose as villagers would have told the Police that it was the appellants who had committed the offence.

52. In the present case, as per the prosecution, during the first part of the incident, a coat belonging to appellant, Onkar and a shawl (chadar) belonging to

appellant, Ajab Singh @ Bali was snatched from them. The informant produced these articles at the police station at the time of lodging the FIR. It is further the case of the prosecution that a country-made pistol and cartridges were inside the pocket of the said coat belonging to appellant, Onkar. Accordingly, the FIR was also registered under Section 25 of the Arms Act. However, during investigation, the Investigating Officer found no evidence to establish that the country-made pistol and the cartridges belonged to appellant, Onkar and, therefore, he submitted a final report (closure report) in respect of the offence under Section 25 Arms Act. This circumstance also weakens the prosecution case regarding the involvement of the appellants, particularly, the surviving appellant Onkar, in the commission of the offence. The role attributed to appellant, Onkar is only that of assaulting with a ballam, which is doubtful as it is not the case of prosecution that he was carrying ballam when he entered in the house. How the ballam came into his hands is not clarified by the prosecution. During investigation, the Investigating Officer has not found any evidence in this regard and submitted a final report under Section 25 Arms Act.

53. Therefore, from the evidence adduced by parties, it appears that some unknown men may have entered the informant's house to commit dacoity. The attempt to commit dacoity was resisted by the inmates of the house. The villagers also reached there and during the scuffle, Rajendra was beaten and shot dead. As the dacoits were not known to the informant so in order to take advantage of village rivalry and enmity due to the Gram Pradhan election, he falsely implicated the appellants in the present

case; an opportunistic implication as it seems.

54. In view of the discussion made above, the involvement of appellant/convict in the offence appears to be highly doubtful. The prosecution has failed to prove its case beyond reasonable doubt, and it has not been established that the appellant, Onkar, along with others, entered into the informants house and committed the murder of Rajendra. Thus, the learned Trial Court failed to appreciate the evidence in the correct perspective and has illegally convicted and sentenced the appellant, Onkar.

55. The finding of Trial Court with regard to delay in lodging the F.I.R. is not well founded either; it is against the evidence on record. The finding of the Trial Court regarding a pre-planned assault by appellants and an FIR by the relatives of appellants to give it the colour of a dacoity is also unfounded and against the evidence on record. The learned trial court failed to appreciate the evidence in right perspective and the finding of guilt was recorded on conjectures. In view of the above, the impugned judgment and order is liable to be set aside and the sole surviving appellant Onkar deserves to be acquitted of the charge for the offence punishable under Section 302 read with 34 IPC.

56. In view of the above, the instant criminal appeal is, accordingly, **allowed**. We set aside the judgment and order dated 02.12.1987 passed by the Trial Court and acquit the surviving appellant, Onkar, of the charge under Section 302 read with 34 IPC.

57. The appellant, **Onkar** is on bail. His bail bond is cancelled and the sureties

discharged. The appellant, Onkar need not surrender.

58. Let a copy of this order be sent to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2025) 12 ILRA 881
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Criminal Revision No. 4925 of 2024

Hamid & Ors. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for Consideration

Issue pertains to whether the Sessions Court was justified in law in allowing the application u/s **319 CrPC** and summoning the revisionist - applicants to face trial, **despite repeated earlier rejections of similar applications, and without duly considering the effect of the Supreme Court's order clarifying that dismissal of the SLP would not amount to an expression on merits**, particularly in the light of the evidentiary material on record, including cross-examination of prosecution witnesses and the settled parameters governing the exercise of power u/s 319 CrPC.

Headnotes

Code of Criminal Procedure, 1973 - ss. 161, 319 - Indian Penal Code, 1860 - ss. 147, 148, 149, 302, 307, 352, 504 - The case arises out of an incident of murder dated 19.05.2020, in respect of which an FIR was lodged on the same day naming ten accused persons, with one more added during investigation, although the present revisionist/applicants were named in the FIR, they were exculpated during investigation on the basis of statements of certain independent witnesses and

consequently not charge-sheeted - Repeated attempts were thereafter made by the informant/opposite party no. 2 to summon the applicants first at the stage of cognizance, then after committal, and subsequently through multiple applications u/s 319 CrPC each of which was either rejected or deferred by the courts below until an application dated 25.07.2023 was rejected on merits by the Sessions Court - That rejection was set aside by High Court on 08.07.2024 with a direction to reconsider the matter in light of the judgment in *Sandeep Kumar v. State of Haryana* - While the applicants' challenge to the said remand order was pending before the Supreme Court, and despite the Supreme Court's order dated 14.08.2024 clarifying that dismissal of the SLP would not amount to an expression on merits or on the role of the applicants, the Sessions Court proceeded to allow a fresh application u/s 319 CrPC on 17.08.2024 and summoned the applicants to face trial, which summoning order was challenged in the instant criminal revision.

Held: Once the Hon'ble Supreme Court, while dismissing the SLP had clarified that the impugned judgment and the dismissal of SLP would not be treated as an expression of opinion on the merits of the case, including the alleged role of the petitioners (applicants), in the opinion of this Court, all questions of fact and law would be open to be raised by the applicants before the Sessions Court pursuant to the remand made by the High Court and, therefore, making cursory reference to the cross examination of PW-1, PW-2 and PW-3, without even indicating as to what they had stated about role of the applicants, allowing application u/s 319 CrPC, does not appear to be justified - Court found it to be a fit case where the matter has to be reconsidered by the Sessions Court after taking into consideration the observations made by the Supreme Court in the order dated 14.08.2024 passed in SLP (Criminal) No. 10780 of 2024, entire material on record, including cross-examination of witnesses significance whereof has been emphasised by the Supreme Court in its decisions - Thus, criminal revision allowed, impugned order set aside. [Paras 31 to 33] (E-13)

Case Law Cited

Aarif and others v. State of Rajasthan and another, **2023 SCC OnLine SC 1375**; Hetram @ Babli v. State of Rajasthan and another, **2024 SCC OnLine SC 3509**; S. Mohammed Ispahani v. Yogendra Chandak and others, **(2017) 16 SCC 226**; Hardeep Singh v. State of Punjab and others, **(2014) 3 SCC 92**; Brijendra Singh and others v. State of Rajasthan, **(2017) 7 SCC 706**; Amar Singh and others v. State of U.P., **2024 SCC OnLine All 2234**; Sandeep Kumar v. The State of Haryana and another, **2023 LiveLaw (SC) 573 - referred to**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Criminal revision; Application u/s 319 CrPC; Summoning; Face trial; Charge-sheet; Cognizance stage; Committal; Examination-in-chief; Cross-examination; Independent witnesses; Statements recorded u/s 161 CrPC; Jurisdictional error; Material irregularity; Undue haste; Exercise of power; Prima facie satisfaction; Merits of the case; Judicial propriety; Pendency of SLP; Clarification by Supreme Court; Expression of opinion on merits; Reconsideration; Fresh order; Remand; Revision allowed; Impugned order set aside.

Case Arising From

REVISIONAL JURISDICTION: Criminal Revision No. - 4925 of 2024

From the Judgment and Order dated 17.08.2024 passed by the Sessions Court, Meerut in S.T. No. 574 of 2020 arising out of Case Crime No. 126 of 2020, Police Station Mundali, Meerut

Appearances for Parties

Advs. for the Revisionist:

Gaurav Kumar Srivastava, M.N. Singh, Mahesh Narain Singh, Satya Prakash Rai, Vimlendu Tripathi

Advs. for the Opposite Party:

G.A., Sushil Dubey

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Vimlendu Tripathi, learned counsel assisted by Shri Gaurav Kumar Srivastava and Shri Satya Prakash Rai, Advocates appearing for the applicants in revision, Shri Rajesh Kumar Rao, learned A.G.A. for the State and Shri Sushil Dubey, learned counsel appearing for opposite party No. 2.

2. The present revision under Section 397/401 CrPC has been filed by three persons challenging the order dated 17.08.2024 whereby an application 133-Kha filed by opposite party no. 2 under Section 319 CrPC has been allowed by the Sessions Court and the applicants have been summoned to face trial under Sections 147, 148, 149, 302, 307, 352, 504 IPC in S.T. No. 574 of 2020 (State Vs. Abubakar and others) arising out of Case Crime No. 126 of 2020, Police Station Mundali, District Meerut.

3. The case has a long history and various proceedings right from lodging of FIR till passing of the order impugned and even subsequent thereto, need reference in a chronological manner.

4. In relation to an incident of murder occurred on 19.05.2020, a First Information Report was lodged on the same day at 20.42 hours indicating occurrence at 19.30 hours. Ten (10) persons were named in the FIR and name of one person, namely, Niyaz was added during investigation, bringing the total number of accused to eleven (11). The applicants, though named in the FIR, their names were expunged during the course of investigation as their presence on the spot was not found. As a result thereof, charge sheet was submitted only against 8 persons.

5. When the charge sheet was submitted before the Chief Judicial

Magistrate, Meerut, an application was moved by opposite party no. 2 requesting summoning of the applicants mentioning that their names were wrongly expunged. The said application was disposed of by order dated 09.07.2020 by referring to the statements recorded under Section 161 CrPC indicating as to whether the applicants had aided in commission of crime or not, the same was a matter of trial which would be considered after evidence is led.

6. After the matter was committed to the court of Session, another application (6-Kha) was moved by opposite party no. 2 praying for summoning of the applicants, however, the same was rejected by the Sessions Court by order dated 13.05.2022 observing that no additional facts had been brought on record. Thereafter, charges were framed and when examination-in-chief of PW-1 commenced on 06.07.2022 and concluded on 05.12.2022, in the meantime, another application under Section 319 CrPC was moved on 19.09.2022 containing the same prayer for summoning the applicants to face trial. An order was passed by the trial court on 24.02.2023 deferring consideration of the said application till recording of evidence of other witnesses of fact. The said application is said to be still pending.

7. Thereafter, evidence of PW-2 and PW-3 was recorded and before cross examination of PW-3 could be concluded, another application (95-Kha) dated 25.07.2023 was moved by opposite party no. 2 making same prayer for summoning the applicants. The application was opposed by the charge-sheeted accused by filing objections dated 29.08.2023 and, by an order dated 09.10.2023, the same was rejected by the Sessions Court on merits.

8. Opposite party no. 2, being aggrieved of the order dated 09.10.2023, approached this Court by filing Criminal Revision No. 5780 of 2023 (Ajwar Vs. State of U.P. and 3 others), which was allowed by order dated 08.07.2024, setting aside the order dated 09.10.2023 with a direction to the court concerned to pass a fresh order in the light of observations made in the order within one month from the date of presentation of certified copy of the order.

9. Opposite party no. 2 filed another application dated 18.07.2024 (133-Kha) under Section 319 CrPC annexing therewith a copy of the order dated 08.07.2024 passed by this Court and prayed for summoning the applicants. While the said application was posted for consideration, the applicants brought to the notice of the trial court the challenge laid by them to the order dated 08.07.2024 by way of SLP (Criminal) No. 10780 of 2024 before the Hon'ble Supreme Court.

10. On 09.08.2024, an order was passed by the Sessions Court taking note of pending SLP and disposal of application (133-Kha) was deferred fixing 14.08.2024. On 14.08.2024, arguments on application (133-Kha) were heard and the matter was posted for passing order on 17.08.2024, on which date, the order impugned in the instant revision has been passed allowing the application (133-Kha) and summoning the applicants to face trial, as already noted.

11. Learned counsel for the applicants has raised following submissions:-

(i) The Sessions Court proceeded in undue haste and though, on 09.08.2024, taking note of pendency of SLP against the

order dated 08.07.2024, disposal of application (133-Kha) was deferred fixing 14.08.2024, on which date the SLP was decided but order was not uploaded that day but the same was uploaded on 17.08.2024, about which also, the Sessions Court was informed on 17.08.2024, the order impugned has been passed in ignorance of the same and, therefore, the order is liable to be set aside on this ground alone.

(ii) The order impugned is based upon the observations made by this Court in the order dated 08.07.2024 without making any reference to the order passed by Hon^{ble} Supreme Court, according to which, all questions on merits were opened to be raised by the applicants with reference to their role in the matter and, therefore, disposal of the application in ignorance of the order of Hon^{ble} Supreme Court, is unsustainable.

(iii) At every stage, the prayer for summoning the applicants was declined by the court, firstly, on 09.07.2020 at cognizance stage, secondly, on 13.05.2022 after committal of the case to the Sessions Court, thirdly, adjudication was deferred by order dated 24.02.2023 awaiting recording of evidence of other witnesses of fact which application is still pending, fourthly, on 09.10.2023, which order, though was set aside in revision but once dismissal of revision has been made ineffective by the Hon^{ble} Supreme Court, the circumstance would be read in favour of the applicants and, hence, passing of the order impugned on the same set of facts and material on record, is wholly unjustified.

(iv) The order impugned is based upon the observations made in the order dated 08.07.2024 passed by this Court and,

therefore, the Sessions Court has treated the said order as final, though the same has to be understood in the light of the order passed by the Hon^{ble} Supreme Court and also the law laid down in various judgments relied on by the applicants before this Court as to the exercise of powers under Section 319 CrPC and, therefore, cursory observations made in the order impugned without meticulously examining the record of proceedings, cannot be countenanced.

(v) There are overwritings in the initially moved application/Tehrir dated 19.05.2020 by the informant, not only as to the time of occurrence of the incident but also involvement of the applicant no. 1 and also serious contradictions in the statements of witnesses, particularly cross examination of PW-1, PW-2 and PW-3 which have not been considered by the Sessions Court and, therefore, the ratio laid down in **Aarif and others Vs. State of Rajasthan and another: 2023 SCC OnLine SC 1375, Hetram @ Babli Vs. State of Rajasthan and another: 2024 SCC OnLine SC 3509, S. Mohammed Ispahani Vs. Yogendra Chandak and others: (2017) 16 SCC 226, Hardeep Singh Vs. State of Punjab and others: (2014) 3 SCC 92, Brijendra Singh and others Vs. State of Rajasthan: (2017) 7 SCC 706 and Amar Singh and others Vs. State of U.P.: 2024 SCC OnLine All 2234**, has not been followed, hence, the order impugned is unsustainable.

(vi) Specific averments made in paragraph no. 60 of the affidavit supporting stay application/memo of revision regarding proceedings held by the Sessions Court on 09.08.2024, 14.08.2024 and 17.08.2024 with reference to the order of Hon^{ble} Supreme Court and information given by the applicants' side to the

Sessions Court having not been disputed in the counter affidavit, it is a case where undue haste was shown by the Sessions Court in passing the order impugned and in all propriety, the matter should have been deferred until the order dated 14.08.2024 disposing of the SLP could be brought on record and perused, for which no occasion could arise due to final order passed in haste.

(vii) The High Court, though allowed the revision filed by opposite party no. 2 by order dated 08.07.2024, even if the order of Hon^{ble} Supreme Court dismissing the SLP and also the observations made thereafter are ignored, the observations and findings recorded in paragraph nos. 50, 51 and 52 of the order of this Court clearly read in favour of the applicants and, hence, even if the High Court's order was to be relied on by the Sessions Court, the said observations were sufficient to reject the application (133-Kha).

(viii) The presence of the applicants having not been found on the spot as stated by various independent witnesses, three of whom are shown as eye witnesses at Sl. Nos. 6, 7 and 8 of the charge sheet, there was no justifiable reason for the Sessions Court to allow application (133-Kha) merely on the ground that Section 149 IPC has been pressed into service indicating formation of an unlawful assembly in which the applicants were also involved.

(ix) A cross case was registered at Crime No. 361 of 2020 on account of injuries sustained by the defence side, incident in relation where to occurred at 9.00 PM the same day and, in the said case, one Niyaz sustained injuries but he was added as 11th

accused in the present case and record of proceedings of the present case read with the proceedings of the cross case reflects absolutely no involvement of the applicants in commission of crime, as alleged, and, hence, the cursory allowing the application (133-Kha) is not according to law.

(x) Reliance placed by this Court while deciding the aforesaid criminal revision by order dated 08.07.2024, on the judgment of Hon^{ble} Supreme Court in the case of **Sandeep Kumar Vs. The State of Haryana and another: 2023 LiveLaw (SC) 573** is misplaced as the said judgment has been passed in ignorance of various other decisions on the point of exercise of power under Section 319 CrPC and, for this reason, though SLP was dismissed by Hon^{ble} Supreme Court, dismissal was held to be non-prejudicial to the defence qua role of the applicants to be agitated before the court after remand by the High Court and, therefore, things have to be considered in their entirety, not only on facts but also on the law governing the subject.

12. Per contra, learned AGA submits that all the arguments advanced relate to the questions which may be considered during the course of trial and once the last order rejecting the application under Section 319 CrPC was set aside by the High Court in Criminal Revision, which order was upheld by the Hon^{ble} Supreme Court by dismissing the SLP by order dated 14.08.2024, no illegality has been committed by the Sessions Court in allowing the application based upon critical analysis of material available on record and, hence, no interference is warranted.

13. Learned counsel for opposite party no. 2 has made following submissions:-

(i) The case being a double murder case and the applicants being named in the FIR, expunging their names based upon the statements of independent witnesses, who were not eye witnesses, that the applicants were not present on the spot, in itself, would not be sufficient to reject the application under Section 319 CrPC and, at this stage, only prima facie satisfaction has to be recorded by the court concerned where trial against the persons not charge-sheeted may be felt necessary and, hence, the detailed order passed by the Sessions Court does not call for any interference.

(ii) The applicants would not get any advantage of the order passed by the Hon'ble Supreme Court, inasmuch as their SLP was dismissed and even if certain observations were made by the Hon'ble Supreme Court, the Sessions Court has considered the case of both sides on merits after granting opportunity of hearing to the applicants and has arrived at a lawful conclusion based upon the record of investigation, particularly expunging the names of the applicants merely based upon the statements of independent witnesses.

(iii) Indication made at entries No. 6, 7 and 8 of the charge sheet as regards witnesses, wherein three persons out of others have been described as eye witnesses by the Investigating Officer, is thoroughly misplaced and cannot be considered as the said persons were not indicated as eye witnesses by the informant and Investigating Officer had no competence or authority to indicate their names as eye witnesses. The fact remains that they would be treated as independent witnesses only and once the presence of the applicants and their specific role of causing physical assault and fire arm injury stand

reflected not only from the contents of FIR but also in the testimony of witnesses, the same was sufficient to exercise powers under Section 319 CrPC and, therefore, the order impugned does not call for any interference.

(iv) By referring to paragraph no. 28 of the counter affidavit, it is contended that eight (8) so called independent witnesses had been introduced by the Investigating Officer himself and these witnesses falsely stated that it was the month of Ramzan and that the incident took place near mosque at the time of Namaz, whereas, in reality, the incident took place during the lock-down period due to Covid-19 when the mosque was completely closed and, in fact, no such independent witness was present at the place of occurrence nor was it naturally possible. It is further contended that the alleged independent witnesses reside at a distance of 1 Km, 900 mtrs, 800 mtrs and 300 mtrs, which demonstrates that none of the said witnesses was present on the spot and their statements were got recorded on account of collusion in between them and the investigating officer.

14. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

15. Though it is true that the application of opposite party no. 2 to summon the applicants was rejected at cognizance stage by order dated 09.07.2020 and, after committal, it was again rejected on 13.05.2022 by the Sessions Court and, then, after certain statements were recorded and before the completion of cross-examination of PW-3, adjudication of another application under Section 319

CrPC was deferred by order dated 24.02.2023 awaiting recording of statements of other witnesses of fact, the fact remains that a subsequent application dated 25.07.2023 (95-Kha) was finally rejected on 09.10.2023. The said order was set aside by this Court while allowing Criminal Revision No. 5780 of 2023 by order dated 08.07.2024. It is necessary to reproduce certain portions of the said order, as emphatically argued by learned counsel for the applicants. Paragraphs no. 50, 51 and 52 of the order dated 08.07.2024 are extracted herein under:-

“50. The Court has now to consider as to whether the satisfaction, which is required to be observed by a Court before summoning a prospective accused could have been observed by Court below on the basis of the depositions of PW-1 Ajwar (first informant), PW-2 Abdullah and PW-3 Asjad. Upon evaluation of the depositions of PW-1, PW-2 and PW-3, this Court finds that the statements of PW-1, PW-2 and PW-3 were also recorded under Section 161 Cr.P.C. **However, when a parallel is drawn in between the statements of aforementioned witnesses recorded under Section 161 Cr.P.C. and their depositions before Court below this Court finds that nothing new has been stated by the aforementioned witnesses in their depositions before Court below.** On the same material, the prospective accused i.e. opposite parties 2, 3 and 4 herein, who are named in the FIR were exculpated as the independent witnesses examined by the Investigating Officer under Section 161 Cr.P.C., the complicity of the opposite parties 2,3 and 4 was not found to be established in the crime in question.

51. From the perusal of depositions of PW-1, PW-2 and PW-3, it is

apparent that nothing new has been stated by aforementioned witnesses than what was stated by them in their statements under Section 161 Cr.P.C.. As such, the caution given by the Apex Court in the case of **Brijendra Singh (Supra)** to the effect that in case, a witness has also been examined under Section 161 Cr.P.C. then the Court should find out whether something new has emerged in this deposition before Court below and only thereafter proceed to allow the application under Section 319 Cr.P.C. **Since the aforesaid caution given by the Apex Court is not satisfied in the present case coupled with the fact that the statement of aforementioned witnesses recorded under Section 161 Cr.P.C. stood belied by the statements of the independent witnesses examined under Section 161 Cr.P.C., therefore, no illegality can be said to have been committed by Court below in passing the order impugned.**

52. It is thus apparent that the prospective accused i.e. opposite parties 2, 3 and 4 herein were named in the FIR but not charge sheeted. The prosecution has filed an application under Section 319 Cr.P.C. after the statement-in-chief/examination-in-chief of three prosecution witnesses of fact i.e. PW-1 Ajwar (first informant), PW-2 Abdullah and PW-3 Asjad was recorded on the ground that as per the depositions of aforementioned witnesses, the complicity of the prospective accused i.e. opposite parties 2, 3 and 4 herein also stands established in the crime in question. However, the statements of aforementioned witnesses were also recorded under Section 161 Cr.P.C., which is similar to their depositions before Court below. As such, nothing new has emerged in the depositions of PW-1, PW-2 and PW-3 before Court

below than what was stated by them in their previous statements recorded under Section 161 Cr.P.C. **The veracity of the statements of aforementioned witnesses recorded under Section 161 Cr.P.C. stood belied by the statements of the independent witnesses examined under Section 161 Cr.P.C. namely Mustajab, Masroob, Matloob, Masroof Ali, Mohd. Javed, Sajid and Azhar, who have not implicated the prospective accused in the crime in question as their very presence at the time and place of occurrence was denied by them. As such, up to this stage, the conclusion drawn by Court below to reject the application filed by the prosecution/first informant under Section 319 Cr.P.C. is in consonance with the directions issued by the Apex Court in the case of Brijendra Singh (Supra) and S. Mohammad Ishpahani (Supra)."**

16. A perusal of the afore-quoted portions of the order of this Court indicates that the conclusion drawn by the Sessions Court while rejecting the application under Section 319 CrPC was found to be in consonance with the directions issued by the Hon^{ble} Supreme Court in the case of **Brijendra Singh (supra) and S. Mohammed Ispahani (supra)**. However, the reason for allowing the revision and conclusion is contained in paragraphs no. 53 to 60 of the order of this Court, which also need reproduction. For a ready reference, the same are reproduced as under:-

"53. However, subsequently, the Apex Court in the case of **Sandeep Kumar Vs. State of Haryana, 2023 SCC OnLine SC 888**, has held that in a case under Section 149 IPC, once the presence of prospective accused stands emerged as per the depositions of the prosecution witnesses

examined up to the stage of the application under Section 319 Cr.P.C. then in such a circumstance, no other material is required to be looked into for ascertaining the innocence of the prospective accused. As such, the aforementioned judgment has carved out an exception to the ratio laid down by the Apex Court in the Five Judges Bench judgment in **Hardeep Singh (Supra), Brijendra Singh (Supra) and S. Mohammad Ishpahani (Supra)**.

54. As per the depositions of PW-1, PW-2 and PW-3 recorded before Court below, the presence of prospective accused i.e. opposite parties 2, 3 and 4 herein at the time and place of occurrence is fully established. In view of above, the finding returned by Court below qua the innocence of prospective accused that as per the statements of independent witnesses examined during the course of investigation by the Investigating Officer is of no consequence, so far as the summoning of the prospective accused under Section 319 Cr.P.C. is concerned.

55. In view of above, the Court below has committed a jurisdictional error in passing the order impugned inasmuch as, the Court below has clearly ignored the ratio laid down by the Apex Court in the case of **Sandeep Kumar (Supra)**. The Court below has thus exercised its jurisdiction with material irregularity, which has vitiated the order impugned.

56. As a result, the present criminal revision succeeds and is liable to be allowed.

57. It is, accordingly, allowed.

58. The order impugned dated 09.10.2023 passed by Additional Sessions

Judge/Special Judge (E.C. Act), Court No. 2, Meerut, in Sessions Case No. 1126 of 2020 (State Vs., Abubuquar and others), under sections 147, 148, 149, 302, 307, 352, 504, 34 IPC, Police Station-Mundawali, District-Meerut, is, hereby, set aside.

59. The Court below shall pass a fresh order **in the light of the observations made herein above** within a period of one month from the date of presentation of a certified copy of this order.

60. Considering the facts and circumstances of the case, the cost is made easy. □

17. A bare perusal of the aforementioned paragraphs indicates that the revision was allowed by referring to the decision of Hon'ble Supreme Court in the case of **Sandeep Kumar (supra)** and the Sessions Court was found to have committed a jurisdictional error ignoring the ratio laid down in the said case.

18. As to what would be the effect of the order of this Court, is to be seen in the light of order dated 14.08.2024 passed by the Hon'ble Supreme Court in SLP (Criminal) No. 10780 of 2024, filed by the applicants. The said order is reproduced as under:-

“We are not inclined to interfere with the impugned judgment and, hence, the present special leave petition is dismissed.

We, however, clarify that the impugned judgment and the dismissal of the present special leave petition will not be treated as an expression of opinion on

the merits of the case, including the alleged role of the petitioners.

Pending application(s), if any, shall stand disposed of.”

19. The Hon'ble Supreme Court, though did not interfere with the order of this Court and dismissed the SLP, while doing so, a clarification was made that the **impugned judgment and the dismissal of SLP would not be treated as an expression of opinion on the merits of the case, including the alleged role of the petitioners (applicants herein).**

20. In view of the aforesaid, it was incumbent for the Sessions Court to, at least, refer to the order passed by the Hon'ble Supreme Court and understand its implications on the merits of the case (both on facts and law), however, the order of the Hon'ble Supreme Court was not before the Sessions Court. Qua this aspect, reference to the relevant order sheet of the Sessions Trial is necessary. The same reads as under:-

“ST 574/20

सरकार □ अबुबकर+8
U/S 302, 370 IPC
PS मुण्डाली

09-8-24

सत्र वाद प्रस्तुत। पुकार पर अभिगण नाजिम, असलम व वसीम जेल से अभिगण गयूर, नदीम व अ० कादिर जमानत पर उपस्थित। अबूबकर जेल से उपस्थित नहीं आया तलब हो। अभि० नियाज उपस्थित नहीं। **वादी मुकदमा हामिद की ओर से 137 ख प्रा०पत्र मय शपथपत्र प्रस्तुत किया गया कि**

मा० सर्वोच्च न्यायालय में योजित एस०एल०पी० के निस्तारण तक प्रा०पत्र u/s 319 Cr.p.c. के प्रा०पत्र की सुनवाई स्थगित की जाये। पत्रावली वास्ते निस्तारण प्रा०पत्र 133ख व 137ख दि० 14/8/24 को पेश हो।

14-8-24

सत्र वाद प्रस्तुत। पुकार पर अभि०गण असलम, अबूबकर, नाजिम व वसीम जिला कारागार से उपस्थित। अभि० नियाज जरिये v/c जेल से तलब हुए। अभि०गण गय्यूर, अ० कादिर व नदीम जरे जमानत उपस्थित। प्रा०पत्र 133ख पर उभयपक्षों के अधिवक्ता को सुना। पत्रावली वास्ते आदेश दिनांक 17/8/24 को पेश हो।“

21. A perusal of the order sheet indicates that factum of pendency of SLP was noted by the court on 09.08.2024 and hearing of application (133-Kha) was deferred fixing 14.08.2024. On 14.08.2024, arguments on application (133-Kha) were heard. Admittedly, SLP was decided by the Hon^{ble} Supreme Court on the same day, i.e. on 14.08.2024.

22. At this stage, reference to paragraph no. 60 of the affidavit supporting stay application/memo of revision needs to be made, which is reproduced as under:-

“60. That on 05.08.2024 application was filed on behalf of Learned Counsel appearing on behalf of the revisionist no. 1 seeking an extremely short adjournment in the matter. On the said application 09.08.2024, was the date fixed.

That on 09.08.2024 an application alongwith status report of SLP (Crl) was also filed before the Court below

to demonstrate that the tentative date fixed in SLP (Crl) is 14.08.2024.

That on 14.08.2024 when the matter was heard by the Learned Court below post lunch whereupon due intimation was given that the SLP (Crl) has already been decided by the Hon^{ble} Supreme Court a few minutes before whereby direction has been issued to decide the matter on its own merit and without being influenced with the judgment of the Hon^{ble} Court or with the dismissal of SLP (Crl) including the alleged role of the revisionists. As such request was made to grant a short date so that the judgment of the Hon^{ble} Supreme Court may be placed on record. But the Learned Court below was adamant to decide the matter because the time of one month, as per direction of the Hon^{ble} High Court, was coming to an end. On repeated requests the Learned Court below adjourned the matter on 17.08.2024 with an assurance that without looking into the order passed by the Hon^{ble} Supreme Court no further action will be taken in the matter. On 17th, the order of the Hon^{ble} Supreme Court, was uploaded on the official website after 4 in the evening, however the Learned Court below without waiting for the same pass the impugned order in a most arbitrary manner. Copy of order passed by Supreme Court dated 14.08.2024 is being filed herewith and marked as Annexure No. 27 to this affidavit.”

23. The aforesaid paragraph has been responded to in paragraph no. 48 of the counter affidavit filed by the opposite party no. 2. The same reads as under:-

“48. That the contents of paragraph no. 60 of the affidavit is a matter of record describing of the filing of SLP before the Hon^{ble} Supreme Court, hence, needs no comment.”

24. Considering the detailed statement of facts qua the order passed by Hon^{ble} Supreme Court on 14.08.2024 and its uploading after 4.00 PM on 17.08.2024 and insistence on the part of applicants requesting Sessions Court to wait for order of Hon^{ble} Supreme Court and no specific denial of the same in the counter affidavit, the Court has no reason not to accept the statement contained in paragraph no. 60 of the affidavit. Once it is so, the Court finds absolutely no justification on the part of the Sessions Court to show undue haste in passing the final order on the same day, i.e. 17.08.2024 and in all judicial propriety, it should have waited for bringing the order of the Hon^{ble} Supreme Court on record and, then, proceed to decide the application.

25. It further reflects that the order dated 17.08.2024 impugned in the present revision, at so many places, indicates that the same is being passed **“in compliance of or in furtherance of the order dated 08.07.2024”** passed by the High Court in the revision and no reference of the order of Hon^{ble} Supreme Court and its implication is contained therein. In this background of facts, this Court does not approve the approach of the learned Additional Sessions Judge, Court No. 4, Meerut and finds undue haste on his part in deciding the application (133-Kha).

26. Although, learned counsel for opposite party no. 2 has also tried to defend quick disposal of the application by arguing that the time limit fixed by the High Court

was going to expire, the record reveals that this Court, by order dated 08.07.2024, had granted one month time for deciding the application from production of certified copy of the order, which was filed by opposite party no. 2 along with a fresh application (133-Kha) on 18.07.2024 and, if the argument advanced on behalf of opposite party no. 2 regarding expiry of one month time from the date of production of certified copy of the order is accepted on its face value, the time would have certainly expired on 17.08.2024, which was the **30th day** from filing of the order of this Court (Month of July being of 31 days). On 17.08.2024, passing of the order by the Hon^{ble} Supreme Court on 14.08.2024 and its late uploading was brought to the notice of the Sessions Court. Heavens would have not fallen if the matter could have been posted after one or two days for perusal of the order passed by the Hon^{ble} Supreme Court and to act accordingly. One month fixed by the High Court could not mean that the application could not have been decided on 32nd day nor could the Sessions Judge, for not deciding the matter on 31st day would have faced contempt proceedings.

27. This Court could have made further observations as regards the undue and unwarranted haste shown by the then Additional Sessions Judge, Court No. 4, Meerut, however, it refrains itself from doing so but with a remark that judiciary must not give rise to any occasion where litigants who approach Courts for redressal of their grievances in accordance with law, start losing faith in this pious institution as it is the last ray of hope for people to get justice by lawful means.

28. As regards merits of the contentions and counter contentions raised

by learned counsel for the parties, not only based upon factual position on record but also the law laid down by Hon'ble Supreme Court in various judgments, on perusal of the judgment in the case of **Sandeep Kumar (supra)**, the Court finds that though observations have been made that at the stage of considering an application under Section 319 CrPC, appreciation of the merits of evidence need not be done and one of the charges being of Section 149 IPC, any specific individual role or act is not material, the said judgment of Hon'ble Supreme Court when read with the ratio laid down in other previous decisions in the cases of **Hetram @ Babli (supra)**, **Aarif (supra)**, **S. Mohammed Ispahani (supra)**, **Hardeep Singh (supra)** and **Brijendra Singh (supra)**, it would be revealed that cross-examination of witnesses has been treated as a matter of quite significance even at the stage of consideration of application under Section 319 CrPC. For this purpose, paragraph no. 9 of the judgment of Hon'ble Supreme Court in the case of **Hetram @ Babli (supra)** is reproduced as under:-

“9. In the facts of the case, the occasion for considering the application under Section 319 of the CrPC arose after the cross-examination of the only eye witnesses was recorded. **Therefore, while deciding an application under Section 319 of the CrPC, the Court must consider the cross-examination as well. If an application under Section 319 of the CrPC is made after the cross examination of witnesses, it will be unjust to ignore the same.** The power under Section 319 of the CrPC cannot be exercised when there is no case made out against the persons sought to be implicated. In view of the omissions which are material and which amount to contradiction,

obviously no Court could have recorded a satisfaction which is contemplated by Section 319 of the CrPC. It is impossible to record a finding that even a prima facie case of involvement of the appellant has been made out.”

29. On the same lines, paragraphs no. 7 and 8 of the judgment of Hon'ble Supreme Court in the case of **Aarif (supra)** are reproduced as under:-

“7. As far as evidence of PW-1 is concerned, we find that though opportunities were available earlier, the statement of the said witness was recorded very late. The witness admitted that at 4 a.m., when she was in the hospital where the deceased was undergoing treatment, a police constable came. Still, she did not disclose anything about the incident to the police constable. She was in the hospital for the entire night, where a police outpost was there. But she did not disclose anything to the police. In any event, in the earlier round, the High Court did not find evidence of the PW-1 sufficient to sustain the order under Section 319 of Cr.P.C.

8. PW-5 - Shahrookh, **in his cross-examination**, admitted that he had not seen the incident with his own eyes. Therefore, he is not an eyewitness. PW-6 - Mohammed claims to have seen the incident from some distance. He also claims to have gone to the hospital where the deceased was taken. He did not report the incident to the police, though the deceased was related to him. The respondents also placed reliance on the testimony of PW-7 - Ekaramuddin S/o Chand Mohammed. His statement was recorded three weeks after the incident. **Evidence of said witnesses is insufficient to meet the standards of a prima facie**

case laid down by the Constitution Bench. No other evidence is relied upon by the respondents to support the application under Section 319”.

30. On the same aspect, paragraphs no. 13 and 15 of the judgment of Hon’ble Supreme Court in the case of **Brijendra Singh (supra)** are extracted as under:-

“13. In order to answer the question, some of the principles enunciated in Hardeep Singh’s case may be recapitulated: Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some “evidence” against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The “evidence” herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence

occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the “evidence” recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where a plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the

discussion contained in the order of the trial court and expressing the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

31. All the aforesaid judgments deal with the parameters of exercise of powers under Section 319 CrPC but were not discussed in the subsequent judgment in case of **Sandeep Kumar (supra)** in the light whereof, this Court, while allowing the revision filed by opposite party no. 2, had remitted the matter to the Sessions Court. Once the Hon’ble Supreme Court, while dismissing the SLP had clarified that the impugned judgment and the dismissal of SLP would not be treated as an expression of opinion on the merits of the case, including the alleged role of the petitioners (applicants), in the opinion of this Court, all questions of fact and law would be open to be raised by the applicants before the Sessions Court pursuant to the remand made by the High Court and, therefore, making cursory reference to the cross examination of PW-1, PW-2 and PW-3, without even indicating as to what they had stated about role of the applicants, allowing application under Section 319 CrPC, does not appear to be justified.

32. In view of the above discussion, this Court finds it to be a fit case where the matter has to be reconsidered by the Sessions Court after taking into consideration the observations made by the Hon’ble Supreme Court in the order dated 14.08.2024 passed in SLP (Criminal) No. 10780 of 2024, entire material on record, including cross-examination of witnesses significance whereof has been emphasized by the Hon’ble Supreme Court in the above-referred decisions.

33. Accordingly, the revision is **allowed**. The order dated 17.08.2024 referred to in second paragraph of this order, stands **set aside**.

34. The Sessions Court concerned (other than the Presiding Officer who had passed the order dated 17.08.2024 if he is still posted in the said Sessions Division) is directed to pass a fresh order in accordance with law on already moved applications that are on record and in the light of observations made in this order, after hearing the applicants, opposite party no. 2 as well as State **on or before 31.03.2026**, provided a certified/self attested downloaded copy of this order is filed before the Court concerned in **1st week of January, 2026**.

(2025) 12 ILRA 894

**APPELLATE JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 18.12.2025

BEFORE

**THE HON’BLE AJIT KUMAR, J.
THE HON’BLE SWARUPAMA CHATURVEDI, J.**

Special Appeal Defective No. 656 of 2023

Alongwith

Special Appeal Defective No. 927 of 2025

C/M Dr. Rajendra Prasad Inter College & Anr. ...Appellants

Versus

Shambhu Rao & Ors. ...Respondents

Issue for Consideration

(1) Validity of the impugned order dated 24.05.2022, withdrawing the approval of the petitioner’s appointment after his superannuation on 31.03.2022 and its effect on retiral benefits.

Headnotes

(A) Service law – Post of Assistant Teacher – Appointment – Approval granted and salary was paid upto

retirement on 31.03.2022 – During the course, salary was directed to be stopped by District Basic Shiksha Adhikari (D.B.S.A.) on a complaint dated 27.11.2020 made regarding the educational certificate, which was stayed by the High Court in writ petition – Thereafter, the D.B.S.A., after calling record from committee of management, passed the impugned order dated 24.05.2022 withdrawing the approval of the petitioner's appointment – Validity challenged. (E-1)

Held : Once an employee has superannuated, the employer retains no authority to reopen or unsettle the validity of the appointment, except in cases involving fraud or misrepresentation as in our considered view contract of employment ends with retirement of employee and then employer and employee relationship ends – The issue relating to educational qualification, if at all, was required to be examined at the time of initial appointment or approval. Reopening the same after a lapse of about 33 years, particularly after the petitioner's retirement, is *ex-facie* arbitrary, unreasonable and cannot be justified as per established principles of certainty and finality in administrative action – The withdrawal of approval at such a belated stage is illegal and consequently the petitioner is entitled to all consequential benefits flowing from the subsisting approval of his appointment, including retiral dues in accordance with law. [Paras 14, 15 and 17]

Case Law Cited

M.S. Mudhol And Anr. vs S.D. Halegkar And Ors. (1993) 3 SCC 591; The State of Andhra Pradesh and Another Vs Smt Dinavahi Lakshmi Kameswari, 2021 INSC 68 – **referred to.**

List of Acts

Uttar Pradesh Basic Education Act, 1972; Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978.

List of Keywords

Approval to the appointment; Stoppage of salary pending enquiry; Retirement; Withdrawal of approval; Educational qualification; Arbitrary; Commission of fraud; Misrepresentation; Superannuation; Contract of employment;

employer and employee relationship; Manifest arbitrariness.

Case Arising From

Judgment and order dated 20.12.2022 allowing the writ petition filed by the respondent against the order of withdrawal of approval of his appointment.

Appearances for Parties

Advs. for the Appellant : Grijesh Tiwari

Advs. for the Respondents : K. K. Rao, Standing Counsel

(Delivered by Hon'ble Swarupama Chaturvedi, J.)

Order on Civil Misc. Delay Condonation Applications.

1. Heard learned counsel for the petitioners.

2. Cause shown for delay in filing the appeals is sufficient.

3. Delay in filing the appeals is condoned.

3. Delay condonation application is allowed.

Order on Appeal

1. Heard Sri K. K. Rao, learned counsel for the appellant, Sri Grijesh Tiwari, learned counsel for the respondent no. 4 and learned Standing Counsel for the State respondents.

2. The appellant in Special Appeal Defective No.927 of 2025 has approached this Court against the impugned order dated 25.08.2025 in Writ A No.1018 of 2025 whereby the learned Single Judge has simply directed to put up the case after the decision of the Special Appeal Defective

No.656 of 2023 filed by the Committee of Management. In connected appeal, which is Special Appeal Defective No.656 of 2023, the appellant has challenged the judgment and order dated 20.12.2022 in Writ A No.10356 of 2022 wherein the petition filed by the petitioner Shambhu Rao was allowed with all consequential benefits.

3. The controversy involved in both special appeals arises out of the same set of facts and relates to the inter se rights of the parties concerning the judgment rendered in Writ A No.10356 of 2022. Since the impugned order dated 25.08.2025 passed in Writ A No.1018 of 2025 is wholly dependent upon the outcome of Special Appeal Defective No.656 of 2023, and both appeals involve overlapping issues of law and fact, we consider it appropriate to hear them together and decide by a common order. Since the main challenge is to the order passed by the learned Single Judge allowing the writ petition of Shambhu Rao and the second appeal arises out of an order passed by learned Single Judge deferring the matter of interest and payment of retirement dues to Shambhu Rao, we take Special Appeal Defective No.- 656 of 2023 as leading appeal.

4. The facts giving rise to these special appeals are that the school was initially established as a Junior High School, catering to classes VI to VIII, and recognized under the Uttar Pradesh Basic Education Act, 1972, which falls within the ambit of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978. Pursuant to an order dated 13.11.1986 issued by the Assistant Director, Basic Education, Seventh Region, Gorakhpur, three posts of Assistant Teacher were created at the

Junior High School level, against which Shambhu Rao along with two more persons, got selected for the appointment. While the appointments of Ram Naresh Tripathi as Assistant Teacher (C.T. Grade) and Deen Bandhu Rao as Assistant Teacher, Urdu (Untrained Trade), were duly approved by the District Basic Education Officer, the appointment of the Shambhu Rao was deferred on the ground that his B.Ed. degree from Maithili University, Darbhanga, Bihar, was not recognized.

5. Subsequently, Shambhu Rao obtained diploma of Vyayam Ratna, equivalent to D.P.Ed., recognized by the Government order dated 18.11.1982, from Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi, in 1988, following which, Shambhu Rao was appointed to a vacant post of Assistant Teacher. The Manager of the Committee of Management forwarded the relevant records to the District Basic Education Officer, Deoria, by letter dated 02.03.1989, and the appointment was approved on 03.03.1989. Accordingly, the Manager of the Committee of Management issued the appointment order to Shambhu Rao, who joined the post and received the salary admissible to an Assistant Teacher until his retirement on 31.03.2022 upon attaining the age of superannuation.

6. Meanwhile, on 23.12.2020, the District Basic Education Officer, Kushinagar, issued a notice to the Manager/Principal of the institution calling upon them to submit duly verified copies of the educational certificates of the Shambhu Rao. The said notice was issued in compliance with the direction of the District Magistrate, Kushinagar, contained in the order dated 05.12.2020, whereby

verification of the Shambhu Rao's educational qualifications was ordered on the basis of a complaint dated 27.11.2020 made by one Rajesh Kumar Singh.

7. Thereafter, by order dated 01.03.2021, the District Basic Education Officer, Kushinagar, directed stoppage of the petitioner's salary pending enquiry on the allegation that the petitioner's B.Ed. certificate was forged. Aggrieved thereby, Shambhu Rao challenged the said order by filing Writ-A No.10319 of 2021, wherein this Court, by order dated 09.09.2021, stayed the operation of the impugned order in that petition and directed payment of salary to the petitioner and during the pendency of the proceedings, the petitioner attained the age of superannuation and retired from service on 31.03.2022.

8. Pursuant to the order dated 09.09.2021, the District Basic Education Officer, Kushinagar, issued a notice to the Manager of the institution calling upon him to produce the original records relating to the appointment of the petitioner. Upon consideration of the response of the Management, the District Basic Education Officer, Kushinagar, passed the order dated 24.05.2022, whereby the earlier approval order dated 03.03.1989 was withdrawn, which forms the subject matter of challenge in the Writ-A No. 10356 of 2022 filed before this Court and the same got allowed in favour of Shambhu Rao. Order passed by this Court in Writ-A No. 10356 of 2022 is under challenge by the management in the connected special appeal.

9. Learned counsel appearing for the appellant in the lead special appeal submits that despite repeated reminders for compliance of the judgment dated 20.12.2022 passed in Writ-A No.10356 of

2022, the respondent authorities failed to release the petitioner's retiral dues, including pension and G.P.F., compelling him to file Contempt Application No.8825 of 2023, consequently Rs. 29,30,443/- was paid to the petitioner in May, 2025, afterwards the contempt application was disposed of.

10. Learned counsel for the appellant further submits that it is matter of fact that the petitioner had superannuated on 31.03.2022 and the retiral benefits were released belatedly on 22.04.2025 and 15.05.2025, therefore, the petitioner claimed interest at the rate of 10% per annum on the delayed payment of G.P.F. as well as on arrears of pension and salary amounting to Rs. 21,90,776/- and Rs. 2,14,048/- respectively, and accordingly filed Writ-A No.10108 of 2025, however, by the impugned order dated 25.08.2025, the learned Single Judge adjourned the matter with observation that the Special Appeal No.656 of 2023 filed by the Committee of Management was pending while granting liberty to the petitioner to approach the Court after disposal of the special appeal filed by the management.

11. Learned Senior Counsel contend that Shambhu Rao had already superannuated on 31.03.2022 and, therefore, the impugned order withdrawing the approval of his appointment, having been passed after his retirement, is per se illegal and without application of mind. He further contends that the issue relating to the petitioner's educational qualification was required to be examined, if at all, at the time of his initial appointment, and reopening the same after an inordinate and unexplained delay of about 33 years is wholly arbitrary and unsustainable in law. Learned counsel further argued that the

District Basic Education Officer, Kushinagar, proceeded to pass the impugned order on the premise that neither B.Ed. nor D.P.Ed. was the requisite qualification at the relevant time.

12. Per contra, learned Counsel representing the State Respondents and learned counsel for the management have tried to justify the action taken by authorities while contending that the Shambhu Rao did not possess the requisite qualification to hold the post and as such there is no error as illegality in the order which was impugned in the writ petition filed by Shambhu Rao. Learned counsel appearing for the management contends that the learned single has also erred in law in allowing the writ petition vide impugned judgment and order dated 20.12.2020 and failed to appreciate this fact that the educational authorities including the appellant was having the liberty to proceed against the respondent no.1 even after his retirement as his appointment was found to be the illegal and the respondent no. 1 has found to have been involved in commission of a fraud in obtaining his appointment and also because of the fact that the disciplinary proceedings were already commenced even prior to the retirement of the respondent no. 1 and as such there is no impediment in taking action against the respondent no. 1 even after his retirement.

13. After thoughtful consideration the issue to be decided in these special appeals is that whether the impugned order dated 24.05.2022, whereby approval of the petitioner's appointment was withdrawn after his superannuation on 31.03.2022, is legally sustainable, and whether the same has any effect on retiral benefits, which is the outcome of the

services rendered by the employee, which the Shambhu Rao has already rendered.

14. It is not in dispute that the petitioner got retired from service on attaining the age of superannuation on 31.03.2022. The impugned order withdrawing approval of his appointment was passed thereafter, on 24.05.2022. Once an employee has superannuated, the employer retains no authority to reopen or unsettle the validity of the appointment, except in cases involving fraud or misrepresentation as in our considered view contract of employment ends with retirement of employee and then employer and employee relationship ends. In the present case, there is neither any allegation nor any finding that the petitioner had secured approval of his appointment by producing forged or fabricated documents. In the absence of such allegation, the post-retirement exercise undertaken by the District Basic Education Officer is clearly without authority of law.

15. It is also matter of fact that Shambhu Rao's appointment was duly approved on 03.03.1989 and remained operative for more than three decades, during which period Shambhu Rao continuously discharged his duties and was paid salary from the State exchequer. The issue relating to educational qualification, if at all, was required to be examined at the time of initial appointment or approval. Reopening the same after a lapse of about 33 years, particularly after the petitioner's retirement, is ex-facie arbitrary, unreasonable and cannot be justified as per established principles of certainty and finality in administrative action.

16. The submission made by learned counsel for the respondent-State and the management, who is appellant in connected special appeal, that neither B.Ed. nor D.P.Ed. was the requisite qualification at the relevant time does not improve their case, inasmuch as the approval order was consciously granted by the competent authority and was never questioned for decades. Administrative authorities cannot be permitted to undo settled rights after decades of actual service provided by an employee, more so when the employee has got retired.

17. As per legal principles, the order dated 24.05.2022 demonstrates manifest arbitrariness and cannot be sustained in law and therefore the order granting relief to the Shambhu Rao in writ petition is justified. The withdrawal of approval at such a belated stage is illegal and consequently the petitioner is entitled to all consequential benefits flowing from the subsisting approval of his appointment, including retiral dues in accordance with law and therefore the order of this court in contempt application is also well justified.

18. In **M.S. Mudhol And Anr. vs S.D. Halegkar And Ors. (1993) 3 SCC 591**, the issue was related to the eligibility to occupy the post of the Principal of a Senior Secondary School, which was raised after years of appointment. In this case the Supreme Court held that:

“Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such

sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ? “

19. In **The State of Andhra Pradesh and Another Vs Smt Dinavahi Lakshmi Kameswari, 2021 INSC 68**, the State Government clarified before Supreme Court in the appeal that it was restricting its challenge only to the component of interest which had been imposed by the judgment and order of the High Court Supreme Court has held that:

“14 The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the

employees of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. Insofar as the interest is concerned, we are of the view that the rate of 12% per annum which has been fixed by the High Court should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate."

20. Applying the principle laid down by the Supreme Court in **State of Andhra Pradesh (supra)** to the facts of the present case, it is evident that Shambhu Rao's retiral benefits, including pension, G.P.F., and other dues, constitute a rightful entitlement for services rendered by him over more than three decades. The payment of such dues is mandated by law and the applicable service rules and regulations. The delay in releasing these amounts from 31.03.2022 until 22.04.2025 and 15.05.2025, despite repeated reminders and contempt proceedings, clearly caused financial prejudice to Shambhu Rao. It is well-settled legal principle that delays in payment of salary or pensionary dues, must be paid with interest at an appropriate rate to compensate the employee for the loss caused by such delay. Applying this principle, Shambhu Rao is entitled to receive interest at the rate of six percent per annum on all delayed retiral benefits from their respective due dates until actual payment.

21. In view of the foregoing discussions and consequential findings arrived by us as above, Special Appeal Defective No.- 656 of 2023 is hereby dismissed.

22. Since we have upheld the judgment of learned Single Judge challenge in this appeal, Shambhu Rao's appointment and continuance in service and ultimate retirement deserves to be awarded with all post retirement benefits and for any delay in disbursement of the same, also deserves to be visited with interest which we assess to be at the rate of 6%.

23. Accordingly, Special Appeal Defective No.- 927 of 2025 along with writ petition being Writ - A No.- 10356 of 2022, the order passed therein dated 20.12.2022 was challenged, stands disposed of with aforesaid directions.

24. All pending applications, stand disposed of accordingly. No order as to costs.

(2025) 12 ILRA 900
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.12.2025

BEFORE

THE HON'BLE MANOJ KUMAR GUPTA, J.
THE HON'BLE AJIT KUMAR, J.
THE HON'BLE VIKAS BUDHWAR, J.

Special Appeal Defective No. 1236 of 2019
 Alongwith other cases

Satya Prakash Yadav & Ors. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

(1) Constitutional validity of issuing advertisement for future vacancies on the

parameter of fundamental right of equal opportunity guaranteed under Article 14 and 16 of the Constitution of India.

(2) Scope of the phrase 'year of recruitment' used in new Rule 14 and effect of departing from the word 'year', as was used in old Rule 14.

(3) Applicability of G.O. dated 09.02.2013 and 25.10.2019 and Overriding effect of the UP Service of Engineers (Irrigation Department Group 'B') Service Rules, 2007 framed under Article 309 over the Executive instructions.

(4) Correctness of Kreetarth Mohan's case upholding the requisition dated 07.11.2013 including the future vacancies.

Headnotes

(A) Service law – Constitution of India – Article 14 and 16 – Equal right of opportunity – Recruitment – Post of Assistant Engineer (Civil) – Advertisement dated 24.12.2023 was issued for vacancies of 640 posts – Subsequently direction was issued to make recommendation only against the posts falling vacant up to the year 2013-14 (394 vacancies), i.e. during the course of the recruitment year in which advertisement was issued, and not against future vacancies – Validity challenged – Division Bench referred the matter to Larger Bench having noticed divergent views expressed by the Division Bench in Kreetarth Mohan's case and a Single Judge Bench in Satya Prakash Yadav's case, Israr Ahmad's case and Kamal Kumar Pandey's case on the same controversy regarding the permissibility of including the future vacancies – Candidate's legitimate expectation to participation and consideration for appointment against the vacancies occurring during the course of the recruitment year in which they acquire the eligibility, explained. (E-1)

Held : It is noteworthy that earlier the phrase 'year of recruitment' was not used in Rule 14 but only the word 'year'. In Rule 14 of the present Rules, 2007, there is a clear departure in the language used. Now, the phrase 'year of recruitment' has been employed. It clearly evinces that determination of vacancies has direct co-relation with the vacancies occurring during the course of the year of recruitment and

which alone would be intimated to the Commission for being filled. [Para 31]

Further held : In the matter of Public employment, the provisions of Article 14 and 16 of the Constitution would come into play. Article 16 of the Constitution grants equality in the matter of opportunity to employment in the public office. It is trite that the eligibility of a candidate is to be considered for appointment with reference to the last date of making of application for recruitment. If the submission in support of inclusion of the future vacancies of year 2014-15 and 2015-16 is accepted, the effect would be that the candidates who would have acquired eligibility for appointment to the vacancies arising in the year 2014-15 and 2015-16 would stand excluded even from the zone of consideration, as on the last date of making application pursuant to the advertisement dated 24.12.2013 they may be found lacking of the eligibility. Such candidates had the legitimate expectation to participation and consideration for appointment against the vacancies occurring during the course of the recruitment year in which they acquire the eligibility. This is also the objective of Rule 14 read with the definition clause of the 'year of recruitment'. It ultimately results in according equal opportunity to the eligible section to public employment [Para 40]

Ultimately held : The judgment in the case of Kreetarth Mohan upholding the requisition dated 07.11.2013 including the future vacancies for the recruitment years 2014-15 and 2015-16 does not lay down any ratio or principle of law. Conversely, the judgments of the learned Single Judge in Satya Prakash Yadav's case, Israr Ahmad's case and Kamal Kumar Pandey's case holding that in view of Rule 3(I) and Rule 14 of the 2007 Rules, the vacancies till the recruitment year 2013-14 only could have been filled, lay down the correct law. Accordingly, the exclusion of the vacancies of the future recruitment years is not found to suffer from any illegality. [Para 63]

(B) Service law – Determination of vacancies – G.O. dated 09.02.2013 and 25.10.2019 were issued to include the future vacancies also – Applicability – Overriding effect of the Rules of 2007 over the Executive instructions felt into consideration. (E-1)

Held : The Rules 2007 have been framed under the proviso to Article 309 of the Constitution.

The Rules makes specific provision for determination and intimation to the Commission the number of vacancies to be filled during the course of the year of recruitment. The field is already occupied. Consequently, the G.O. dated 09.02.2013 and 25.10.2019, which are general in nature, cannot be applied to the recruitment in question, in view of the principles laid down by the Apex Court in the above noted judgments. The executive instructions cannot supplant the Rules framed under proviso to Article 309 of the Constitution. [Para 39]

Case Law Cited

Service Bench No. 5195 of 2016, Kreetarth Mohan vs. State Of U.P. and others decided on 23.03.2018; Malik Mazhar Sultan vs. U.P. Public Service Commission and others, 2008(17)SCC 703; Malik Mazhar Sultan vs. U.P. Public Service Commission, 2009 (17) SCC 24; State of Bihar vs. Secretariat Assistant successful Examinees Union 1986, 1994(1) SCC 126; Neelima Shangla vs. State of Haryana, (1986) 4 SCC 268; Vivek Kaisth vs. State Of Himanchal Pradesh and others, 2024 (2) SCC 269; Sankarshan Dass vs. Union Of India, 1991(3) SCC 47; Manoj Kumar vs. Union Of India and others, 2024(3) SCC 563; Vansh vs. Ministry Of Education and others, 2024 SCC OnLine SC 342; Shmita Srivastava vs. State Of Madhya Pradesh and others, 2024 SCC OnLine SC 764; Union Public Service Commission vs. Gaurav Dwivedi and Others, 1999 5 SCC 180; Renu and others vs. District and sessions judge, Tis hazari and another (2014) 14 SCC 50; (I) Tej Prakash Pathak and others vs. Rajasthan High court and others, 2013 (4) SCC 540; Parth Das & Ors vs. The State of Tripura & Ors., 2025 0 Supreme (SC) 1273; Ajith G. Das and others vs. State of Kerala and others, 2024 SCC onLine SC 3820; Union of India vs. A. Shainamol, (2021) 20 SCC 267; Bihar State Electricity Board vs. Suresh Prasad and others, (2004) 2 SCC 681; State of Haryana vs. Subash Chander Marwaha, (1974) 3 SCC 220; Sant Ram Sharma vs. State Of Rajasthan and others, 1967 SCC OnLine SC 16; A.B. Krishna and Ors. vs. State of Karnataka and Ors., (1998) 3 SCC 495; Parth Das & Ors vs. The State of Tripura & Ors, (2025) 0 Supreme (SC) 1273; Jaiveer Singh and Ors. vs. State of Uttarakhand and Ors., 2023 SCC OnLine SC 1584, 2023 INSC

1024; Bank of Baroda and Another vs. G. Palani and Others, (2022) 5 SCC 612; A.P. Christians Medical Educational Society vs. Government of Andhra Pradesh and another, (1986) 2 SCC 667; State of Bihar and others vs. Kameshwar Prasad Singh and another, (2000) 9 SCC 94; Haryana vs. Ram Kumar Mann (1997) 3 SCC 321; Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111; Escorts Ltd. vs. Commissioner of Central Excise, Delhi-II, (2004) 8 SCC 335; Bharat Petroleum Corporation Ltd. And another vs. N.R. Vairamani And Another 2004 (8) SCC 579; State of Orissa vs. MD. Illiyas, 2006 (1) SCC 275; Mavilayi Service Cooperative Bank Ltd. & Others vs. Commissioner of Income Tax, Calicut & another, 2001 (7) SCC 90 – **referred to.**

List of Acts

Constitution of India – Article 14, 16, 166(1) and 309; Uttar Pradesh Service of Engineers (Irrigation Department Group 'B') Service Rules, 2007 – Rules 3(1), 4, 5, 14 and 15; Uttar Pradesh Service of Engineers (Irrigation Department Group 'B') Service Rules, 1993 – Rule 3(j); UP Higher Judicial Service Rules, 1975 – Rule 8.

List of Keywords

Recruitment; Reduction of vacancies; Future vacancies; Years of recruitment; Service jurisprudence; Anticipated vacancies; Determination of number of vacancies; Vested right; Interplay between the statutory rules/regulations having statutory force and Government Orders referable to the power under Article 166(1) of the Constitution; Executive instruction; Zone of consideration; Legitimate expectation; Equal opportunity; Public employment; Indefeasible right for appointment.

Case Arising From

Reference made to the Larger Bench looking into divergent views expressed by an earlier Division Bench in Kreetarth Mohan's case and a Single Judge Bench in Satya Prakash Yadav's case, Israr Ahmad's case and Kamal Kumar Pandey's case on the same controversy regarding the permissibility of including the future vacancies.

Appearances for Parties

Advs. for the Appellant : Ashok Khare, Sr. Advs.; U.K. Saxena, Sr. Advs. Navin Kumar Sharma, Umang Srivastav

Advs. for the Respondents : Manish Goyal, Additional Advocate General; A. K. Goyal, ACSC; Chandan Kumar, SC; Avneesh Tripathi

(Delivered by Hon'ble Manoj Kumar
Gupta, J.,
Hon'ble Ajit Kumar, J.
&
Hon'ble Vikas Budhwar, J.)

1. A Division Bench, having noticed divergent views expressed by an earlier Division Bench and a Single Judge Bench on the same controversy, passed the following order on 03.02.2025:

"1. The special appeal is directed against the order of learned Single Judge dated 06.11.2019 dismissing the writ petition of the appellants. The petitioners had challenged a communication sent by the office of Chief Engineer, Irrigation Department of the State U.P. dated 21.06.2018 addressed to the State Government, whereby recommendation was made to fill up only 394 post falling vacant in the recruitment years 2011-12, 2012-13 and 2013-14 through the State Engineering Services Recruitment Examination, 2014. The main ground of challenge was that the advertisement was issued on 24.11.2013 for filling up 640 posts and after issuance of advertisement, the vacancies could not have been reduced and that it was permissible to include future vacancies of next three recruitment years. Before the learned Single Judge, reliance was placed on a Division Bench judgment in Writ (S.B.) No. 1596 of 2016 where the Division Bench declined to accept challenge to the requisition dated 07.11.2013 by the Secretary, Irrigation

Department, to the U.P. Public Service Commission informing the Commission of the vacancies against which recruitment was to be held. It also included the future vacancies of recruitment years 2014-15 and 2015-16. The learned Single Judge held that in accordance with Rules of 1993, the selection could be held only for the vacancies occurring in the recruitment year and future vacancies could not be included. It has been held that in case future vacancies are also included, the persons who would acquire eligibility in the subsequent recruitment years would stand excluded from the selection process and this would result in violation of Articles 14 and 16 of the Constitution. In other words, the view taken by the Division Bench in respect of the same selection has not been followed for the reasons stated in the judgment.

2. This Division Bench is therefore, having one judgment, which takes a view in favour of inclusion of future vacancies and a judgment of learned Single Judge taking a contrary view. The said judgment as noted above duly takes notice of the Division bench judgment.

3. We are of the opinion that in the aforesaid facts and circumstances, the controversy should be settled by a larger Bench.

4. Accordingly, we direct the office to place the record of the instant case along with all connected matters before Hon'ble the Chief Justice for appropriate orders."

2. Pursuant thereto, the present batch of intra court appeals and connected petitions have been placed before us, by order of Hon'ble the Chief Justice.

Facts:

3. Broadly stated, the facts are that the State of Uttar Pradesh (in short 'State') in order to fill up the posts of Assistant Engineer (Civil) in the Irrigation Department sent a requisition on 06.07.2012 to the U.P. Public Service Commission (in short 'Commission') for 262 vacancies for the posts of Assistant Engineer (Civil) for the recruitment year 2011-12. In continuation of the same, another requisition was sent by the Special Secretary, Government of Uttar Pradesh, to the Commission on 07.11.2013 for 378 posts for the vacancies pertaining to the recruitment years 2012-13, 2013-14, 2014-15 and 2015-16 (121+86+79+92). Thereafter, an advertisement No. A-8/-E-1/2013 dated 24-12-2013 was issued by the Commission notifying a Combined Recruitment of Assistant Engineer (Civil, Mechanical, Agriculture) for several departments of the State Government, including the Irrigation Department. The total number of vacancies advertised for Assistant Engineer (Civil) in the Irrigation Department was 640 (262+378). The last date for submission of applications was 24-01-2014.

4. According to the State, an error occurred in the calculation of the vacancies of the Irrigation Department, while sending requisition to the Commission. The total sanctioned strength of Assistant Engineer (Civil) was 1588, out of which 804 posts were for direct recruitment and 784 for promotion. Out of 804 posts earmarked for direct recruitment, 330 posts stood occupied by direct recruits thus leaving only 474 posts. Consequently, the Personnel Department of the State was consulted, and on 01-11-2017, the Chief Engineer, Karmik (Establishment-II)

Irrigation and Water Resources Department, U.P. submitted a report before the Special Secretary, Irrigation Department, stating that against the sanctioned strength of 804 posts for direct recruitment, 330 posts had already been filled, so selections were required to be conducted for only 474 vacancies against the requisitioned 640 posts. Therein, he also specified the manner, in which the earlier requisitions were to be amended. The same is as follows:-

संशोधित तालिका

क्रम सं.	विवरण	पदों की संख्या
1.	वर्तमान में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के कार्यरत/ भरे पदों की संख्या	305
2.	चयन वर्ष 2009-10 एवं 2010-11 हेतु अध्याचित पदों से सम्बन्धित सम्मिलित राज्य अभियंत्रण परीक्षा-2011 में लोक सेवा आयोग, उ०प्र० इलाहाबाद द्वारा चयनित 182 अभ्यर्थियों में से शेष बचे अभ्यर्थियों की संख्या (जिनके नियुक्ति आदेश शासन स्तर पर जारी किए जाने हैं)	08
3.	लोक सेवा आयोग, उ०प्र०, इलाहाबाद द्वारा विकलांगजन हेतु (बैकलॉग/विशेष चयन)	17

	परीक्षा-2013 में विकलांगजन के विज्ञापित पद	
4.	उक्त के फलस्वरूप सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के भरे पदों की संख्या	330
5.	सिंचाई एवं जल संसाधन विभाग, उ०प्र० में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के स्वीकृत पदों की संख्या	804
6.	सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के स्वीकृत पदों के सापेक्ष भरे पदों की स्थिति के अनुसार सहायक अभियंता के वर्तमान में रिक्त पदों की स्थिति (804-330)	474
7.	चयन वर्ष 2011-12 से 2015-16 तक अध्याचित पदों की संख्या जिनके सम्बन्ध में लोक सेवा आयोग, उ०प्र० इलाहाबाद द्वारा चयन सम्बन्धी कार्यवाही प्रगति पर है	640
8.	वर्तमान में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के 474 रिक्त पद उपलब्ध है परन्तु चयन वर्ष 2011-12 से 2015-16 तक 640 अध्याचित पद, जिनके सम्बन्ध में लोक सेवा आयोग द्वारा कार्यवाही की	166

जा रही gS] esa inksa ds vkf/kD; dh fLFkfr (640-474= 166)	

5. Accordingly, a communication came to be issued by the State, addressed to the Commission on 14.11.2017, for making selections against 474 posts of Assistant Engineer (Civil). It states that the Chief Engineer vide his aforesaid letter dated 01.11.2017 had informed that as envisaged under Rule 8 of the U.P. Government Servants Seniority Rules, 1991, a consolidated seniority list was in existence. The said list was required to be considered while sending the requisition. However, without taking into consideration the said list, requisitions were sent. This resulted in requisition of 166 candidates in excess of the existing vacancies. It was stated that only 474 posts of Assistant Engineer (Civil) were vacant and accordingly, direction was issued to make selection of 474 candidates only as against the requisition of 640. Along with the said communication, copy of letter of the Chief Engineer dated 01.11.2017 was annexed.

6. Further, correspondence took place for clarity on the process of making selections for the vacancies advertised on 24.12.2013. In reply to a State Government's letter dated 30.01.2018 and Commission's letter dated 23.01.2018, the Chief Engineer Karmik (Establishment-II) Irrigation and Water Resources Department, by letter dated 10.05.2018, furnished information regarding the vacancies available to be filled for the recruitment years 2011-12 to 2016-17, totalling 474 posts, the break up of which is as follows:

क्रम	चयन वर्ष	रिक्त पदों	वृ

संख्या		की संख्या	ल पद
1	2011-12	255	454
2	2012-13	66	
3	2013-14	73	
4	2014-15	51	
5	2015-16	09	
6	2016-17	20	20
योग			474

7. On 18.05.2018, the State issued a communication to the Commission to act in accordance with the letter dated 10.05.2018. Thereafter, by communication dated 31.05.2018, the Commission sought clarification from the State regarding the actual number of vacancies available, as there were two communications on record - one dated 28.09.2015, indicating that the total vacancies available for the recruitment years 2011-12 to 2013-14 were 469, and the other dated 10.05.2018, annexing therewith a letter of the Irrigation Department of the even date, disclosing 394 vacancies (255+66+73) upto the recruitment year 2013-14. On 05.06.2018, the Joint Secretary, State of U.P. addressed a letter to the Engineer-in-Chief and the Head of the Department, Irrigation and Water Resources, Lucknow seeking inputs in the light of the query made by the Commission on 31.05.2018.

8. The Chief Engineer, Karmik Establishment-II, Irrigation and Water Resources Department, U.P. by his letter dated 21.06.2018 informed that the total number of vacancies available for the post of Assistant Engineer (Civil) for the recruitment years 2011-12, 2012-13 and 2013-14 was 394 (255+66+73) and only

these vacancies were required to be filled up. On 02.07.2018, the State Government, through its Joint Secretary, addressed a communication to the Commission, directing it to act in accordance with the letter dated 21.06.2018 while making selections for the post of Assistant Engineer (Civil) in the Irrigation Department.

9. The direction issued by the State to the Commission to make recommendation only against the posts falling vacant up to the year 2013-14 (394 vacancies), i.e. during the course of the recruitment year in which advertisement was issued, and not against future vacancies, led to filing of several appeals/writ petitions.

Category 'A' comprises of the Intra Court Appeals preferred by the writ petitioners/appellants whose writ petitions, questioning the letter dated 21.06.2018 issued by the Chief Engineer, Irrigation Department, State of U.P., whereby only 394 posts were recommended to be filled, stood dismissed.

Category 'B' comprises of the writ petitions questioning the said recommendation of the Chief Engineer dated 21.06.2018.

Category 'C' comprises of the writ petitions wherein challenge has been laid to the final result dated 03.05.2019.

Category 'D' comprises of the writ petitions seeking a direction to fill up all the posts advertised on 24.12.2013.

Category 'E' are the writ petitions wherein the challenge has been raised to the result dated 02.02.2019, limiting the

declaration of result to vacancies upto the recruitment year 2013-14.

Category 'F' are the writ petitions wherein the writ petitioners seek a direction to call them for interview.

10. During course of hearing on 14.08.2025, the following order was passed:-

"Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Umang Srivastava, learned counsel for the appellants, Sri Avneesh Tripathi, learned counsel for the respondent No.- 3, namely U.P. Public Service Commission and Sri Manish Goyal, learned Additional Advocate General assisted by Sri Kunal Ravi Singh, learned Chief Standing Counsel and Sri A.K. Goyal, learned Additional Chief Standing Counsel for the State respondents.

As prayed on behalf of State respondents and U.P. Public Service Commission, three weeks' time is granted to them to file exhaustive counter affidavits annexing therewith all the relevant communications including letters of the Commission dated 19th May, 2014 and 31st May, 2018 and the letters of State Government dated 5th June, 2018, 10th May, 2018 and 18th May, 2018 and serve a copy of the affidavits upon learned counsel for the appellants appearing in various cases.

Learned counsel for the appellants will have one week's time to file rejoinder affidavit.

List this matter on 18th September, 2025 at 2:00 pm."

11. In compliance to the said order, supplementary counter affidavit has been filed both by the State and Commission.

12. Learned counsel for the appellants/ writ petitioners chose not to file any reply to the supplementary counter affidavit filed by the State and the Commission and accordingly final arguments were heard. Written submissions were also filed by the rival parties.

ARGUMENTS OF APPELLANTS/ WRIT PETITIONERS

13. Shri Ashok Khare and Shri Uday Karan Saxena, Senior Advocates, assisted by Shri Umang Shrivastav and Shri Naveen Kumar Sharma, learned counsel for the appellants/writ petitioners, submitted that the judgment and order of the learned Single Judge rejecting the challenge to the decision of the Engineer-in-Chief, Karmik Establishment-II, dated 21-06-2018 is manifestly illegal and cannot be sustained. Elaborating the submission, it is urged that as per requisitions dated 06-07-2012 and 07-11-2013, a total of 640 (267+378) vacancies of Assistant Engineer (Civil) were advertised on 24-12-2013. Once the selection process had commenced, there could not have been reduction of the vacancies of Assistant Engineer (Civil) from 640, as advertised, to 394. It is further contended that though on 01.11.2017, the total vacancies of Assistant Engineer was shown to be 474, however, without any rationale or basis, the same stood further reduced to 394. The submission is that a conscious decision was taken by the State Government while sending the requisition for 640 vacancies, and the said decision could not have been reviewed.

14. Argument is that there is Government Order dated 09.07.2013 which provides that while sending requisition to the UPPSC, future vacancies of three recruitment years should also be included. It was in view of the said G.O. that requisition dated 07.11.2013 was sent, including future vacancies of the recruitment years 2014-15 and 2015-16 also. The Government is bound by the policy decision contained in the G.O.

15. Reliance has been placed on the Division Bench judgement in Service Bench No. 5195 of 2016 (Kreetarth Mohan vs. State Of U.P. and others), decided on 23.03.2018, to contend that the requisition dated 07.11.2013, which included the further vacancies of the years 2014-15 and 2015-16 as well, has already been upheld and the said Division Bench judgment was binding upon the learned Single Judge.

16. It is also contended that though Rule 3(l) of the *State of Uttar Pradesh Service of Engineers (Irrigation Department Group 'B') Service Rules, 2007* defines 'year of recruitment' as a period of twelve months commencing on the first day of July of the calendar year and as per Rule 14, the appointing authority has to determine and intimate to the Commission the number of vacancies to be filled during the course of the year of recruitment, however, in view of the Government order dated 09.07.2013, as reiterated on 25.10.2019, the future vacancies which were to arise during the next three years were also to be included.

17. Additionally, it has been argued that it is not something foreign to service jurisprudence to include the anticipated vacancies which would arise in future as the same stands widely accepted and is

already provided in Rule 8 of the *UP Higher Judicial Service Rules, 1975*. It has been contended that as per the counter affidavit of the Commission sworn by the Deputy Secretary, U.P. Public Service Commission, U.P. Lucknow dated 15.09.2014, the decision to limit the recruitment to vacancies upto the recruitment year 2013-14 was taken by a Committee constituted by the Public Service Commission at its own level. It does not have the approval of the State. The contention is that the Commission had no authority under law to reduce the vacancies which were advertised, it being only a recruiting agency. It is also contended that even though the writ petitioners do not possess any indefeasible right for appointment but that does not give license to the respondents to act arbitrarily and once it is established that the decision of the respondents to reduce the vacancies is without any rationale, then the Court should come to the rescue of the appellants/ writ petitioners. Further contention is that once the appellants/ writ petitioners got selected, then in view of Office-Memorandum dated 15.11.1999, they are to be given appointment/joining, the present case not being a case falling under the exceptions stipulated therein.

18. Lastly, it has been submitted that the writ petitioners/ appellants have been discriminated, particularly, when barring the post of Assistant Engineer (Civil) in Irrigation Department, there has been no reduction of the vacancies of Assistant Engineer in other departments which were advertised on 24.12.2013.

19. In order to buttress the said submissions, reliance has been placed upon the judgement in; (a) *Malik Mazhar Sultan vs. U.P. Public Service Commission and*

others 2008(17)SCC 703; (b) Malik Mazhar Sultan vs. U.P. Public Service Commission 2009 (17) SCC 24; (c) State of Bihar vs. Secretariat Assistant successful Examinees Union 1986, 1994(1) SCC 126; (d) Neelima Shangla vs. State of Haryana, (1986) 4 SCC 268; (e) Vivek Kaisth vs. State Of Himanchal Pradesh and others 2024 (2) SCC 269 (f) Sankarshan Dass vs. Union Of India, 1991(3) SCC 47; (g) Manoj Kumar vs. Union Of India and others, 2024(3) SCC 563 (h) Vansh vs. Ministry Of Education and others, 2024 SSC OnLine SC 342 (i) Shmita Srivastava vs. State Of Madhya Pradesh and others, 2024 SCC OnLine SC 764; (j) Union Public Service Commission v. Gaurav Dwivedi and Others, 1999 5 SCC 180; (k) Renu and others vs. District and sessions judge, Tis hazari and another (2014) 14 SCC 50; (l) Tej Prakash Pathak and others vs. Rajasthan High court and others 2013 4 SCC 540; (m) Parth Das & Ors v. The State of Tripura & Ors 2025 0 Supreme (SC) 1273;

ARGUMENT ADVANCED ON BEHALF OF THE STATE

20. Shri Manish Goyal, learned Additional Advocate General assisted by Shri A.K. Goyal and Shri Chandan Kumar, learned Addl. Chief Standing Counsel has submitted that none of the contentions raised have any legs to stand. Submission is that the State being a model employer is to act within the four corners of law, within the ambit of the Rules. According to him, selection for the post of Assistant Engineer (Civil) stands regulated by 2007 Rules. Contention is that Rule 3(l) defines 'year of recruitment' which means a period of twelve months commencing on the first day of July of the calendar year and since the advertisement was published on

24-12-2013, thus, as per Rule 14 of the 2007 Rules, the selections could only be conducted for the vacancies up to the recruitment year 2013-14. The anticipated vacancies for the recruitment years 2014-15 and 2015-16 which had been mistakenly requisitioned were rightly excluded on basis of a conscious decision of the State Government dated 21-06-2018, communicated to the Commission on 02.07.2018.

21. Argument is that the reliance placed upon the Government Orders dated 09-07-2013 and 25-10-2019 is misconceived and out of context, particularly, when Government orders cannot amend, alter or supplant the statutory rules. He further submits that the Division Bench judgment in **Kreetarth Mohan (supra)** does not lay down any principle of law. The challenge raised against the inclusion of the future vacancy was negated mainly on the ground that the Government Order dated 09-07-2013 was not impugned in the writ petition.

22. In a nutshell, the submission is that in the absence of any challenge raised to the definition of the 'year of recruitment' under Rule 3 (l) and the provision relating to determination of the vacancies on the basis of the 'year of recruitment' as per Rule 14, the plea for inclusion of future vacancies has no merits.

23. It is also submitted on behalf of the State that it is the prerogative of the State, as an employer, to determine the number of vacancies, and to fill or not to fill whole of the vacancies advertised. Argument is also to the extent that the writ petitioners/ appellants do not possess any indefeasible right for being accorded appointment as even otherwise mere

selection does not confer any vested right to be appointed. Reliance has been placed upon the judgments in (a) *Ajith G. Das and others vs. State of Kerala and others* 2024 SCC onLine Sc 3820; (b) *Union of India vs. A. Shainamol* (2021) 20 SCC 267; (c) *Bihar State Electricity Board vs. Suresh Prasad and others*, (2004) 2 SCC 681; (d) *State of Haryana vs. Subash Chander Marwaha*, (1974) 3 SCC 220; (e) *Sant Ram Sharma vs. State Of Rajasthan and others*, 1967 SCC OnLine SC 16; (f) *A.B. Krishna and Ors. vs. State of Karnataka and Ors.*, (1998) 3 SCC 495; (g) *Parth Das & Ors v. The State of Tripura & Ors*, (2025) 0 Supreme (SC) 1273.

ARGUMENT ADVANCED ON BEHALF OF THE COMMISSION

24. Shri Avneesh Tripathi, who appears for the Commission, has adopted the arguments of Shri Manish Goyal, Additional Advocate General. He has nothing to add, except that the selections have been done as per the Rules governing the subject and the appellants/writ petitioners have no legal right to appointment. It is also contended that the Commission, being a recruiting agency, acts upon the directions of the State, which it had followed in the instant case.

RELEVANT STATUTORY PROVISIONS

"The Uttar Pradesh Service of Engineers (Irrigation Department) (Group 'B') Service Rule, 2007

Rule 3 (l) 'Year of recruitment' means a period of twelve months commencing on the first day of July of a calendar year.

4. Cadre of the Service.- (1) *The strength of the Service and of each category of posts therein shall be such as may be determined by the Government from time to time.*

(2) *The strength of the Service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in Appendix "A" Provided that-*

(i) *the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation; or*

(ii) *the Governor may create such additional permanent or temporary posts as he may consider proper.*

5. Source of Recruitment.- *Recruitment of the posts of Assistant Engineer (Civil or Mechanical) in the Service shall be so arranged that-*

(1) *50 2/3 percent posts in the cadre are filled in by direct recruits selected through the Commission.*

(2) *49 1/3 percent posts in the cadre are filled in by promotees through the Commission, which shall consist of-*

(a) In Civil Branch-

(i) *47 1/3 percent shall be filled in from amongst substantively appointed Junior Engineers (Civil) who have completed seven years service as such on the first day of the year of recruitment.*

(ii) *One percent shall be filled in from amongst such substantively appointed Computers (Civil) who possess one of the*

qualifications mentioned in Appendix "B" or who possess Bachelor's degree in Civil Engineering from a recognised Institution or are Associate Members of the Institution of Engineers (India) (Civil Engineering Branch) and who have completed seven years service as such on the first day of the year of recruitment.

(iii) One percent shall be filled in from amongst such substantively appointed Research Supervisors who possess Bachelor's degree in Civil Engineering from a recognised institution or are Associate Members of the Institution of Engineers (India) (Civil Engineering Branch) and who have completed seven years service as such on the first day of the year of recruitment.

(b) In Mechanical Branch-

49 1/3 percent shall be filled in from amongst such substantively appointed Junior Engineers (Mechanical) who have completed seven years service as such on the first day of the year of recruitment:

Provided that the appointing authority may regulate the recruitment by promotion in any year of recruitment in such manner that the prescribed percentage for promotion is maintained.

Rule 14.- Determination of Vacancies-- *The appointing authority shall determine and intimate to the Commission the number of vacancies to be filled during the course of the year of recruitment as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories under rule 6.*

15. Procedure for direct recruitment.- (1) *Applications for permission to appear in the competitive examination shall be invited by the Commission in the form published in the advertisement issued by the Commission.*

(2) *No candidate shall be admitted to the examination unless he holds a certificate for admission issued by the Commission.*

(3) *After the results of the written examination have been received and tabulated, the Commission shall, having regard to the need for securing due representation of the candidates belonging to Scheduled Castes, Scheduled Tribes and others under rule 6, summon for interview, such number of candidates as, on the result of the written examination, have come upto the standard fixed by the Commission in this respect. The marks awarded to each candidate at the interview shall be added to the marks obtained by him in the written examination.*

(4) *The Commission shall prepare a list of candidates in order of their proficiency, as disclosed by the aggregate of marks obtained by each candidate at the written examination and interview and recommend such number of candidates as they consider fit for appointment. If two or more candidates obtain equal marks in the aggregate, the name of the candidate obtaining higher marks in the written examination shall be placed higher in the list. If two or more candidates obtain equal marks in the written examination also then in such situation the names of the candidates shall be arranged in accordance with the general policy of the Commission. The*

Commission shall forward the list to the appointing authority."

Relevant extract of the advertisement dated 24.12.2013

S. no	Name of Department	Name of Post	Total vacancies	SC of U. P.	ST of U. P.	OB C of U. P.	Gender	Branch
1.	Irrigation Deptt.	Asstt. Engg. (Civil)	640	134	13	173	320	Civil
2.	Irrigation Deptt.	Asstt. Engg. (Mechanical)	89	03	-	23	63	Mechanical
3.	Minor Irrigation Deptt.	Asstt. Engg. (Agriculture)	10	-	-	04	06	Agriculture
4.	Minor Irrigation Deptt.	Asstt. Engg. (Civil)	10	2	-	3	5	Civil
5.	Minor Irrigation Deptt.	Asstt. Engg. (Mechanical)	04	-	-	01	03	Mechanical
6.	Rural Engineering Services Deptt.	Asstt. Engg. (Civil)	24	05	-	12	07	Civil
7.	Rural Engineering Services Deptt.	Asstt. Engg. (Electrical)	01	-	-	-	01	Electrical

8.	Land Development and Water Resources Deptt.	Bhoomi Sanra kshan Adhikari /Technical Officer	08	-	-	03	05	Agriculture/Civil
9.	Public Works Deptt. (P.W.D.)	Asstt. Engg. (Civil)	140	-	03	23	114	Civil
10.	Ground Water Deptt.	Asstt. Engg. (Civil)	06	-	-	-	-	Civil
11.	Ground Water Deptt.	Asstt. Engg. (Mechanical)	04	-	-	-	-	Mechanical

Pay Scale: Rs. 15,600/- Rs. 39,100/- (Grade Pay Rs. 5400/- Post-Class II, Gazetted). **Note:-** No. of vacancies may increase or decrease.

REQUISITIONS

"सत्य प्रतिलिपि

संख्या:-1552/12-27-सिं-2-3(80)/06

प्रेषक,
नवीन चन्द्र त्रिपाठी
संयुक्त सचिव
उत्तर प्रदेश शासन।

सेवा में,

सचिव,
लोक सेवा आयोग,
उ०प्र०, इलाहाबाद।

(नवीन चन्द्र त्रिपाठी)
संयुक्त सचिव

सिंचाई अनुभाग-2 लखनऊ: दिनांक
06 जुलाई, 2012

विषय:- चयन वर्ष 2011-12 में रिक्त पदों पर सीधी भर्ती के माध्यम से चयन कराये जाने विषयक अध्याचन।

महोदय,

उपर्युक्त विषयक कार्यालय प्रमुख अभियन्ता, सिंचाई विभाग, उ०प्र० लखनऊ के पत्र संख्या-1992/ई-2, दिनांक 15-06-2012 (छायाप्रति संलग्न) का कृपया अवलोकन करने का कष्ट करें।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि चयन वर्ष 2011-12 में 267 रिक्त पद के सापेक्ष 02 प्रतिशत की कटौती करते हुए कुल 262 पदों का अध्याचन (सामान्य वर्ग के लिये 50 प्रतिशत 131 पद, अनुसूचित जाति के लिये 21 प्रतिशत 55 पद, पिछड़ी जाति के लिये 27 प्रतिशत 71 पद, अनुसूचित जनजाति के लिये 02 प्रतिशत 05 पद) को भरे जाने हेतु अध्याचन 02 प्रतियों में सेवा नियमावली सहित संलग्न कर प्रेषित किया जा रहा है।

3- अतः अनुरोध है कि उक्त रिक्तियों के विरुद्ध चयन कराकर चयनित सहायक अभियन्ताओं की सूची शासन को तत्काल उपलब्ध कराने का कष्ट करें।

संलग्नक- यथोक्त।

भवदीय,
ह० अपठनीय

पृष्ठांकन संख्या एवं दिनांक तदैव-

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. परीक्षा नियंत्रक, लोक सेवा आयोग, उ०प्र०, इलाहाबाद।
2. वरिष्ठ स्टाफ अधिकारी (ई-2), सिंचाई विभाग, उ०प्र०, लखनऊ।

आज्ञा से
ह० अपठनीय
अनुसचिव"

"सत्य प्रतिलिपि

संख्या-2953/12-27-सिं-2-3(80)/06

प्रेषक,
मयूर माहेश्वरी
विशेष सचिव
उत्तर प्रदेश शासन।

सेवा में,
सचिव,
लोक सेवा आयोग,
उ०प्र०, इलाहाबाद।

सिंचाई अनुभाग-2 लखनऊ:
दिनांक 07 नवम्बर, 2013

विषय:- चयन वर्ष 2012-13, 2013-14, 2014-15 एवं 2015-16 में सहायक अभियन्ता (सिविल) के रिक्त पदों पर सीधी भर्ती के माध्यम से चयन कराये जाने के सम्बन्ध में अध्याचन।

महोदय,

उपर्युक्त विषयक प्रमुख अभियन्ता कार्यालय, सिंचाई विभाग, उ०प्र० लखनऊ के पत्र संख्या-2239/ई-2, दिनांक 10-07-2012, पत्र संख्या-जी-444/ई-2/सहा०अभि० सीधी भर्ती अध्याचन, दिनांक 23-09-2013 एवं पत्र संख्या-जी-393/ई-2/सहा०अभि० सीधी भर्ती दिनांक 30-09-2013 (छायाप्रतियां संलग्न) का कृपया अवलोकन करने का कष्ट करें।

2- चयन वर्ष 2012-13, 2013-14, 2014-15 एवं 2015-16 में सहायक अभियन्ता (सिविल) सिंचाई विभाग के रिक्त पदों का विवरण निम्नवत् है:-

(क) चयन वर्ष 2012-13 की सीधी भर्ती के माध्यम से रिक्त 123 पदों पर चयन कराये जाने हेतु 02 प्रतिशत कटौती करते हुए कुल रिक्त 121 पदों का संलग्न अध्याचन निम्नानुसार है:-

(1) सामान्य वर्ग के लिये 50 प्रतिशत = 61 पद

(2) अनुसूचित जाति के लिये 21 प्रतिशत = 25 पद

(3) अन्य पिछड़ा वर्ग के लिये 27 प्रतिशत = 33 पद

(4) अनुसूचित जनजाति के लिये 02 प्रतिशत = 02 पद

(ख) चयन वर्ष 2013-14 की सीधी भर्ती के माध्यम से रिक्त 88 पदों पर चयन कराये हेतु 02 प्रतिशत कटौती करते हुए कुल रिक्त 86 पदों का संलग्न अध्याचन निम्नानुसार है:-

(1) अनारक्षित पदों की संख्या = 43 पद

(2) अनुसूचित जाति के पदों की संख्या = 18 पद

(3) अनुसूचित जनजाति के पदों की संख्या = 02 पद

(4) अन्य पिछड़ा वर्ग के पदों की संख्या = 23 पद

(ग) चयन वर्ष 2014-15 की सीधी भर्ती के माध्यम से रिक्त 81 पदों पर चयन कराये जाने हेतु 02 प्रतिशत कटौती करते हुए कुल रिक्त 79 पदों का संलग्न अध्याचन निम्नानुसार है:-

(1) अनारक्षित पदों की संख्या = 39 पद

(2) अनुसूचित जाति के पदों की संख्या = 17 पद

(3) अनुसूचित जनजाति के पदों की संख्या = 02 पद

(4) अन्य पिछड़ा वर्ग के पदों की संख्या = 21 पद

(घ) चयन वर्ष 2015-16 की सीधी भर्ती के माध्यम से रिक्त 94 पदों पर चयन कराये जाने हेतु 02 प्रतिशत कटौती करते हुए कुल रिक्त 92 पदों का संलग्न अध्याचन निम्नानुसार है:-

(1) अनारक्षित पदों की संख्या = 46 पद

(2) अनुसूचित जाति के पदों की संख्या = 19 पद

(3) अनुसूचित जनजाति के पदों की संख्या = 02 पद

(4) अन्य पिछड़ा वर्ग के पदों की संख्या = 25 पद

3- प्रश्नगत प्रकरण में मुझे यह कहने का निदेश हुआ है कि चयन वर्ष 2012-13, 2013-14, 2014-15 एवं 2015-16 के उपरोक्तानुसार कुल रिक्त 378 पदों पर चयन कराकर चयनित सहायक अभियन्ताओं (सिविल) की सूची शासन को यथाशीघ्र उपलब्ध कराने का कष्ट करें।

संलग्नक- यथोक्त।

भवदीय,
ह० अपठनीय
विशेष सचिव

संख्या एवं दिनांक तदैव

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. परीक्षा नियंत्रक, लोक सेवा आयोग, उ०प्र०, इलाहाबाद।
2. प्रमुख अभियन्ता एवं विभागाध्यक्ष, सिंचाई विभाग, उ०प्र०, लखनऊ।

आज्ञा से
ह० अपठनीय
उप सचिव"

DEPARTMENTAL LETTERS/
COMMUNICATIONS

**"कार्यालय प्रमुख अभियन्ता
(अधिष्ठान-2 अनुभाग)
सिंचाई एवं जल संसाधन विभाग,
उत्तर प्रदेश**

**पत्रांक:जी-737/ई-2/ लखनऊ:
दिनांक:1 नवम्बर, 2017**

विषय: सीधी भर्ती के सहायक अभियन्ता (सिविल) को लोक सेवा आयोग को भेजी गयी अधिक रिक्तियों के सम्बन्ध में।

अनु सचिव, सिंचाई एवं जल संसाधन अनुभाग-13, उत्तर प्रदेश शासन, लखनऊ

उपरोक्त विषयक इस कार्यालय के पत्रांक:जी-570/ई-2/अधियाचन, दिनांक 11.09.2017 का अवलोकन करने की कृपा करें, जिसके द्वारा शासकीय पत्र संख्या: 1780/सत्ताईस-13-2017-2/2016, दिनांक 30.08.17 द्वारा प्राप्त आदेशों के अनुपालन में लोक सेवा आयोग, उ०प्र०, इलाहाबाद को प्रेषित किए गये सीधी भर्ती संवर्ग के सहायक अभियन्ता (सिविल) के त्रुटिपूर्ण गणना के फलस्वरूप स्वीकृत पदों के सापेक्ष अधिक हो रहे पदों के सम्बन्ध में चयन वर्ष 2016-17 हेतु अधियाचित 69 पदों को विज्ञापित न कराये जाने के सम्बन्ध में अनुरोध करते हुए सीधी भर्ती संवर्ग के सहायक अभियन्ता (सिविल) के पदों को भरे जाने के सम्बन्ध में लोक सेवा आयोग द्वारा दिसम्बर 2013 में विज्ञापित 640 पदों के सापेक्ष 478 अभ्यर्थियों का ही चयन कराये जाने के सम्बन्ध में निर्णय लिये जाने का अनुरोध किया गया था।

उक्त के सम्बन्ध में दिनांक 31.10.17 को दूरभाष पर दिये गये निर्देशानुसार सम्मिलित राज्य अभियंत्रण परीक्षा-2011 में लोक सेवा आयोग उत्तर प्रदेश इलाहाबाद द्वारा चयनित 182 अभ्यर्थियों में से शासन स्तर पर निर्गत हुए शासकीय नियुक्ति आदेशों का पुनः परीक्षण करने के उपरान्त अवगत कराना है कि लोक सेवा आयोग द्वारा चयनित 182 अभ्यर्थियों के सापेक्ष कुल 11 शासकीय आदेश के माध्यम से

174 अभ्यर्थियों के नियुक्ति आदेश निर्गत हुए हैं शेष बचे अभ्यर्थियों की संख्या में संशोधन करते हुए तालिका-2 के पंक्ति-2 में पदों की संख्या 04 के स्थान पर 08 दर्शाते हुए तदनुसार निम्नानुसार संशोधित सूचना निम्नानुसार है:-

संशोधित तालिका

क्रम सं	विवरण	पदों की संख्या
1	वर्तमान में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के कार्यरत/भरे पदों की संख्या	305
2	चयन वर्ष 2009-10 एवं 2010-11 हेतु अध्याचित पदों से सम्बन्धित सम्मिलित राज्य अभियंत्रण परीक्षा-2011 में लोक सेवा आयोग, उ०प्र० इलाहाबाद द्वारा चयनित 182 अभ्यर्थियों में से शेष बचे अभ्यर्थियों की संख्या (जिनके नियुक्ति आदेश शासन स्तर पर जारी किए जाने हैं)	08
3	लोक सेवा आयोग, उ०प्र०, इलाहाबाद द्वारा विकलांगजन हेतु (बैकलॉग/विशेष चयन) परीक्षा-2013 में	17

	विकलांगजन के विज्ञापित पद	
4	उक्त के फलस्वरूप सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के भरे पदों की संख्या	33 0
5	सिंचाई एवं जल संसाधन विभाग, उ०प्र० में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के स्वीकृत पदों की संख्या	80 4
6	सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के स्वीकृत पदों के सापेक्ष भरे पदों की स्थिति के अनुसार सहायक अभियंता के वर्तमान में रिक्त पदों की स्थिति (804-330)	47 4
7	चयन वर्ष 2011-12 से 2015-16 तक अध्याचित पदों की संख्या जिनके सम्बन्ध में लोक सेवा आयोग, उ०प्र० इलाहाबाद द्वारा चयन सम्बन्धी कार्यवाही प्रगति पर है	64 0
8	वर्तमान में सीधी भर्ती संवर्ग के सहायक अभियंता	16 6

	(सिविल) के 474 रिक्त पद उपलब्ध हैं परन्तु चयन वर्ष 2011-12 से 2015-16 तक 640 अधियाचित पद, जिनके सम्बन्ध में लोक सेवा आयोग द्वारा कार्यवाही की जा रही है में पदों के आधिक्य की स्थिति (640-474=166)	

अतः इस कार्यालय के पत्रांक:जी-570/ई-2, दिनांक 11.09.17 के क्रम में उपरोक्त तालिकानुसार संशोधित सूचना इस अनुरोध के साथ संलग्न कर प्रेषित करने की अपेक्षा हुई है कि कृपया इस कार्यालय के पत्र दिनांक 11.09.17 में उल्लिखित तालिका-2 के स्थान पर उपरोक्त तालिकानुसार पदों की स्थिति को संज्ञान में लेते हुए तदनुसार अग्रेतर कार्यवाही करने की कृपा करें।

(ध्यान सिंह)
मुख्य अभियंता कार्मिक (ई-2)
कृते, प्रमुख अभियन्ता, सि० एवं
ज० सं० वि०"

"प्रेषक, संख्या: 2113 / सत्ताईस-13-2017-02/2016

शम्भू नाथ,
सचिव
उ० प्र० शासन।
सेवा में,
सचिव,
लोक सेवा आयोग,
उ० प्र०, इलाहाबाद।

सिंचाई एवं जल संसाधन अनुभाग-
13 लखनऊ: दिनांक 14 नवम्बर, 2017

विषय:- चयन वर्ष 2011-12, 2012-13, 2013-14, 2014-15 एवं 2015-16 में सहायक अभियन्ता (सिविल) के रिक्त पदों पर सीधी भर्ती के माध्यम से चयन कराये जाने हेतु प्रेषित अधियाचन के संबंध में।

महोदय,

उपर्युक्त विषयक शासन के पत्र संख्या-1552/12-27-सि०-2-3 (80)/06 दिनांक 06.07.2012 एवं पत्र संख्या-2953/13-27-सि०-2-3(80)/06 दिनांक 07.11.2013 का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से क्रमशः सहायक अभियन्ता (सिविल) के सीधी भर्ती के अन्तर्गत चयन वर्ष 2011-12 हेतु 262 पद, चयन वर्ष 2012-13 हेतु 121 पद, चयन वर्ष 2013-14 हेतु 86 पद, चयन वर्ष 2014-15 हेतु 79 पद एवं चयन वर्ष 2015-16 हेतु 92 पद कुल 640 पदों पर चयन हेतु अधियाचन लोक सेवा आयोग, उ० प्र० इलाहाबाद को प्रेषित किया गया था, जिसके क्रम में लोक सेवा आयोग, उ० प्र० इलाहाबाद द्वारा सम्मिलित राज्य अभियंत्रण सेवा (सामान्य चयन) परीक्षा 2013 का दिनांक 24.12.2013 द्वारा विज्ञापित करके चयन की कार्यवाही प्रारम्भ की जा चुकी है।

2. इस संबंध में मुख्य अभियन्ता (ई-2) के पत्र संख्या-जी-570/ई-2/अधियाचन दिनांक 11.09.2017 एवं पत्र संख्या-जी-737/ई-2/दिनांक 01.11.2017 (छायाप्रति संलग्न) द्वारा उपलब्ध करायी गयी सूचना के अनुसार सहायक अभियन्ता (सिविल) पद पर दोनों संवर्गों के नियुक्ति / पदोन्नति उपरान्त उ० प्र० सरकारी सेवक ज्येष्ठता नियमावली-1991 के नियम-8 के प्राविधानों के तहत एकल वरिष्ठता सूची निर्गत की जाती है, जो प्रमुख अभियन्ता पद (उच्चतम पद) तक पदोन्नति हेतु पोषक संवर्ग के रूप में कार्य करती है। अतः सीधी भर्ती संवर्ग के सहायक अभियन्ताओं के अधियाचित पदों की

गणना किये जाने के संबंध में सहायक अभियन्ताओं की एकल वरिष्ठता सूची को विचार में लेते हुये गणना की जानी चाहिए थी, जिससे यह स्थिति स्पष्ट हो पाती कि प्रत्येक चयन वर्ष में उपलब्ध परिणामी रिक्तियों के अनुसार अधिशासी अभियन्ता एवं उससे उच्च पदों पर पदोन्नति उपरान्त सहायक अभियन्ता से अधिशासी अभियन्ता के पद पर पदोन्नति हेतु तैयार पात्रता सूची में कितने सीधी भर्ती संवर्ग के सहायक अभियन्ता पदोन्नत हो जायेंगे, तदनुसार ही अधियाचित पदों को शासन को प्रेषित किया जाना चाहिए था, परन्तु बिना सीधी भर्ती/ प्रोन्नत संवर्ग की गणना किये अधियाचन शासन को प्रेषित कर दिया गया, जिसके फलस्वरूप वर्तमान में सीधी भर्ती संवर्ग के कार्यरत सहायक अभियन्ताओं एवं चयन वर्ष 2011-12 से चयन वर्ष 2015-16 तक अधियाचित किये गये 640 पदों को सम्मिलित किये जाने पर सीधी भर्ती संवर्ग के कुल 804 स्वीकृत पदों के सापेक्ष 166 पदों का आधिक्य हो रहा है। इस प्रकार वर्तमान में सहायक अभियन्ता (सिविल) के 474 पद ही रिक्त हैं।

3. अतः इस संबंध में मुझे यह कहने का निदेश हुआ है कि कृपया वर्णित स्थिति के दृष्टिगत शासन के संदर्भित पत्रों के द्वारा चयन वर्ष 2011-12 से 2015-16 तक के लिये सहायक अभियन्ता (सिविल) के 640 पदों पर चयन हेतु प्रेषित अधियाचन के सापेक्ष 474 अभ्यर्थियों का ही चयन करके संस्तुति शासन को उपलब्ध कराने का कष्ट करें।

संलग्नक- यथोपरि। भवदीय,

(शम्भू नाथ)
सचिव।"

**"कार्यालय प्रमुख अभियन्ता
(अधिष्ठान-2 अनुभाग)**

**सिंचाई एवं जल संसाधन विभाग,
उत्तर प्रदेश**

**संख्या: जी-138/ई-2/ लखनऊ:
दिनांक: 10 मई, 2018**

विषय:- सम्मिलित राज्य अभियंत्रण सेवा परीक्षा-2013 में सहायक अभियन्ता (सिविल) के पद हेतु प्राप्त अधियाचनों में लम्बवत् एवं क्षैतिज आरक्षण-20 स्थिति स्पष्ट किए जाने के सम्बन्ध में।

अनु सचिव, सिंचाई एवं जल संसाधन अनुभाग-13, उत्तर प्रदेश शासन लखनऊ।

उपरोक्त विषयक कृपया शासकीय पत्रांक: 200/ सत्ताईस-13-2018-2/2016, दिनांक 30.01.18 का संदर्भ ग्रहण करने की कृपा करें, जिसके द्वारा लोक सेवा आयोग, उत्तर प्रदेश, इलाहाबाद के पत्रांक: 728/03/ई-3/2012-2013, दिनांक 23.01.2018 की प्रति संलग्न करते हुए लोक सेवा आयोग द्वारा विज्ञापित 17 विकलांगजनों के पदों के सम्बन्ध में स्थिति स्पष्ट किए जाने एवं चयन वर्ष 2011-12 से 2015-16 के मध्य वर्षवार रिक्त पदों का विवरण उपलब्ध कराने की वाँक्षना की गयी है।

उल्लेखनीय है कि इस कार्यालय के पत्रांक: जी-570/ई-2, दिनांक 11.09.17 एवं पत्रांक: जी-737 ई-2, दिनांक 01.11.2017 द्वारा सीधी भर्ती संवर्ग के सहायक अभियन्ता (सिविल) के स्वीकृत 804 पदों के सापेक्ष तत्समय कार्यरत सहायक अभियन्ताओं की संख्या को दृष्टिगत रखते हुए 166 पदों के आधिक्य की स्थिति को दर्शाते हुए 474 अभ्यर्थियों का ही चयन कराये जाने का अनुरोध शासन से किया गया, जिसमें चयन वर्ष 2016-17 के रिक्त पद भी सम्मिलित थे। तत्क्रम में शासकीय पत्रांक: 2113/सत्ताईस-13 -2017-02/2016, दिनांक 14.11.2017 द्वारा

लोक सेवा आयोग, उ०प्र०, इलाहाबाद को पत्र प्रेषित किया गया है।

शासकीय पत्रांक: 200/सत्ताईस-13-2018-2/2016, दिनांक 30.01.2018 द्वारा की गयी वाँक्षनानुसार लोक सेवा आयोग, उ०प्र०, इलाहाबाद को प्रेषित उक्त 474 पदों के सम्बन्ध में निम्न तालिकानुसार चयन वर्ष 2011-12 हेतु 255, चयन वर्ष 2012-13 हेतु 66, चयन वर्ष 2013-14 में 73, चयन वर्ष 2014-15 हेतु 51, चयन वर्ष 2015-16 हेतु 09 तथा चयन वर्ष 2016-17 हेतु 20 पद आगणित हो रहे हैं। इस प्रकार चयन वर्ष 2011-12 से 2015-16 तक (255+66+73+51+09=) कुल 454 पद तथा चयन वर्ष 2016-17 हेतु 20 पद उपलब्ध हैं।

क्रम संख्या	चयन वर्ष	रिक्त पदों की संख्या	ल पद
1	2011-12	255	454
2	2012-13	66	
3	2013-14	73	
4	2014-15	51	
5	2015-16	09	
6	2016-17	20	20
योग			474

उक्त तालिकानुसार चयन वर्ष 2011-12 से 2015-16 के मध्य उपलब्ध 454 पदों के सापेक्ष 13 पद विकलांगजन के उपलब्ध हो रहे हैं, जिसकी उपश्रेणी निम्नानुसार है:-

1. दृष्टिबाधित-05 पद
2. श्रवण बाधित-04 पद
3. चल निःशक्तता-04

लोक सेवा आयोग, उ०प्र०, इलाहाबाद के पत्रांक: 728/03/ई-3/2012-2013, दिनांक 23.01.18 के संदर्भ में उल्लेख करना समीचीन होगा कि वर्तमान में सीधी भर्ती संवर्ग में कोई भी विकलांग सहायक अभियंता (सिविल), विभाग में कार्यरत नहीं है, अतः उक्त स्थिति में विकलांगजन हेतु बैकलॉग, विशेष चयन के अन्तर्गत विज्ञापित 17 विकलांगजन में से 11 विकलांग अभ्यर्थी सहायक अभियंता (सिविल) विभाग को प्राप्त होने पर विकलांगजन का निर्धारित 24 पदों का कोटा पूर्ण हो जायेगा। उक्त 11 पदों की उपश्रेणी निम्नानुसार है:-

1. दृष्टिबाधित-04 पद
2. श्रवण बाधित-04 पद
3. चल निःशक्तता-03

अतः उपरोक्तानुसार पदों की स्थिति सूचनार्थ एवं अग्रेत्तर आवश्यक कार्यवाही हेतु प्रेषित है।

(संदीप कुमार खरे)
अधिशाली अभियन्ता(ई-2)
कृते प्रमुख अभियन्ता, सि० एवं
ज० सं० वि०

"प्रेषक, संख्या: 792/ सत्ताईस-13-2018-2/2016

सुधीन्द्र कुमार,
संयुक्त सचिव
उ०प्र० शासन।

सेवा में,
सचिव,
लोक सेवा आयोग,
उत्तर प्रदेश, इलाहाबाद ।

सिंचाई एवं जल संसाधन अनुभाग-
13 लखनऊ: दिनांक 18 मई, 2018

विषय:- सम्मिलित राज्य अभियंत्रण सेवा परीक्षा, 2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त अध्याचनों में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या- 642(1)/03/ई-3/2012-2013 दिनांक 30 जून 2017 के संदर्भ में अधिशासी अभियन्ता (ई-2), कार्यालय प्रमुख अभियन्ता, सिंचाई एवं जल संसाधन विभाग, उ०प्र० लखनऊ के पत्र संख्या- जी-138/ई-2 दिनांक 10.05.2018 द्वारा उपलब्ध करायी गयी सूचना की छायाप्रति संलग्न कर प्रेषित करते हुये अनुरोध है कि कृपया तदनुसार प्रकरण में आवश्यक कार्यवाही सुनिश्चित कराने का कष्ट करें।

संलग्नक: यथोपरि।

भवदीय,
(सुधीन्द्र कुमार)
संयुक्त सचिव"

"शीर्ष प्राथमिकता/स्पीड पोस्ट/फैक्स/ई-मेल

पत्र सं०-835/03/ई-3/2012-2013

प्रेषक,
जगदीश,
सचिव,
लोक सेवा आयोग, उ०प्र०,
इलाहाबाद।

सेवा में,
प्रमुख सचिव,
उत्तर प्रदेश शासन,
सिंचाई एवं जल संसाधन अनुभाग-13,
लखनऊ।

इलाहाबाद: दिनांक 31 मई, 2018

विषय:- सम्मिलित राज्य अभियंत्रण सेवा परीक्षा, 2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त अध्याचनों में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासन के पत्र संख्या- 792/सत्ताईस-13-2018-2/2018, दिनांक 18 मई, 2018 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से सम्मिलित राज्य अभियंत्रण सेवा परीक्षा-2013 में सहायक अभियन्ता (सिविल), सिंचाई विभाग के अन्तर्गत चयन वर्ष 2011-12 से 2016-17 तक के रिक्त होने वाले पदों के सम्बन्ध में अवगत कराया गया है।

2- इस सम्बन्ध में सूच्य है कि आयोग द्वारा शासन से सहायक अभियन्ता (सिविल), सिंचाई विभाग हेतु प्राप्त अध्याचन के अनुसार प्रश्नगत परीक्षा में चयन वर्ष 2011-12, वर्ष 2012-13 तथा 2013-14 तक के कुल-469 पदों को सम्मिलित कर चयन सम्बन्धी कार्यवाही की जा रही है। तदनुसार सहायक अभियन्ता (सिविल) के 469 पदों के लम्बवत् व क्षैतिज आरक्षण की स्थिति स्पष्ट करने की अपेक्षा आयोग के पत्र दिनांक 21-05-2015 द्वारा की गयी थी। शासन द्वारा उक्त पत्र का उत्तर पत्र दिनांक 28-09-2015 (संलग्नक-1) के माध्यम से प्रेषित किया गया, जिसमें लम्बवत् व क्षैतिज आरक्षण की स्थिति स्पष्ट कर दी गयी, किन्तु विकलांगजन हेतु क्षैतिज आरक्षण के अन्तर्गत 14 पदों को अलग से अध्याचित / विज्ञापित विकलांग विशेष चयन के 17 पदों में अन्तर्निहित बताया गया है। उक्त के सम्बन्ध में स्थिति स्पष्ट कराने हेतु आयोग द्वारा पुनः पत्र दिनांक 30-06-2017, शासन को प्रेषित किया गया, जिसके प्रत्युत्तर में शासन का पत्र

दिनांक 18-05-2018 प्राप्त हुआ है। उक्त पत्र में चयन वर्ष 2011-12, वर्ष 2012-13 व 2013-14 में क्रमशः 255+66+73=394 रिक्त पद ही बताये गये हैं जो कि पूर्व में बतायी गयी पदों की स्थिति से पूर्णतः भिन्न है। शासन द्वारा उक्त पदों का अलग-अलग लम्बवत् व क्षैतिज आरक्षण भी नहीं बताया गया। अतः आयोग द्वारा उक्त विसंगतियों के सम्बन्ध में स्थिति स्पष्ट करने हेतु यह अपेक्षा की गयी है कि इस पत्र के साथ संलग्न शासन के पत्र दिनांक 28-09-2015 में चयन वर्ष 2011-12 से चयन वर्ष 2013-14 तक के रिक्त कुल-469 पदों के अनुसार चयन की कार्यवाही सम्पन्न की जाय अथवा शासन के पत्र दिनांक 18-05-2018 में बताये गये चयन वर्ष 2011-12 से चयन वर्ष 2013-14 तक रिक्त 394 पदों पर चयन की कार्यवाही की जाय। यदि पत्र दिनांक 18-05-2018 के अनुसार चयन की कार्यवाही होनी हो तो चयन वर्ष 2011-12 से चयन वर्ष 2013-14 तक रिक्त 394 पदों की लम्बवत् व क्षैतिज आरक्षण की स्थिति स्पष्ट कर आयोग को शीघ्र सूचित किया जाना आवश्यक है।

3- उल्लेखनीय है कि शासन के पत्र सं०-1328/12-27-सि०-2-3(33)/12 दिनांक 28-05-2012 के माध्यम से विकलांग बैकलांग हेतु सहायक अभियन्ता (सिविल), सिंचाई विभाग के 17 पदों का अधिचयन प्राप्त हुआ था, जिसके आधार पर आयोग द्वारा उक्त पदों पर विज्ञापन की कार्यवाही की गयी है। सूच्य है कि शासन के पत्र दिनांक 28-09-2015 में चयन वर्ष 2011-12 से चयन वर्ष 2013-14 तक के रिक्त 469 पदों में क्षैतिज आरक्षण के अन्तर्गत बताये गये 14 विकलांगजन के पदों को उक्त विशेष चयन हेतु विज्ञापित 17 पदों में अन्तर्निहित बताया गया है। इससे यह प्रतीत हो रहा है कि विकलांग / विशेष चयन के अन्तर्गत अलग से विज्ञापित 17 पद रिक्त नहीं है। अतः शासन द्वारा प्रेषित प्रश्नगत पद हेतु अलग से 17 विकलांग पदों के सम्बन्ध में स्थिति स्पष्ट करते हुए यदि विशेष चयन /

विकलांग बैकलांग हेतु विज्ञापित 17 पदों या जिन विकलांग बैकलांग पदों पर चयन की कार्यवाही सम्पन्न की जानी हो तो उन पदों की उपश्रेणी के अनुसार चिन्हांकन कर स्थिति स्पष्ट किया जाना आवश्यक है। अतः अनुरोध है कि उपरोक्त प्रस्तर-2 एवं 3 में की गयी पृच्छा के सम्बन्ध में वांछित सूचना यथाशीघ्र उपलब्ध कराने का कष्ट करें, जिससे चयन की कार्यवाही शीघ्र पूर्ण की जा सके।

संलग्नक- यथोक्त।

भवदीय,
(जगदीश)
सचिव।"

"शीर्ष प्राथमिकता / समयबद्ध
संख्या-982/सत्ताईस-13-2018-2/2016

प्रेषक,
सुधीन्द्र कुमार,
संयुक्त सचिव,
उत्तर प्रदेश शासन।

सेवा में
प्रमुख अभियन्ता एवं विभागाध्यक्ष,
सिंचाई एवं जल संसाधन विभाग,
उ०प्र०, लखनऊ।

सिंचाई एवं जल संसाधन अनुभाग-
13 लखनऊ: दिनांक: 05 जून, 2018

विषय: सम्मिलित राज्य अभियन्तण सेवा परीक्षा 2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त धिचाचनों में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किये जाने के संबंध में।

महोदय,
उपर्युक्त विषयक अधिशासी अभियन्ता (ई-2), कार्यालय कार्यालय प्रमुख अभियन्ता,

सिंचाई एवं जल संसाधन विभाग, उ०प्र० लखनऊ के पत्र संख्या-जी-138/ई-2 दिनांक 10.05.2018 के क्रम में सचिव, लोक सेवा आयोग, उ०प्र०, इलाहाबाद के पत्र संख्या-835/03/ई-3/2012-2013 दिनांक 31.05.2018 (छायाप्रति संलग्न) का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से सम्मिलित राज्य अभियन्त्रण सेवा परीक्षा 2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त अध्याचनों में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किये जाने की अपेक्षा की गयी है।

2. अतः इस संबंध में मुझे यह कहने का निदेश हुआ है कि कृपया संलग्न पत्र में की गयी अपेक्षा के अनुक्रम में स्थिति स्पष्ट करते हुये अपनी आख्या स्पष्ट संस्तुति सहित शासन को 03 दिन के अन्दर निश्चित रूप से उपलब्ध कराने का कष्ट करें, ताकि स्थिति से लोक सेवा आयोग, उ०प्र०, इलाहाबाद को अवगत कराया जा सके।

संलग्नक: यथोपरि।

भवदीय
(सुधीन्द्र कुमार)
संयुक्त सचिव।"

**"कार्यालय प्रमुख अभियन्ता
(अधिष्ठान-2 अनुभाग)
सिंचाई एवं जल संसाधन विभाग,
उत्तर प्रदेश**

संख्या: जी-411/ई-2/ लखनऊ:
दिनांक: 21 जून, 2018

विषय:- सम्मिलित राज्य अभियन्त्रण सेवा परीक्षा-2013 में सहायक अभियन्ता (सिविल) के पद हेतु प्राप्त अध्याचनों में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किए जाने के सम्बन्ध है।

**अनु सचिव, सिंचाई एवं जल
संसाधन अनुभाग-13, उत्तर प्रदेश शासन
लखनऊ।**

उपरोक्त विषयक कृपया शासकीय पत्रांक: 902/सत्ताईस-13-2018-2/2016, दिनांक 05.06.2018 का संदर्भ ग्रहण करने की कृपा करें, जिसके द्वारा लोक सेवा आयोग, उत्तर प्रदेश इलाहाबाद के पत्रांक 835/03/ई-3/2012-2013, दिनांक 31.05.2018 की प्रति संलग्न करते हुए पत्र में उल्लिखित प्रस्तर-2 एवं प्रस्तर-3 में की गयी पृच्छा के सम्बन्ध में अपनी स्पष्ट आख्या उपलब्ध कराते हुए सम्मिलित राज्य अभियन्त्रण परीक्षा-2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त चयन वर्ष 2011-12 से 2013-14 तक अध्याचित 394 पदों के सम्बन्ध में लम्बवत् एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किए जाने की वांछना की है।

उक्त के सम्बन्ध में शासकीय पत्र दिनांक 05.06.18 द्वारा दिये गये निर्देशों के अनुपालन में सचिव, लोक सेवा आयोग, उ०प्र०, इलाहाबाद के पत्र दिनांक 31.05.18 के प्रस्तर-2 के सम्बन्ध में स्पष्ट करना है कि इस कार्यालय के पत्रांक:जी-138/ई-2, दिनांक 10.05.18 के क्रम में प्रेषित शासकीय पत्रांक: 792/सत्ताईस-13-2018-2/2018, दिनांक 18.05.2018 के अनुसार चयन वर्ष 2011-12, 2012-13 एवं 2013-14 तक अध्याचित क्रमशः (255+66+73) पद कुल 394 पदों के अनुसार की कार्यवाही किया जाना उपयुक्त होगा। उक्त अध्याचित 394 पदों का समेकित रूप से लम्बवत् एवं क्षैतिज आरक्षण के अनुसार अनारक्षित/आरक्षित पदों का विवरण निम्न तालिकानुसार होगा:-

चयन वर्ष 2011-12 से 2013-14 तक सहायक	चयन वर्ष 2011-12 से 2013-14 तक सहायक	अभ्यु क्ति

अभियंता (सिविल) सीधी भर्ती के 394 अधियाचित पदों का लम्बवत् आरक्षण		अभियंता (सिविल) सीधी भर्ती के 394 अधियाचित पदों का क्षेत्रिज आरक्षण		
सामान्य/अ नारक्षित	1 9 7	-		
पिछड़ा वर्ग	10 6	-		
अनुसूचित जाति	83	-		
अनुसूचित जनजाति	08	-		
स्वतंत्रता संग्राम सेनानी के आश्रितों हेतु (02 प्रतिशत)	-	स्वतंत्रता संग्राम सेनानी के आश्रितों हेतु (02 प्रतिशत)	0 7	
विकलांग अभ्यर्थियों के लिए (03 प्रतिशत)	-	विकलांग अभ्यर्थियों के लिए (03 प्रतिशत)	1 1	
	-	दृष्टिहीनता (पी०बी०)	0 4	
		श्रवण हास	0	
		(पी०डी०)	4	
		चल क्रिया सम्बन्धी निःशक्तता (ओ०एल०/ ओ०ए०)	0 3	
भूतपूर्व सैनिकों के लिए (05 प्रतिशत) -	-	भूतपूर्व सैनिकों के लिए (05 प्रतिशत)	ला गू न हीं	
उत्तर प्रदेश की महिलाओं हेतु (20 प्रतिशत)	-	उत्तर प्रदेश की महिलाओं हेतु (20 प्रतिशत)	7 8	सनादेश संख्या:1 8/1/99- का-2/99 दिनांक 30.08.9 9 द्वारा महिला ओं के लिये 20 प्रतिशत आरक्षण का प्राविधान है, तदनुसार क्षेत्रिज आरक्षण करते हुए उपयुक्त अभ्यर्थि यों का

				चयन किया जाए। यदि उपयुक्त महिला अभ्यर्थी उपलब्ध नहीं है तो यह पद पुरुष अभ्यर्थी से भरे जायेंगे।

स्थिति में विशेष चयन के अन्तर्गत विज्ञापित 17 पदों में से सहायक अभियंता (सिविल) के 13 पदों पर चयन किया जाना उपयुक्त होगा जिनकी उपश्रेणी निम्न तालिकानुसार होगी:-

दृष्टिबाधित (पी०बी)	श्रवण बाधित (पी०डी)	चलन निःशक्तता (ओ०एल०/ओ०ए०)
5	4	4

अतः उपरोक्तानुसार पदों की स्थिति सूचनार्थ एवं अग्रेत्तर आवश्यक कार्यवाही हेतु प्रेषित है।

(दिनेश्वर शुक्ला)
मुख्य अभियंता कार्मिक (ई-2)
कृते प्रमुख अभियन्ता, सि० एवं
ज०सं०वि०"

उक्त के अतिरिक्त सचिव, लोक सेवा आयोग, उ०प्र०, इलाहाबाद के पत्र दिनांक 31.05.18 के प्रस्तर-3 के सम्बन्ध में उल्लिखित करना है कि सिंचाई विभाग, उ०प्र० में सीधी भर्ती संवर्ग के सहायक अभियंता (सिविल) के कुल 804 पद स्वीकृत हैं जिसके सापेक्ष विकलांगजन के कुल 24 पद आरक्षित संवर्ग में आगणित होते हैं। गत पृष्ठ पर अंकित तालिकानुसार चयन वर्ष 2011-12 से 2013-14 तक विज्ञापित पदों के सापेक्ष क्षैतिज आरक्षण के अन्तर्गत विकलांगजन के कुल 11 पद आगणित हो रहे हैं। वर्तमान में सीधी भर्ती संवर्ग के अन्तर्गत कोई भी विकलांग संवर्ग का सहायक अभियंता (सिविल) कार्यरत नहीं है अतः सम्मिलित राज्य अभियंत्रण सेवा विकलांगजन हेतु (बैकलॉग/विशेष चयन) परीक्षा-2013 के अन्तर्गत विज्ञापित 17 पदों में से यदि 13 विकलांग अभ्यर्थी सहायक अभियंता (सिविल) के रूप में विभाग को प्राप्त हो जाते हैं तो स्वीकृत पदों के सापेक्ष विकलांगजन का निर्धारित 24 पदों का कोटा पूर्ण हो जायेगा। ऐसी

"प्रेषक, संख्या: 986/ सत्ताईस-13-2018-2/2018

सुधीन्द्र कुमार,
संयुक्त सचिव
उ०प्र० शासन।
सेवा में,
सचिव,
लोक सेवा आयोग,
उत्तर प्रदेश, इलाहाबाद।

सिंचाई एवं जल संसाधन अनुभाग-
13 लखनऊ: दिनांक 02 जुलाई 2018

विषय:- सम्मिलित राज्य अभियंत्रण सेवा परीक्षा 2013 में सहायक अभियन्ता (सिविल) पद हेतु प्राप्त अध्याचनों में लम्बवत एवं क्षैतिज आरक्षण की स्थिति स्पष्ट किये जाने के संबंध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या 835/03/ई-3/2012-2013 दिनांक 31 मई 2018 के संदर्भ में मुख्य अभियन्ता, कार्मिक (ई-2), कार्यालय प्रमुख अभियन्ता, सिंचाई एवं जल संसाधन विभाग, उ०प्र० लखनऊ के पत्र संख्या-जी-411/ई-2 दिनांक 21 जून, 2018 द्वारा उपलब्ध करायी गयी सूचना की छायाप्रति संलग्न कर प्रेषित करते हुये अनुरोध है कि कृपया तदनुसार प्रकरण में आवश्यक कार्यवाही कराने का कष्ट करें।

संलग्नक: यथोपरि।

भवदीय,

(सुधीन्द्र कुमार)
संयुक्त सचिव"

GOVERNMENT ORDERS

संख्या-15/20/95-का-4-2013

प्रेषक,

राजीव कुमार,
प्रमुख सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. समस्त प्रमुख सचिव/सचिव, उत्तर प्रदेश शासन।
2. समस्त विभागाध्यक्ष/प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।

कार्मिक अनुभाग-4
लखनऊ: दिनांक 09 जुलाई 2013

विषय:- लोक सेवा आयोग, उत्तर प्रदेश को समय से अधियाचन प्रेषित किया जाना।

महोदय,

उपर्युक्त विषयक, समसंख्यक शासनादेश दिनांक 30.09.1991, दिनांक 2.1.1996, दिनांक 27.05.1997, दिनांक 9.08.2007, दिनांक 29.12.2008, दिनांक 05.10.2009, दिनांक 23.11.2009, दिनांक 28.10.2010, दिनांक 3.10.2011, दिनांक 14.03.2012 एवं दिनांक 18.09.2012 के द्वारा आपसे यह अनुरोध किया गया है कि समय से चयन की कार्यवाही सुनिश्चित करने हेतु, सम्पूर्ण सूचनाओं का समावेश करते हुए, संबंधित पदों के अधियाचन 02 वर्ष पूर्व लोक सेवा आयोग को प्रेषित कर दिये जायें।

2. लोक सेवा आयोग, उत्तर प्रदेश द्वारा अवगत कराया गया है कि उपर्युक्त संदर्भित शासनादेशों में दिये गये सुस्पष्ट प्राविधानों निर्देशों के बावजूद विभागों द्वारा आयोग को समय से अधियाचन उपलब्ध नहीं कराये जा रहे हैं, जिससे चयन सम्पन्न कराने में विलम्ब हो रहा है।

3. लोक सेवा आयोग, उत्तर प्रदेश द्वारा उपलब्ध कराये गये सीधी भर्ती एवं पदोन्नति के अधियाचनों के नवीन प्रारूप संलग्न करते हुए, आपसे निम्नवत अनुरोध करने का मुझे पुनः निदेश हुआ है:-

(1) आगामी 03 वर्षों में घटित होने वाली रिक्तियों की गणना सुनिश्चित करते हुए, सम्मिलित राज्य/प्रवर अधीनस्थ सेवा परीक्षा सहित अन्य समस्त परीक्षाओं/चयनों के अधियाचन नवीन प्रारूपों पर, तत्काल लोक सेवा आयोग को प्रेषित करने का कष्ट करें। भविष्य में भी समस्त पदों के अधियाचन 03 वर्ष पूर्व लोक सेवा आयोग को उपलब्ध करा दिये जाए।

(2) प्रेषित किये जाने वाले अधियाचनों में समस्त सूचनाओं का समावेश करते हुए, सेवा

नियमावली की प्रति (हिन्दी/अंग्रेजी) भी लोक सेवा आयोग को प्रेषित करने का कष्ट करें।
(3) अधियाचन प्रेषित किये जाते समय समसंख्यक शासनादेश दिनांक 09.08.2007 के प्राविधानों का विशेष रूप से ध्यान रखा जाए तथा लम्बवत एवं क्षैतिज आरक्षण की स्थिति भी स्पष्ट की जाए। यदि विकलांग हेतु क्षैतिज आरक्षण के अन्तर्गत कोई रिक्ति आरक्षित की जानी हो, तो शासनादेश दिनांक 13.01.2011 के अनुसार स्पष्ट चिन्हांकन/विकलांगता का उल्लेख करते हुए, कार्मिक विभाग के शासनादेश दिनांक 03.02.2008 के प्रस्तर-24 के अनुसार प्रमाण-पत्र भी प्रेषित करने का कष्ट करें।

(4) विभिन्न चयनों एवं परीक्षाओं के अधियाचनों के संबंध में आयोग द्वारा की जाने वाली पृच्छाओं/संविक्षाओं का उत्तर समयबद्ध रूप से आयोग को उपलब्ध कराने का कष्ट करें।

4. कृपया उपर्युक्त निर्देशों का कड़ाई से अनुपालन सुनिश्चित करते हुए नवीन अधियाचन प्रारूपों पर सीधीभर्ती/पदोन्नति के पदों के अधियाचन यथाशीघ्र लोक सेवा आयोग को प्रेषित करने का कष्ट करें।

संलग्नक:- यथोपरि।

भवदीय
(राजीव कुमार)
प्रमुख सचिव

संख्या-15/20/95(1)-का-4-2013,
तदिनांक।

प्रतिलिपि, सचिव, लोक सेवा आयोग,
उत्तर प्रदेश, इलाहाबाद को उनके पत्र संख्या-
117/8/मिस/एस-10/2012-13, दिनांक
07.05.2013 के संदर्भ में सूचनार्थ प्रेषित।

आज्ञा से

(राजीव कुमार)
प्रमुख सचिव

"प्रेषक,
मुकुल सिंहल,
अपर मुख्य सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. समस्त अपर मुख्य सचिव/ प्रमुख सचिव,
उत्तर प्रदेश शासन।
2. समस्त विभागाध्याक्ष/प्रमुख कार्यालयाध्यक्ष,
उत्तर प्रदेश।

कार्मिक अनुभाग- 4 लखनऊ: दिनांक:
25 अक्टूबर, 2019

विषय: लोक सेवा आयोग, उत्तर प्रदेश
को समय से अधियाचन प्रेषित किया जाना।

महोदय,

उपर्युक्त विषयक समसंख्यक शासनादेश दिनांक 30.09.1991, 02.01.1996, 27.05.1999, 09.08.2007, 29.12.2008, 05.10.2009, 23.11.2009, 28.10.2010, 03.10.2011, 14.03.2012, 18.09.2012, 09.07.2013, 23.10.2013, एवं 01.10.2014, के द्वारा आपसे यह अनुरोध किया गया है कि समय से चयन की कार्यवाही सुनिश्चित करने हेतु सम्पूर्ण सूचनाओं का समावेश करते हुए संबंधित पदों के अधियाचन 03 वर्ष पूर्व लोक सेवा आयोग को प्रेषित कर दिये जायें।

2- उपर्युक्त के दृष्टिगत, आपसे निम्नवत् अनुरोध करने का मुझे पुनः निदेश हुआ है-

(1) कार्मिक अनुभाग-4 द्वारा निर्गत किये गये शासनादेश संख्या-15/5/2017-का-

2017, दिनांक 29 नवम्बर, 2017 एवं समसंख्यक पत्र दिनांक 12 नवम्बर, 2018 के अनुसार निर्देशों का अनुपालन पूर्ण रूप से सुनिश्चित किया जाये।

मुकुल सिंहल,
अपर मुख्य सचिव"

OFFICE ORDER

"सत्य प्रतिलिपि

उत्तर प्रदेश शासन कार्मिक अनुभाग-4

संख्या-28/5/80-का-4-1999

लखनऊ: दिनांक: 15 नवम्बर, 1999

कार्यालय-ज्ञाप

लोक सेवा आयोग, उ० प्र० द्वारा आयोजित प्रतियोगितात्मक परीक्षाओं तथा अन्य चयनों के आधार पर चयनित अभ्यर्थियों को नियुक्ति प्रदान करने एवं प्रतीक्षा सूची से नाम मांगने सम्बन्धी, पूर्व में निर्गत शासनादेशों के अनुपालन में आने वाली कठिनाईयों को ध्यान में रखते हुए, शासन द्वारा यह निर्णय लिया गया है, कि एकल संवर्गों के पदों को छोड़कर, अन्य समस्त सम्मिलित सेवाओं एवं अन्य चयनों में प्रतीक्षा सूची का निर्माण नहीं किया जायेगा और न ही किसी प्रकार की रिशफलिंग की कार्यवाही की जायेगी।

2-उपर्युक्त के सम्बन्ध में पूर्व में निर्गत समस्त शासनादेशों को अवक्रमित करते हुए, शासन द्वारा लिये गये अन्य महत्वपूर्ण निर्णय निम्नवत् हैं:-

(1) किसी चयन वर्ष विशेष में घटित होने वाली रिक्तियों को सही गणना सुनिश्चित करने के उपरान्त ही आयोग को अधियाचन भेजा जाय। अधियाचन भेजे जाने के उपरान्त यथासम्भव रिक्तियों में कोई परिवर्तन न किया जाय।

(2) चयनित अभ्यर्थियों की संस्तुतियाँ प्राप्त होने के उपरान्त उन्हें कार्यभार अवश्य

(2) शासनादेश दिनांक 09.07.2013 में अंकित प्राविधानों के अधीन आगामी 03 वर्षों में घटित होने वाली रिक्तियों की गणना सुनिश्चित करते हुए, सम्मिलित राज्य प्रवर अधीनस्थ सेवा परीक्षा सहित अन्य समस्त परीक्षाओं/चयनों के सीधी भर्ती के अधियाचन के संबंध में निर्धारित प्रारूप को अद्यावधिक करते संलग्नक के अनुसार परिवर्तित किया जा रहा है। कृपया नवीन प्रारूप पर, अधियाचन लोक सेवा आयोग को ससमय प्रेषित करने का कष्ट करें।

(3) प्रेषित किये जाने वाले अधियाचनों में डी. एफ. एफ., भूतपूर्व सैनिक विकलांगजन, तथा महिलाओं के आरक्षण की स्थिति स्पष्ट करते हुए शासनादेश संख्या सं०-35/65-03-11-78/99, दिनांक 13.01.2011 के अनुसार विकलांगजन हेतु स्पष्ट चिन्हांकन तथा विकलांगता के प्रकार के साथ-साथ आर्थिक रूप से कमजोर वर्गों के लिये अधिकतम 10 प्रतिशत आरक्षण प्रदान करने के संबंध में कार्मिक अनुभाग-2 के शासनादेश संख्या-1/2019/4/1/2002/का-2/19 टी० सी०-II, दिनांक 18.02.2019 एवं शासनादेश संख्या-3/2019/4/1/2002/का-2019 टी० सी०-11, दिनांक 14.03.2019 का भी स्पष्ट उल्लेख किया जाय। उक्त के साथ संबंधित पद की सेवा नियमावली की प्रति (हिन्दी/अंग्रेजी) भी लोक सेवा आयोग को अनिवार्य रूप से प्रेषित की जाए।

3- कृपया उपर्युक्त निर्देशों का कड़ाई से अनुपालन सुनिश्चित करने का कष्ट करें।

भवदीय,

ग्रहण कराया जाय, सिवाय उन मामलों के जहां सम्बन्धित विभाग/संस्था/संगठन को पूर्णरूप से समाप्त कर दिया गया हो अथवा किसी न्यायालय द्वारा कोई अन्यथा आदेश दिये गये हों।

(3) सम्बन्धित विभागों द्वारा संस्तुतियां / आवंटन प्राप्त होने के तीन माह के अन्दर नियुक्ति आदेश जारी करना सुनिश्चित किया जाय तथा अभ्यर्थी को प्रथमतः कार्यभार ग्रहण करने हेतु एक माह का समय प्रदान किया जाय, जिसे अपरिहार्य परिस्थितियों में एक माह तक और बढ़ाने पर विचार किया जा सकता है।

(4) चयनित अभ्यर्थियों के चरित्र सत्यापन एवं स्वास्थ्य परीक्षण कराने के उपरान्त ही नियुक्ति पत्र जारी किए जायें।

(5) निर्धारित अवधि में कार्यभार ग्रहण न करने वाले अभ्यर्थियों के अभ्यर्थन निरस्त करते हुए, घटित रिक्तियों को आगामी चयन वर्ष हेतु अग्रणीत कर दिया जाय।

(6) चयन सूची का उपयोग उसी चयन वर्ष की रिक्तियों के विरुद्ध किया जाय, जिसके लिए अध्याचन भेजा गया हो / चयन किया गया हो।

3-उपर्युक्त आदेश तत्काल प्रभाव से प्रभावी होंगे।

4-उपर्युक्त आदेशों का प्रत्येक स्तर पर कड़ाई से अनुपालन सुनिश्चित किया जाय।

ह० अपठनीय
सचिव

संख्या-28/5/80 (1) का-4-1999,
तदिनांक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

1- समस्त प्रमुख सचिव / सचिव, उत्तर प्रदेश शासन।

2-सचिव, लोक सेवा आयोग, उ०प्र०, इलाहाबाद।

3-समस्त विभागाध्यक्ष/प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।

4-समस्त मण्डलायुक्त/जिलाधिकारी, उत्तर प्रदेश।

5-सचिवालय के समस्त अनुभाग।

6-सचिव, विधान परिषद् / विधान सभा, उत्तर प्रदेश।

आज्ञा से
ह० अपठनीय
विशेष सचिव"

**"सत्य प्रतिलिपि
उत्तर प्रदेश शासन
कार्मिक अनुभाग-4**

संख्या-28/5/80-का-4-2014

लखनऊ: दिनांक: 26 मार्च, 2014

कार्यालय-ज्ञाप

समसंख्यक कार्यालय ज्ञाप दिनांक 15.11.1999 के द्वारा यह निर्देश निर्गत किये गये हैं कि लोक सेवा आयोग, उत्तर प्रदेश द्वारा आयोजित की जाने वाली प्रतियोगितात्मक परीक्षाओं तथा अन्य चयनों के आधार पर चयनित अभ्यर्थियों के कार्यभार ग्रहण न करने पर, एकल पदीय संवर्गों को छोड़ते हुए, अन्य संवर्गों में प्रतीक्षा सूची अथवा रिशफलिंग की कार्यवाही न की जाय।

2. शासन के समक्ष आने वाली कठिनाइयों के दृष्टिगत, अधोहस्ताक्षरी को यह कहने का निदेश हुआ है, कि सम्यक् विचारोपरान्त कार्यालय ज्ञाप दिनांक

15.11.1999 के प्रस्तर-2(2) को निम्नवत् प्रतिस्थापित किये जाने की राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं:-

2(2)- चयनित अभ्यर्थियों की संस्तुतियां प्राप्त होने के उपरान्त उन्हें कार्यभार अवश्य ग्रहण कराया जाय किन्तु जहां संबंधित विभाग/संस्था/संगठन को पूर्ण रूप से समाप्त कर दिया गया हो अथवा किसी मा. न्यायालय द्वारा कोई अन्यथा आदेश पारित किया गया हो अथवा त्रुटिपूर्ण अधियाचन प्रेषित किये जाने/अधियाचन में अंकित पदों के उपलब्ध न होने पर चयनित अभ्यर्थियों को कार्यभार ग्रहण कराया जाना अनिवार्य नहीं होगा।

3. इस कार्यालय ज्ञाप के प्राविधान ऐसे चयनों में भी प्रभावी होंगे, जिनसे संबंधित संस्तुतियां आयोग द्वारा संबंधित विभागों को उपलब्ध करायी जा चुकी हैं।

4. कृपया उपर्युक्त निर्देशों का प्रत्येक स्तर पर कड़ाई से अनुपालन सुनिश्चित करने का कष्ट करें।

ह० अपठनीय
प्रमुख सचिव

संख्या-28/5/80 (1)-का-4-2014,
तद्दिनांक।

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित :-

1-समस्त प्रमुख सचिव/सचिव, उत्तर प्रदेश शासन।

2-सचिव, लोक सेवा आयोग, उत्तर प्रदेश, इलाहाबाद।

3-समस्त विभागाध्यक्ष / प्रमुख कार्यालयाध्यक्ष, उत्तर प्रदेश।

4- प्रमुख सचिव, विधान परिषद/विधान सभा, उत्तर प्रदेश।

5- सचिवालय के समस्त अनुभाग।

आज्ञा से
ह० अपठनीय
विशेष सचिव"

Copy of the English Translation of the above documents is Addendum-I

ANALYSIS

25. The selection to the post of Assistant Engineer is regulated by the 2007 Rules enacted in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. These Rules were notified on 16.11.2007.

26. Rule 3(l) defines 'year of recruitment' which means a period of twelve months commencing on the first day of July of the calendar year.

27. Rule 4 provides for the cadre of service, according to which, the strength of service of each □ and every category of post shall be such as determined by the State from time to time. Clause (a) of the proviso to sub-rule (2) of Rule 4 gives powers to the appointing authority to leave unfilled or hold in abeyance any vacant post, without thereby entitling any person to compensation.

28. Rule 5 provides for source of recruitment i.e. 50 2/3 percent posts are to be filled in by direct recruitment and 49 1/3% posts through promotion.

29. Rule 14 deals with the determination of the vacancies, according to which, the appointing authority is to determine and intimate to the Commission the number of vacancies to be filled during the course of the year of recruitment. Rule

15 lays down the procedure for direct recruitment.

30. A plain reading of the Rules shows that the appointing authority is enjoined with the duty (i) to determine the number of vacancies and (ii) intimate to the Commission, the number of the vacancies to be filled during the course of the year of recruitment. The word employed in Rule 14, 'year of recruitment', marks significance, particularly, when the same stands defined under Rule 3(l) as a period of twelve months commencing on the first day of July of a calendar year. Meaning thereby, that the determination of the vacancies is to be made on the basis of year of recruitment i.e. twelve months commencing on the first day of July of the calendar year. Earlier, the service of Engineers of the Irrigation Department (Group 'B') was regulated by the Uttar Pradesh Service of Engineers (Irrigation Department) (Group 'B') Service Rules, 1993. Under Rule 3(j) of the said Rules, 'year of recruitment' was defined in a similar manner. Under Rule 14 of the said Rules also, there was provision for determination of the vacancies to be filled up and for intimation of the same to the Commission. Rule 14 of the earlier Rules was as follows:

"14. Date of Determination of Vacancies. The appointing authority shall determine and intimate to the Commission the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for a candidate belonging to Scheduled Castes, Scheduled Tribes and other categories under Rule 6."

(emphasis supplied)

31. It is noteworthy that earlier the phrase 'year of recruitment' was not used in Rule 14 but only the word 'year'. In Rule 14 of the present Rules, 2007, there is a clear departure in the language used. Now, the phrase 'year of recruitment' has been employed. It clearly evinces that determination of vacancies has direct correlation with the vacancies occurring during the course of the year of recruitment and which alone would be intimated to the Commission for being filled.

32. The advertisement was issued on 24.12.2013, therefore, bearing in mind the rule in question, 'the year of recruitment' was the period between 01st July, 2013 and 30th June 2014 i.e. recruitment year 2013-14. Thus the vacancies till the recruitment year 2013-14 only could have been advertised. However, the requisition dated 07.11.2013 sent by the State to the Commission was not only for the vacancies upto the recruitment year 2013-14 but also included the future vacancies of the recruitment years 2014-15 and 2015-16, which apparently was not in consonance with the Rules.

33. This leads us to contention made on behalf of the candidates that the requisition dated 07.11.2013 sent by the State including therein the future vacancies of 2014-15 and 2015-16 was in terms of the Government Order dated 09.07.2013, reiterated by Government Order dated 25.10.2019. The contention is that Rule 14 only makes provision for annual determination of vacancies. It does not whittle down the authority of the State Government to issue executive instructions to include future vacancies also while making any recruitment.

34. The interplay between the statutory rules/regulations having statutory force and Government Orders referable to the power under Article 166(1) of the Constitution of India has been subject matter of consideration by the Supreme Court in many cases. In **Sant Ram Sharma**, it has been observed as follows:

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

35. Hon'ble Apex Court in **A.B. Krishna and Ors. (supra)**, observed as under:

"8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section

39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter."

36. In **Jaiveer Singh and Ors. vs. State of Uttarakhand and Ors.**, 2023 SCC OnLine SC 1584, 2023 INSC 1024, Hon'ble Apex Court observed as follows:

"49. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it."

37. In **Bank of Baroda and Another vs. G. Palani and Others**, (2022) 5 SCC 612, following was observed:-

"14. First we come to the rigour of the regulations, The regulations have statutory force, having framed in exercise of the powers under section 19(2)(1) of the 1970 Act and are binding. They could not have been supplanted by any executive fiat, order or joint note, which has no statutory basis. The joint note of the officers also had no statutory force behind it and could not have obliterated any of the provisions of 1970 act or the existing regulations. Thus, joint notes could not have taken away the rights that were available under the 1995 pension regulations to the officer."

38. Recently, the aforesaid law came to be reiterated in **Parth Das & Ors (supra)**, wherein the following was observed:

"40. Applying the above principles of law, it can safely be concluded that executive instructions issued under Article 166(1) of the Constitution of India cannot override the act done under the statute and the rules made thereunder. The executive instructions can only supplement the provisions of the act and the rules in case of any ambiguity or if gaps are to be filled but such executive instructions cannot supplant the specific provisions which already occupy the field. It is not the case of the government that to fill the gaps and to supplement the TSR Act and TSR Rules, the NRP is relevant, therefore, Abeyance Memorandum or Cancellation Memorandum may be upheld. In absence of the same, in our view, the action of the government in cancelling the process of recruitment for the post of Enrolled Followers is not justified and would amount to arbitrary exercise of power."

39. The Rules 2007 have been framed under the proviso to Article 309 of the Constitution. The Rules makes specific provision for determination and intimation to the Commission the number of vacancies to be filled during the course of the year of recruitment. The field is already occupied. Consequently, the G.O. dated 09.02.2013 and 25.10.2019, which are general in nature, cannot be applied to the recruitment in question, in view of the principles laid down by the Apex Court in the above noted judgments. The executive instructions cannot supplant the Rules framed under proviso to Article 309 of the Constitution.

40. In the matter of Public employment, the provisions of Article 14 and 16 of the Constitution would come into play. Article 16 of the Constitution grants equality in the matter of opportunity to employment in the public office. It is trite that the eligibility of a candidate is to be considered for appointment with reference to the last date of making of application for recruitment. If the submission in support of inclusion of the future vacancies of year 2014-15 and 2015-16 is accepted, the effect would be that the candidates who would have acquired eligibility for appointment to the vacancies arising in the year 2014-15 and 2015-16 would stand excluded even from the zone of consideration, as on the last date of making application pursuant to the advertisement dated 24.12.2013 they may be found lacking of the eligibility. Such candidates had the legitimate expectation to participation and consideration for appointment against the vacancies occurring during the course of the recruitment year in which they acquire the eligibility. This is also the objective of Rule 14 read with the definition clause of the 'year of recruitment'. It ultimately

results in according equal opportunity to the eligible section to public employment.

41. Supplementary affidavit filed by the State discloses the justification for the reduction of the vacancies of Assistant Engineer (Civil) from 640 to 394. Admittedly, the total sanctioned posts of Assistant Engineer (Civil) in Irrigation Department was 1588, out of which, 804 posts were for direct recruits and 784 for promotees. The total number of vacancies advertised on 24.12.2013 of Assistant Engineer (Civil) is 640 vide two requisitions; (a) dated 06.07.2012 for recruitment year 2011-12 (262 posts) and (b) dated 07.11.2013 for the recruitment years 2012-13, 2013-14, 2014-15 and 2015-16 ($121 + 86 + 79 + 92 = 378$).

42. According to the State, there was error in calculation of the vacancies, while sending the requisitions. The errors were on two counts. The first one was in respect of the calculation of the posts already occupied by the direct recruits. According to the stand taken in the supplementary counter affidavit, out of 804 posts reserved for direct recruits, 330 posts were already occupied, leaving only 474 vacant posts. This mistake was brought to the notice of the State Government by the Chief Engineer Karmik (E-2), Irrigation and Water Resources Department, U.P. through his report dated 01.11.2017. The State Government, by its letter dated 14.11.2017, directed the UPPSC to make recruitment only for 474 posts, as against the requisition made to it.

43. The second error was in respect of wrongful inclusion of vacancies of the future years. It was corrected by the State by its letter dated 02.07.2018, to the Commission. It was a conscious decision of

the State Government, taken on basis of various interdepartmental communications dated (i) 31.05.2018 by Commission to the State Government (ii) 05.06.2018 by State Government to the Department (iii) 21.06.2018 by Chief Engineer Karmik (E-2) to the State Government, and (iv) 02.07.2018 by State Government to the Commission (details stated in Paragraphs 7 & 8).

44. As a result, there was a further reduction of 80 vacancies pertaining to the recruitment years 2014-15, 2015-16 and 2016-17 ($51 + 09 + 20$). At this stage, it is also relevant to note that after the recruitment in question, two more recruitment exercises have been held in respect of the vacancies of subsequent years.

45. The entire basis of the determination of the vacancies hinges upon the facts and the figures exhibited by the State in the supplementary counter affidavit, however, in absence of any rebuttal to the same, this Court has no option but to accept the said facts and figures as correct.

46. Moreover, the advertisement itself stipulates that the number of the vacancies can be increased or decreased. The error in calculation of vacancies can definitely be corrected under the said clause.

47. Significantly, the mistake was corrected much before declaration of the final result. There is no allegation of any malice in facts or law and it was always open for the State to rectify the mistake which was committed while wrongly determining the vacancies.

48. Obviously, there cannot be any change in the eligibility criteria, once the selection process has started, but the said legal proposition cannot be pressed in

service, where the determination of the vacancies is erroneous. Therefore, reliance placed upon **Tej Prakash Pathak (supra)** is out of context as in the said case, the eligibility criteria came to be changed in the midst of the recruitment process. □

49. Likewise, **Parth Das & Ors (supra)** although holds that the rules of the game cannot be changed after the game has begun but that was for upholding the sanctity of the statutory rules over executive instructions. The appellants therein had participated in the process of selection held as per the statutory rules but at the stage of character verification, the selection process was kept in abeyance and later cancelled on the basis of the New Recruitment Policy. The same was found contrary to the field already occupied by the Rules and therefore, the decision to cancel the recruitment on basis thereof was held to be illegal.

50. The determination of the vacancies and the requisition for employment is the prerogative of the State and the Courts of law generally do not interfere in their decision until and unless the same is found to be ex-facie illegal or arbitrary. In **Ajith G. Das and others (Supra)**, the Supreme Court observed as under:

"The primary role of the KPSC is to aid and facilitate the selection process. It functions as an autonomous body within the framework laid down by the Constitution of India, ensuring transparency and merit-based recruitment. However, its autonomy is confined to the Conduct of the selection process. Determination of the number of vacancies and the requisition for employees remain

the prerogative of the State Government, which is the employer. This fundamental distinction was overlooked by the High Court, leading to an erroneous Interpretation of the KPSC's authority."

51. Certainly, mere participation in a selection process or placement in the select list would not create indefeasible right for appointment, the only exception being where the action is found to be arbitrary. What is arbitrary depends upon the facts and the circumstances of the individual case. No strict jacket formula can be applied.

52. The State has been successful in disclosing the logic and rationale behind reduction of the vacancies from the one originally advertised. Consequently, the submission advanced against the action of the State and the Commission in not filling up all the vacancies advertised does not merit acceptance.

53. In **A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and another (1986) 2 SCC 667**, it was observed as under :-

"We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

54. The allegation of the discrimination on the count that barring the Assistant Engineer (Civil) there has been no proportionate reduction of vacancies in other departments is also not worthy of acceptance, inasmuch as, law does not contemplate doctrine of negative equality.

In **State of Bihar and others vs. Kameshwar Prasad Singh and another**, (2000) 9 SCC 94, the following was observed:-

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh v. New Delhi Municipal Committee (1996) 2 SCC 459 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is up-held, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secy., Jaipur Development Authority v. Daulat Mal Jain (1997) 1 SCC 35, this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

31. In State of Haryana v. Ram Kumar Mann (1997) 3 SCC 321 this Court observed:

"The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and

he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

55. In **Kreetarth Mohan (supra)**, the requisition dated 07.11.2013 was under challenge which included the future vacancies for the recruitment years 2014-15 and 2015-16. Division Bench negated the challenge on the ground that the Government Order dated 09.07.2013 providing for inclusion of anticipated vacancies was not impugned. Neither the statutory rules were interpreted nor any legal principle was laid down. The relevant observations from the said judgment are as under:

"(15) The petitioner in the instant writ petition has assailed the the letter dated 7.11.2013 sent by the Secretary, Irrigation Department to the U.P. Public Service Commission, informing the vacancy of the post of Assistant Engineer (Civil) in Engineering Cadre for selection relating to the selection years 2013-2014, 2014-2015 and 2015-2016. It appears that the said requisition was sent to the Commission in compliance of the directions issued vide Government Order dated 9th July, 2013, which, in our opinion, is a consequential

act, which cannot be said to be unjustified or reasonable.

(16) Surprisingly, the petitioner has not challenged the Government Order dated 9th July, 2013 knowing well that the requisition for three selection years has been sent in compliance of the said Government Order. The intention behind sending requisition after calculation of vacancies going to fell vacant is that the considerable long time is consumed in completing the selection process and not filling up of the vacancies in time results causes State work to suffer, which ultimately affects the public at large."

56. The learned Single Judge took notice of the Division Bench judgment and proceeded to decide the case after considering the statutory provisions which are governing the field. In our opinion, the view taken by the learned Single Judge is premised upon the statutory framework as well as the precedents on the said subject.

57. In **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111**, Hon'ble Supreme Court in para 59 held as under:-

"59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See Ram Rakhi v. Union of India, Delhi Admn. (NCT of Delhi) v. Manohar Lal, Haryana Financial Corpn. v. Jagdamba Oil Mills and Nalini Mahajan (Dr) v. Director of Income Tax (Investigation).]"

58. The said decision came to be followed in the case of *Escorts Ltd. v. Commissioner of Central Excise, Delhi-II*, (2004) 8 SCC 335, the following was observed.-

"8. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

59. In *Bharat Petroleum Corporation Ltd. And another vs N.R. Vairamani And Another 2004 (8) SCC 579*, a note of caution was flagged that the Courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the situation of the decision on which reliance is placed. It was held as under.-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D).

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,..."

60. The aforesaid principles of law came to be referred to in the case of *State of Orissa Vs. MD. Illiyas 2006 (1) SCC*

275 and Mavilayi Service Cooperative Bank Ltd. & Others Vs. Commissioner of Income Tax, Calicut & another 2001 (7) SCC 90.

61. Now referring to the precedents relied on behalf of the appellants/ writ petitioners, the Court finds that **Malik Mazhar Sultan (supra)** has no application since the Rule 8 of the **U.P. Higher Judicial Service Rules, 1975** provided for taking into account anticipated vacancies of the next two years. However, under the 2007 Rules, the position is quite different. Thus, the said analogy cannot be applied. The same is the position with **Vivek Kaisth (supra)** also, as it in fact followed **Malik Mazhar Sultan (supra)**.

62. **Manoj Kumar (supra), Vansh (supra), Shmita Srivastava (supra)** are those cases wherein the Apex Court had discussed the injurious consequences arising out of arbitrary and illegal administrative action and had resorted to apply compensation/ restitution theory. However, the said judgments have no application as here the action of the State is neither arbitrary nor illegal.

CONCLUSION

63. In view of the foregoing discussion, the legal corollary would be that the judgment in the case of **Kreetarth Mohan (supra)** upholding the requisition dated 07.11.2013 including the future vacancies for the recruitment years 2014-15 and 2015-16 does not lay down any ratio or principle of law. Conversely, the judgments of the learned Single Judge in **Satya Prakash Yadav (supra), Israr Ahmad (supra)** and **Kamal Kumar Pandey (supra)** holding that in view of Rule 3(l) and Rule 14 of the 2007 Rules, the vacancies till the recruitment year

2013-14 only could have been filled, lay down the correct law. Accordingly, the exclusion of the vacancies of the future recruitment years is not found to suffer from any illegality.

64. Accordingly, the present appeals/writ petitions, being devoid of merits, are liable to be dismissed.

65. Resultantly, **dismissed**.

ADDENDUM-I

No.: 1552/12-27-Sin.-2-3(80)/06

From,

Naveen Chandra Tripathi
Joint Secretary
Government of Uttar

Pradesh

To,

Secretary,
Public Service Commission,
U.P., Allahabad

Irrigation Section □ 2

Lucknow : Date 06 July, 2012

Subject Requisition regarding selections to be made through direct recruitment on the vacant posts for the selection year 2011-12.

Sir,

Kindly peruse the Letter No. 1992/E-2, Date 15-06-2012 (photocopy enclosed), issued by the office of the Engineer-in-Chief, Irrigation Department, Lucknow, U.P., on the above mentioned subject.

2- In this regard, I have been directed to state that, against 267 vacant

posts for the selection year 2011-12, after effecting a deduction of 02 percent, requisition is being made for a total of 262 posts to be filled. Of these, 50 percent i.e. 131 posts are for the General Category, 21 percent i.e. 55 posts for the Scheduled Castes, 27 percent i.e. 71 posts for the Other Backward Classes, and 02 percent i.e. 05 posts for the Scheduled Tribes. Accordingly, the requisition, along with the Service Rules, is being forwarded herewith in two copies.

3-Therefore, it is requested to conduct the recruitment against the aforesaid vacancies and that the list of selected Assistant Engineers be kindly made available to the Government forthwith.

Enclosure : as aforesaid.

Sincerely,
Sd/-
(Naveen Chandra Tripathi)
Joint Secretary

Endorsement No. and date as above:

Copy forwarded to the following for information and necessary action :

1. Controller of Examination, Public Service Commission, U.P., Allahabad
2. Senior Staff Officer (E-2), Irrigation Department, U.P., Lucknow.

By order
Sd/-
(Bhagwati)
Under Secretary

True Copy

No.: 2953/13-27-Sin.-2-3(80)/06

From,
Mayur Maheshwari
Special Secretary
Government of Uttar
Pradesh

To,
Secretary,
Public Service
Commission,
U.P., Allahabad

Irrigation Section - 2
Lucknow Date 07 November,
2013

Subject - Requisition regarding conducting selection through direct recruitment against vacant posts of Assistant Engineer (Civil) for the selection years 2012-13, 2013-14, 2014-15 and 2015-16.

Sir,

With reference to the above-mentioned subject, kindly pursue Letter No. 2239/E-2 dated 10-07-2012; Letter No. G-444/E-2/Assistant Engineer (Direct Recruitment Requisition) dated 23-09-2013; and Letter No. G-393/E-2/Assistant Engineer (Direct Recruitment) dated 30-09-2013 (photocopies enclosed), issued by the office of Engineer-in-Chief, Irrigation Department, Uttar Pradesh, Lucknow.

2-The details of vacant posts of Assistant Engineer (Civil) in the Irrigation Department for the selection years 2012-13, 2013-14, 2014-15 and 2015-16 are as follows:

(a) For the selection year 2012-13, against 123 vacant posts to be filled through direct recruitment, after effecting a

02 percent deduction, the enclosed requisition for a total of 121 vacant posts is as follows:

- 1) 50 percent for the General Category= 61 posts
- (2) 21 percent for the Scheduled Caste= 25 posts
- (3) 27 percent for the Other Backward Classes= 33 posts
- (4) 02 percent for the Scheduled Tribe= 02 posts

(b) For the selection year 2013-14, against 88 vacant posts to be filled through direct recruitment, after effecting a 02 percent deduction, the enclosed requisition for a total of 86 vacant posts is as follows:

- (1) No. of posts for the Unreserved= 43 posts
- (2) No. of posts for the Scheduled Caste=18 posts
- (3) No. of posts for the Scheduled Tribe =02 posts
- (4) No. of posts for the Other Backward Class= 23 posts

(c) For the selection year 2014-15, against 81 vacant posts to be filled through direct recruitment, after effecting a 02 percent deduction, the enclosed requisition for a total of 79 vacant posts is as follows:

- (1) No. of posts for the Unreserved = 39 posts
- (2) No. of posts for the Scheduled Caste = 17 posts
- (3) No. of posts for the Scheduled Tribe = 02 posts
- (4) No. of posts for the Other Backward Class = 21 posts

(d) For the selection year 2015-16, against 94 vacant posts to be filled through direct recruitment, after effecting a 02 percent deduction, the enclosed requisition for a total of 92 vacant posts is as follows:

- (1) No. of posts for the Unreserved= 46 posts
- (2) No. of posts for the Scheduled Caste= 19 posts
- (3) No. of posts for the Scheduled Tribe= 02 posts
- (4) No. of posts for the Other Backward Classes= 25 posts

3. In the matter in question, I have been directed to state that, in accordance with the above details, recruitment against the said vacancies of a total of 378 posts for the selection years 2012-13, 2013-14, 2014-15 and 2015-16 be conducted and that the list of selected Assistant Engineers (Civil) be kindly made available to the Government at the earliest.

Enclosure : as aforesaid

Sincerely,
Sd/- illegible
Special Secretary

Endorsement No. and date as above:

Copy forwarded to the following for information and necessary action-

- 1. Controller of Examination, Public Service Commission, U.P., Allahabad
- 2. Engineer-in-chief and Head of Department, Irrigation Department, U.P., Lucknow.

By order
Sd/- illegible
Deputy Secretary

**Office of the Engineer-in- Chief
(Establishment-2 Anubhag)
Irrigation and Water Resource
Department, Uttar Pradesh**

Letter No:G-737/E-2/

Lucknow: Date: 1 Nov. 2017

Subject: Regarding excess vacancies sent to Public Service Commission for direct recruitment of Assistant Engineer (Civil).

**Under Secretary, Irrigation and
Water Resource Section-13, Government
of Uttar Pradesh, Lucknow**

Kindly peruse the letter No. G-570/E-2/requisition, dated 11.09.2017 on the above subject of this office, whereby, in compliance with the orders received vide Government letter No. 1780/Twenty Seven-13-2017-2/2016, dated 30.08.17, a request was made to the Public Service Commission, Uttar Pradesh, Allahabad not to advertise the 69 posts requisitioned for the selection year 2016-17 in respect of the posts of Assistant Engineer (Civil) of Direct Recruitment Cadre, resulting in excess posts over and above the sanctioned quota due to erroneous calculation and further sought a decision regarding recruitment of only 478 candidates against 640 posts advertised by the Public Service Commission in December 2013 for filling up the posts of Assistant Engineer (Civil) of Direct Recruitment Cadre.

In connection with the above, as per the instructions given on telephone on 31.10.17, after re-examination of the Government appointment orders issued at the Government level from among the 182 candidates selected by the Public Service Commission, Uttar Pradesh, Allahabad

under the Combined State Engineering Examination-2011, it is to be informed that in respect of 182 candidates selected by the Public Service Commission, appointment orders of 174 candidates have been issued through a total of 11 Government orders. By amending the number of remaining candidates, the number of posts in row-2 of Table-2 is shown as 08 instead of 04, accordingly the revised information is as follows:-

Revised table

Sr. No.	Description	No. of vacancies
1	Number of posts of Assistant Engineer (Civil) in Direct Recruitment Cadre currently working/filled	305
2	Number of candidates remaining (whose appointment orders are to be issued at the government level) out of 182 selected by Public Service Commission, Uttar Pradesh, Allahabad in Combined State Engineering Examination-2011 related to the requisitioned posts for the selection year 2009-10 and 2010-11)	08
3	Posts advertised for persons with disabilities in the (Backlog/Special Selection) Examination-2013 for	17

	Persons with Disabilities by the Public Service Commission, Uttar Pradesh, Allahabad	
4	As a result of the above, the number of filled posts of Assistant Engineer (Civil) in the direct recruitment cadre	330
5	Number of sanctioned posts of Assistant Engineer (Civil) in the direct recruitment cadre in the Irrigation and Water Resources Department, Uttar Pradesh	804
6	Current vacant posts of Assistant Engineer (804-330) as per the status of filled posts against sanctioned posts of Assistant Engineer (Civil) of Direct Recruitment Cadre.	474
7	Number of requisitioned posts for the selection year 2011-12 to 2015-16 regarding which selection proceedings are in progress by Public Service Commission, Uttar Pradesh, Allahabad.	640
8	Currently, 474 vacant posts of Assistant Engineer (Civil) in the direct recruitment cadre	166

	are available. However, there is an excess of posts (640-474=166) considering the 640 requisitioned posts for the selection years 2011-12 to 2015-16, for which the Public Service Commission is taking action.	

Therefore, in continuation of the letter no. G-570/E-2, dated 11.09.17 of this office, it is required to send the revised information as per the above table along with the request to take cognizance of the status of posts as per the above table in place of Table-2 mentioned in the letter dated 11.09.17 of this office and take further action accordingly.

Sd/-
(Dhyan Singh)
Chief Engineer Personnel (E-2)
For Engineer-in-Chief,
Irrigation and Water Resource
Department

**Number: 2113/Twenty Seven-13-
2017-02/2016**

From,
Shambhu Nath,
Secretary,
Government of U.P.

To,
Secretary,
Public Service
Commission,
Uttar Pradesh,
Allahabad.

Irrigation and Water Resources
Section-13 Lucknow: Dated 14
November, 2017

Subject:- Regarding the requisition sent for selection through direct recruitment on the vacant posts of Assistant Engineer (Civil) in the selection years 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

Sir,

Kindly take note of the Government letters referred to above, bearing letter No. 1552/12-27-Sin-2-3 (80)/06 dated 06.07.2012 and letter no. 2953/13-27-Sin-2-3 (80)/06 dated 07.11.2013, through which requisitions were forwarded to the Uttar Pradesh Public Service Commission, Allahabad, for selection under the Direct recruitment quota to the post of Assistant Engineer (Civil), as detailed below: 262 posts for selection year 2011-12, 121 posts for selection year 2012-13, 86 posts for selection year 2013-14, 79 posts for selection year 2014-15 and 92 posts for selection year 2015-16, aggregating to a total of 640 posts. Pursuant thereto, the Uttar Pradesh Public Service Commission, Allahabad, has already initiated the process of selection by advertising the Combined State Engineering Services (General Selection) Examination, 2013, on 24.12.2013.

2. In this regard, as per the information furnished through the Letter of the Chief Engineer (E-2) bearing letter No G-570/E-2/ requisition dated 11.09.2017 and Letter No. G-737/E-2 dated 01.11.2017 (Photocopies enclosed), after the appointment/ promotion to the post of Assistant Engineer (Civil) in both cadres, a single seniority list is issued under the provisions of Rule 8 of the Uttar Pradesh Government Servants Seniority Rules, 1991 which functions as the feeder cadre for promotion to the post of Engineer-in-

Chief (the highest post). Therefore, the calculation of the requisitioned posts for Assistant Engineers in the direct recruitment cadre ought to have been done by considering the single seniority list of Assistant Engineers. This would have made it clear that as per the resultant vacancies available in each selection year, how many Assistant Engineers of the Direct Recruitment Cadre would be promoted in the eligibility list prepared for promotion from Assistant Engineer to Executive Engineer after promotion to Executive Engineer and higher posts. The requisitioned posts should have been sent to the Government accordingly. However, the requisition was forwarded to the Government without undertaking the calculation of the Direct Recruitment/Promotion Cadre. As a result thereof, at present, upon including the working Assistant Engineers of the Direct Recruitment Cadre and the 640 posts requisitioned from the selection year 2011-12 to the selection year 2015-16, there is an excess of 166 posts as compared to the total sanctioned posts of 804 of the Direct Recruitment Cadre. Thus, at present, only 474 posts of Assistant Engineer (Civil) are vacant.

3 Therefore, in this regard, I am directed to say that in view of the situation described, through the reference letters of the Government, kindly select only 474 candidates against the requisition sent for selection to 640 posts of Assistant Engineer (Civil) for the selection year 2011-12 to 2015-16 and provide the recommendation to the Government.

Enclosures -as above.

Sincerely,
Sd/-

(Shambhu Nath)
Secretary.

**Office of the Engineer-in-Chief
(Establishment-2 Section)
Irrigation and Water Resource
Department, Uttar Pradesh**

**No. G- 138 / E-2/
Lucknow: Date: 10th May, 2018**

Subject:

Regarding clarification of the status of vertical and horizontal reservation in the requisitions received for the post of Assistant Engineer (Civil) in the Combined State Engineering Services Examination-2013.

**Under Secretary, Irrigation &
Water Resource Section-13, Government
of Uttar Pradesh, Lucknow.**

Kindly take reference of the aforementioned subjected Government Letter No.: 200/ Twenty Seven-13-2018-2/2016, dated 30.01.18, whereby a copy of the letter no. 728/03/E-3/2012-2013, dated 23.01.2018 of the Public Service Commission, Uttar Pradesh, Allahabad has been attached, seeking to clarify the position regarding the posts for 17 Persons with Disabilities (PwD) advertised by the Public Service Commission and to provide the details of vacant posts year wise between the selection year 2011-12 to 2015-16.

It is noteworthy that vide letter no. G-570/E-2, dated 11.09.17 and letter no. G-737 E-2, dated 01.11.2017 of this office, keeping in view the number of Assistant Engineers working at that time against the sanctioned 804 posts of Assistant Engineer (Civil) of direct recruitment cadre, showing

the situation of excess of 166 posts, a request has been made to the government to select only 474 candidates, which includes the vacant posts of selection year 2016-17. Pursuant to the same, a letter has been sent to the Public Service Commission, Uttar Pradesh, Allahabad vide Government Letter no. 2113/Twenty Seven-13-2017-02/2016, dated 14.11.2017.

According to requisition done through the Government Letter No.: 200/Twenty Seven- 13-2018-2/2016, dated 30.01.2018, in respect of the said 474 posts sent to the Public Service Commission, Uttar Pradesh, Allahabad, as per the following table, 255 posts for the selection year 2011-12, 66 for the selection year 2012-13, 73 for the selection year 2013-14, 51 for the selection year 2014-15, 09 for the selection year 2015-16 and 20 posts for the selection year 2016-17 are being calculated respectively. Thus, from the selection year 2011-12 to 2015-16 (255+66+73+51+09=) a total of 454 posts and 20 posts are available for the selection year 2016-17.

Sr. No,	Selection Tear	Number of vacant post	otal Post
1	2011-12	255	454
2	2012-13	66	
3	2013-14	73	
4	2014-15	51	
5	2015-16	09	
6	2016-17	20	20
Total			474

According to the said table, out of 454 posts available between the selection year 2011-12 to 2015-16, 13 posts are available

for the persons with disabilities, whose sub-categories are as follows:-

1. Visually Impaired - 05 post
2. Hearing Impaired - 04 post
3. Locomotor Disability - 04 post

With reference to the letter no. 728/03/E-3/2012-2013, dated 23.01.18 of Public Service Commission, Uttar Pradesh, Allahabad, it would be expedient to mention that at present no Persons with Disabilities (PwD) Assistant Engineer (Civil) is working in the department in the direct recruitment cadre, hence in the above situation, if the department receives 11 Persons with Disabilities (PwD) candidates/Assistant Engineers (Civil) out of 17 Persons with Disabilities (PwD) candidates advertised under backlog/special selection for Persons with Disabilities (PwD) candidates, the quota of 24 posts fixed for Persons with Disabilities (PwD) candidates shall be fulfilled. The sub-categories of the said 11 posts are as follows:-

1. Visually Impaired - 04 post
2. Hearing Impaired - 04 post
3. Locomotor Disability - 03 post

Therefore, the status of the posts as mentioned above is sent for information and further necessary action.

Sd/-
(Sandeep Kumar Khare)
Executive Engineer (E-2)
For Engineer-in-Chief,
Irrigation & Water Resource
Department

No.: 792/Twenty Seven-13-2018-
2/2016

From,

Sudheendra Kumar,
Joint Secretary,
Government of Uttar
Pradesh.

To,

The Secretary,
Public Service
Commission,
Uttar Pradesh, Allahabad.

**Irrigation and Water Resource
Section-13 Lucknow: 18th May,
2018**

Subject:

Regarding clarification of the status of vertical and horizontal reservation in the requisitions received for the post of Assistant Engineer (Civil) in the Combined State Engineering Services Examination-2013.

Sir,

With reference to your letter no. 642(1)/03/E-3/2012-2013 dated 30th June, 2017 regarding the above subject, a copy of the information furnished vide the letter no. G-138/E-2 dated 10.05.2018 issued by the Executive Engineer (E-2), Office of the Engineer-in-Chief, Irrigation and Water Resource Department, Uttar Pradesh, Lucknow. It is requested to kindly ensure necessary action accordingly in matter.

Enclosure: As above.

Sincerely,
Sd/-
(Sudheendra Kumar)
Joint Secretary

Top Priority/Speed Post/ Fax/E-mail
Letter No.-835/03/E-3/2012-2013

From,
 Jagdish,
 Secretary,
 Public Service
 Commission, Uttar Pradesh,
 Allahabad .

To,
 The Principal Secretary,
 Government of Uttar
 Pradesh,
 Irrigation and Water
 Resources, Section-13,
 Lucknow.

Allahabad: Date 31 May, 2018

Subject:- Regarding clarification of the status of vertical and horizontal reservation in the requisitions received for the post of Assistant Engineer (Civil) in the Combined State Engineering Services Examination, 2013.

Sir,

In the above-mentioned subject, kindly refer to the Letter No.-792/Twenty Seven- 13-2018-2/2018, dated 18th May, 2018 of the government, through which it has been apprised regarding the vacant posts of Assistant Engineer (Civil), Irrigation Department in the Combined State Engineering Services Examination-2013 from the selection year 2011-12 to 2016-17.

2. In this regard, it is informed that, as per the requisition received from the Government for the post of Assistant Engineer (Civil), Irrigation Department, the

Commission is conducting the selection process through the examination in question, on a total of 469 posts for the selection years 2011-12, 2012-13, and 2013-14. Accordingly, the Commission, vide its letter dated 21-05-2015, requested for the clarification on the status of vertical and horizontal reservations for the 469 posts of Assistant Engineer (Civil). In response whereof, the Government sent a letter dated 28-09-2015 (Enclosure-1), in which the status of vertical and horizontal reservations was clarified. However, the 14 posts under horizontal reservation for persons with disabilities were stated to be included in the 17 posts requisitioned/advertised for special selection of persons with disabilities. In the connection to the aforesaid, the Commission again sent a letter dated 30-06-2017 to the government seeking clarification, in reply to which a letter dated 18-05-2018 of the government was received. In the said letter, only $255+66+73=394$ vacant posts have been mentioned in the selection years 2011-12, 2012-13 and 2013-14 respectively, which is completely different from the status of the posts mentioned earlier. Also, the government did not disclose the vertical and horizontal reservation separately for the said posts. Therefore, in order to clarify the status regarding the said discrepancies, the Commission has expressed the expectation that the process of selection be carried out either in accordance with the Government letter dated 28.09.2015, on the basis of the total 469 vacant posts pertaining to the selection years 2011-12 to 2013-14, or in accordance with the Government letter dated 18.05.2018, on the basis of 394 vacant posts pertaining to the selection years 2011-12 to 2013-14. If the selection process is to be conducted as per the letter dated 18-05-2018, then it is

necessary to clarify the status of vertical and horizontal reservation in 394 vacant posts from the selection year-2011-12 to the selection year-2013-14 and the Commission be informed as soon as possible.

3- It is noteworthy that vide Letter No.-1328/12-27-Si-2-3(33)/12- dated 28-05-2012 of the government, a requisition for 17 backlog posts of Assistant Engineer (Civil), Irrigation Department for the person with disability was received, on the basis of which the Commission has taken action to advertise the said posts. It is noteworthy that in the letter dated 28-09-2015 of the government, the 14 posts for the persons with disabilities mentioned under horizontal reservation in the 469 vacant posts from the selection year 2011-12 to the selection year 2013-14 have been stated to be included in the 17 posts advertised for the said special selection. From this, it appears that the 17 posts advertised separately under the special selection/disabled are not vacant. Therefore, with regard to the 17 posts reserved for persons with disabilities separately forwarded by the Government, it is necessary to clarify the position, indicating whether a special selection / selection for the backlog of persons with disabilities is to be conducted for these 17 posts, or for any other backlog posts for persons with disabilities where the selection process is to be completed, and to mark these posts according to their sub-category to clearly reflect the status.

It is, therefore, requested that the desired information in respect of the queries raised in paragraphs 2 and 3 above be made available at the earliest, so that the selection process may be completed expeditiously.

Enclosures □ As above.

Sincerely,
Sd/-
(Jagdish)
Secretary.

Top Priority/ Time-bound
No.- 982/Twenty Seven-13-2018-
2/2016

From,
Sudheendra Kumar,
Joint Secretary,
Government of Uttar
Pradesh.

To,
Engineer-in-Chief and
Head of Department,
Irrigation and Water
Resources Department,
UP, Lucknow.

Irrigation and Water Resources
Section □ 13 Lucknow: Date: 05 June,
2018

Sub: - Regarding clarification of
status in vertical and horizontal reservation
in the requisitions received for the post of
Assistant Engineer (Civil) in the Combined
State Engineering Service Examination.

Sir,

Kindly refer to letter number
835/03/E-3/2012-2013 dated 31.05.2018
(copy enclosed) from the Secretary, Uttar
Pradesh Public Service Commission,
Allahabad in pursuant to letter number G-
138/E-2 dated 10.05.2018 of the Executive
Engineer (E-2), Office of the Engineer-in-
Chief, Irrigation and Water Resources
Department, Uttar Pradesh, Lucknow,
through which clarification has been sought
regarding the vertical and horizontal

reservation status in the requisitions received for the post of Assistant Engineer (Civil) in the Combined State Engineering Services Examination 2013.

2. Therefore, I have been directed to convey you to kindly clarify the position in light of the expectation expressed in the enclosed letter and submit your report along with clear recommendations to the Government within 3 days, so that the Uttar Pradesh Public Service Commission, Allahabad, may be dully apprised of the position.

Enclosures: As above Sincerely,

S/d-
(Sudheendra Kumar)
Joint Secretary.

**Office of Engineer-in-Chief
(Establishment-2 Section)
Irrigation and Water Resources
Department, Uttar Pradesh**

No: G-411 / E-2 /

Lucknow:

Date: 21st June, 2018

Subject: Regarding clarification of the status of vertical and horizontal reservation in the requisitions received for the post of Assistant Engineer (Civil) in the Combined State Engineering Services Examination- 2013.

Under Secretary, Irrigation and Water Resources Section-13, Government of Uttar Pradesh, Lucknow

In the aforesaid subject, kindly refer to the Government No.- 902 /Twenty Seven- 13-2018-2 / 2016, dated 05.06.2018 through which a copy of the letter no.- 835

/ 03 / E-3 / 2012-2013, dated 31.05.2018 of the Public Service Commission, Uttar Pradesh, Allahabad has been enclosed, providing its clear report in respect of the query made in para 2 and para 3 mentioned in the letter and has sought clarification on the status of vertical and horizontal reservation regarding 394 requisitioned posts from the year 2011-12 to 2013-14 for the post of Assistant Engineer (Civil) selected in the Combined State Engineering Examination-2013.

In this regard, it is to be clarified regarding para 2 of letter dated 31.05.18 of the Secretary, Public Service Commission, U.P., Allahabad in compliance with the instructions given by the Government letter dated 05.06.18 that as per the Government letter no.- 792 /Twenty Seven-13-2018-2 / 2018, dated 18.05.2018 sent in continuation of this office's letter no. G-138 / E-2, dated 10.05.18, it would be appropriate to proceed for the selection years 2011-12, 2012-13 and 2013-14 respectively for a total of 394 posts = (255+66+73). Accordingly, the consolidated details of unreserved/ reserved posts, as per the vertical and horizontal reservation of the said requisitioned 394 posts, shall be as per the following table:-

Vertical reservation of 394 requisitioned posts of Assistant Engineer (Civil) Direct Recruitment from Selection Year 2011-12 to 2013-14	Horiz ontal reservation of 394 requisitioned posts of Assistant Engineer (Civil) Direct Recruitment from Selection Year 2011-12	Re mar k

		to 2013-14		
General / UR	197	-		-
Backward Class	106	-		-
Scheduled Caste	83	-		-
Scheduled Tribe	08	-		-
For dependents of freedom fighters (02%)	-	For dependents of freedom fighters (02%)	07	-
For Persons with disabilities (03%)	-	For persons with disabilities (03%)	11	-
		Blindness (P.B.)	04	
		Deafness (P.D.)	04	
		Locomotor Disability (O.L. / O.A.)	03	

Vertical reservation of 394 requisitioned posts of Assistant Engineer (Civil) Direct Recruitment from Selection Year 2011-12 to 2013-14	Horizontal reservation of 394 requisitioned posts of Assistant Engineer (Civil) Direct Recruitment from Selection Year 2011-12 to 2013-14		Remark
For ex-servicemen (05%)	For ex-servicemen (05%)	Not implemented	-
For women of Uttar Pradesh (20%)	For women of Uttar Pradesh (20%)	78	There is a provision for 20% women reservation vide govt. Letter: 18 / 1 / 99-ka-2 / 99 dated 30.08.99. Accordingly, suitable candidates be selected by making horizontal

			reservati on. If suitable female candidat es are not available , then these posts will be filled by male candidat es.

Apart from the above, it is to be mentioned regarding para 3 of letter dated 31.05.18 of the Secretary, Public Service Commission, U.P., Allahabad that a total of 804 posts of Assistant Engineer (Civil) of direct recruitment cadre are sanctioned in the Irrigation Department, U.P. against which a total of 24 posts for persons with disabilities are calculated in the reserved cadre. As per the table mentioned on the previous page, a total of 11 posts for persons with disabilities are being counted under horizontal reservation against the advertised posts till selection year 2011-12 to 2013-14. At present, no Assistant Engineer (Civil) of the disabled cadre is working under the direct recruitment cadre. Therefore, if 13 disabled candidates are received by the department as Assistant Engineer (Civil) out of the 17 posts advertised under the Combined State Engineering Service for Disabled Persons (Backlog / Special selection) Examination 2013 then the quota of 24 posts fixed for persons with disabilities will be fulfilled against the sanctioned posts. In such a situation, it would be appropriate to select 13 posts of Assistant Engineer (Civil) from

the 17 posts advertised under the special selection whose sub-categories shall be as per the following table:-

Visually impaired (P.B.)	Hard of Hearing (P.D.)	Locomotive Disability (O.L. / O.A.)
5	4	4

Therefore, the status of posts as mentioned above is forwarded for information and further necessary action.

Sd/-

(Dineshwar Shukla)
Chief Engineer Personnel (E-2)
For Engineer-in-Chief,
Irrigation & Water Resource
Department

No. : 986 / Twenty Seven-13-2018-
2 / 2016

From,
Sudheendra Kumar,
Joint Secretary,
Government of Uttar
Pradesh

To,
The Secretary,
Public Service
Commission,
Uttar Pradesh, Allahabad

**Irrigation and Water Resource
Section-13 Lucknow: 02nd July, 2018**

Subject:- Regarding clarification of the status of vertical and horizontal reservation in the requisitions received for the post of Assistant Engineer (Civil) in the

Combined State Engineering Services
Examination-2013.

Subject: Sending requisitions to the
Public Service Commission, Uttar Pradesh,
in time.

Sir,

Sir,

With reference to your
aforementioned letter no. 835 / 03 / E-3 /
2012-2013, dated 31st May, 2018, a copy
of the information furnished vide letter no.
G-411 / E-2, dated 21st June, 2018 issued
by the Chief Engineer, Personnel (E-2),
Office of the Engineer-in-Chief, Irrigation
and Water Resource Department, Uttar
Pradesh, Lucknow is enclosed herewith
along with a kind request that necessary
action in matter be taken accordingly.

On the above-mentioned subject,
through Government Orders of the same
number dated 30.09.1991, dated
02.01.1996, dated 27.05.1997, dated
09.08.2007, dated 29.12.2008, dated
05.10.2009, dated 23.11.2009, dated
28.10.2010, dated 03.10.2011, dated
14.03.2012 and dated 18.09.2012, you have
been requested to send requisitions for the
concerned posts to the Public Service
Commission 02 years in advance, including
complete information, in order to ensure
timely completion of the selection process.

Enclosure: As above

Sincerely,
Sd/-
(Sudheendra Kumar)
Joint Secretary

2. The Public Service
Commission, Uttar Pradesh, has informed
that, despite the clear provisions and
directions given in the above-referred
Government Orders, requisitions are not
being made available to the Commission in
time by the departments, due to which there
is delay in completion of selections.

GOVERNMENT ORDER

No. 15/20/95-Ka-4-2013

From,

Rajeev Kumar,
Principal Secretary,
Government of Uttar
Pradesh.

To:

1. All Principal
Secretaries/Sekretaries,
Government of Uttar
Pradesh.

2. All Heads of
Departments/Principal Heads of
Offices, Uttar Pradesh.

Personnel Section-4

3. While enclosing the new
formats for requisitions of direct
recruitment and promotions made available
by the Public Service Commission, Uttar
Pradesh, I have again been directed to
request you as under:

(1) Ensuring calculation of the
vacancies likely to arise in the next 03
years, kindly send requisitions on the new
formats for all examinations/selections,
including the Combined State/Upper
Subordinate Services Examination, to the
Public Service Commission immediately.
In future also, requisitions for all posts

Lucknow: Dated: 09 July 2013

should be made available to the Public Service Commission 03 years in advance.

(2) While sending requisitions, kindly ensure inclusion of all information and also send a copy of the Service Rules (Hindi/English) to the Public Service Commission.

(3) While sending requisitions, the provisions of Government Order of the same number dated 09.08.2007 should be specially kept in mind and the position of vertical and horizontal reservation should also be clarified. If any vacancy is to be reserved under horizontal reservation for persons with disabilities, then, as per Government Order dated 13.01.2011, clearly mentioning the specific identification/type of disability, a certificate as per paragraph-24 of the Government Order of the Personnel Department dated 03.02.2008 should also be sent.

(4) With regard to requisitions of various selections and examinations, replies to queries/observations raised by the Commission should kindly be made available to the Commission in a time-bound manner.

4. Kindly ensure strict compliance with the above instructions and send the requisitions for posts of direct recruitment/promotion on the new requisition formats to the Public Service Commission at the earliest.

Enclosure: As above.

Yours faithfully,
(Rajeev Kumar)
Principal Secretary

No. 15/20/95(1)-Ka-4-2013, Dated:
Of the same date

Copy forwarded for information to the Secretary, Public Service Commission, Uttar Pradesh, Allahabad, in reference to his letter No. 117/8/Misc/S-10/2012-13 dated 07.05.2013.

By order,
(Rajeev Kumar)
Principal Secretary

From:

Mukul Singhal,
Additional Chief Secretary,
Government of Uttar

Pradesh.

To:

1. All Additional Chief Secretaries/Principal Secretaries/Secretaries, Government of Uttar Pradesh.

2. All Heads of Departments/Principal Heads of Offices, Uttar Pradesh Government of Uttar Pradesh

Personnel Section-4 ,
Lucknow, Dated: 25 October 2019

Subject: Sending requisitions to the Public Service Commission, Uttar Pradesh, in time.

Sir,

On the above-mentioned subject, through Government Orders of the same number dated 30.09.1991, 02.01.1996, 27.05.1999, 09.08.2007, 29.12.2008, 05.10.2009, 23.11.2009, 28.10.2010, 03.10.2011, 14.03.2012, 18.09.2012, 09.07.2013, 23.10.2013 and 01.10.2014, you have been requested to send

requisitions of the concerned posts to the Public Service Commission 03 years in advance, including complete information, in order to ensure timely completion of the selection process.

2. In view of the above, I have again been directed to request you as under:

(1) Full compliance should be ensured of the instructions as per Government Order No. 15/5/2017-Ka-2017 dated 29 November 2017 and letter of the same number dated 12 November 2018, issued by Personnel Section-4.

(2) Under the provisions contained in Government Order dated 09.07.2013, ensuring calculation of vacancies likely to arise in the next 03 years, regarding requisitions for direct recruitment for all examinations/selections including the Combined State/Upper Subordinate Services Examination, the prescribed format is being updated and modified as per the annexure. Kindly send requisitions to the Public Service Commission in time on the new format.

(3) In the requisitions to be sent, clearly mentioning the status of reservation for DFF (Dependants of Freedom Fighters), ex-servicemen, persons with disabilities and women, as per Government Order No. 35/65-03-11-78/99 dated 13.01.2011, clear identification and type of disability for persons with disabilities should be indicated, and also the clear mention should be made regarding granting up to a maximum of 10 percent reservation for Economically Weaker Sections as per Government Orders of Personnel Section-2 No. 1/2019/4/1/2002/Ka-2/19 TC-II dated 18.02.2019 and No. 3/2019/4/1/2002/Ka-2019 TC-II dated 14.03.2019. Along with

the above, a copy of the Service Rules (Hindi/English) of the concerned post shall also be mandatorily sent to the Public Service Commission.

3. Kindly ensure strict compliance with the above instructions.

Yours faithfully,
Mukul Singhal,
Additional Chief Secretary

OFFICE ORDER

TRUE COPY

Government of Uttar Pradesh
Personnel Section-4
No. 28/5/80-Ka-4-1999
Place: Lucknow
Date: 15 November 1999
OFFICE MEMORANDUM

Keeping in view the difficulties arising in the implementation of previously issued Government Orders relating to providing appointment to candidates selected on the basis of competitive examinations and other selections conducted by the Public Service Commission, U.P., and in seeking names from the waiting list, the Government has decided that, except for single-cadre posts, in all other combined services and other selections, no waiting list shall be prepared and no reshuffling shall be done.

2. In relation to the above, while superseding all previously issued Government Orders, the following other important decisions have been taken by the Government:

(1) Requisitions should be sent to the Commission only after ensuring correct calculation of the vacancies arising in a

particular year of selection. As far as possible, there should be no change in the vacancies after the requisition has been sent.

(2) After receipt of the recommendations in respect of selected candidates, they must be made to assume charge, except in those cases where the concerned department/institution/organization has been completely wound up, or where any Court has passed an order to the contrary.

(3) The concerned departments shall ensure issuance of appointment orders within three months from the date of receipt of recommendations/allotments, and the candidate shall be given one month's time to assume charge in the first instance, which, in unavoidable circumstances, may be considered for extension by one more month.

(4) Appointment letters shall be issued only after verification of character and conduct and medical examination of the selected candidates.

(5) In respect of candidates who do not assume charge within the prescribed period, their candidature shall be cancelled and the resulting vacancies shall be carried forward to the next year of selection.

(6) The select list shall be utilized only against the vacancies of that particular year of selection for which the requisition was sent/selection was made.

3. The above orders shall come into force with immediate effect.

4. Strict compliance of the above orders shall be ensured at every level.

Sd/□ [Illegible]
Secretary

No. 28/5/80(1)-Ka-4-1999, Of the same date

Copy forwarded for information and necessary action to:

1. All Principal Secretaries/Secretaries, Government of Uttar Pradesh.

2. Secretary, Public Service Commission, U.P., Allahabad.

3. All Heads of Departments/Principal Heads of Offices, Uttar Pradesh.

4. All Divisional Commissioners/District Magistrates, Uttar Pradesh.

5. All Sections of the Secretariat.

6. Secretary, Legislative Council/Legislative Assembly, Uttar Pradesh.

By order,
Sd/□ [Illegible]
Special Secretary

TRUE COPY
Government of Uttar Pradesh
Personnel Section-4
No. 28/5/80-Ka-4-2014
Place: Lucknow
Date: 26 March 2014
OFFICE MEMORANDUM

Through Office Memorandum of the same number dated 15.11.1999, instructions were issued that, in respect of providing appointment to candidates selected on the basis of competitive examinations and other selections conducted by the Public Service

Commission, Uttar Pradesh, when selected candidates do not assume charge, then, except for single-post cadres, no action for preparation of waiting list or reshuffling shall be taken in other cadres.

2. In view of the difficulties coming before the Government, the undersigned has been directed to state that, after due consideration, His Excellency the Governor is pleased to accord approval to substituting paragraph 2(2) of the Office Memorandum dated 15.11.1999 as under:

“2(2) - After receipt of the recommendations in respect of selected candidates, they must be made to assume charge; however, where the concerned department/institution/organization has been completely wound up, or where any Hon^{ble} Court has passed a contrary order, or where, due to defective requisition being sent/the posts mentioned in the requisition not being available, it shall not be mandatory to make the selected candidates assume charge.”

3. The provisions of this Office Memorandum shall also be effective in those selections in which recommendations have already been made available by the Commission to the concerned departments.

4. Kindly ensure strict compliance with the above instructions at every level.

Sd/□ [Illegible]
Principal Secretary

No. 28/5/80(1)-Ka-4-2014, Of the same date

Copy forwarded for information and necessary action to:

1. All Principal Secretaries/Secretaries, Government of Uttar Pradesh.

2. Secretary, Public Service Commission, Uttar Pradesh, Allahabad.

3. All Heads of Departments/Principal Heads of Offices, Uttar Pradesh.

4. Principal Secretary, Legislative Council/Legislative Assembly, Uttar Pradesh.

5. All Sections of the Secretariat.

By order,
Sd/- [Illegible]
Special Secretary

(2025) 12 ILRA 955
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 19.12.2025

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

Writ - A No. 6734 of 2002

Mohd. Arif **...Petitioner**
Versus
U.P. State Road Transport Corp. & Ors.
...Respondents

Issue for Consideration

- (1) Effect of non-recording the statements of independent witnesses on the validity of the disciplinary proceedings.
- (2) Scope of writ jurisdiction while dealing with the issues relating to disciplinary proceedings.

Headnotes

(A) Service law – Removal from service – Post of Conductor – Disciplinary proceedings – Charge of corruption and misconduct by taking 30 passengers out of 83 for travel without ticket, consequently embezzle the income of corporation – Petitioner claimed enquiry

illegal for the reason of not examining certain witnesses – Permissibility. (E-1)

Held : Claim of the petitioner that certain witnesses were not examined during the course of inquiry proceedings is unsustainable, as the petitioner himself, during the course of inquiry proceedings, forgo his right to examine them by insisting upon the Inquiry Officer to complete the inquiry without examination of such witnesses – In a departmental enquiry, the strict and technical rules of evidence are not applicable – Non-recording of statements of independent witnesses, such as passengers, would not vitiate the disciplinary proceedings or render them invalid. [Paras 13 and 14]

(B) Constitution of India – Article 226 – Writ – Judicial review – Disciplinary proceeding – Scope of interference. (E-1)

Held : Scope of writ jurisdiction while dealing with issues relating to disciplinary proceedings is limited. The power of judicial review is confined to the decision-making process and the power of judicial review conferred on a Constitutional Court or Tribunal is limited [Para 21]

Case Law Cited

State of Haryana and Another vs. Rattan Singh, 1977 SCC OnLine SC 145; U.P. State Road Transport Corporation vs. Suresh Chand Sharma, (2010) SCC OnLine SC 648; State of A.P. vs. S. Sree Rama Rao : AIR 1963 SC 1723; B.C. Chaturvedi vs. Union of India : 1996 SCC (L&S) 80; High Court of Bombay vs. Shashikant S. Patil : (2000) 1 SCC 416; State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya : (2011) 4 SCC 584; Union of India vs. P. Gunasekaran : (2015) 2 SCC 610 – **referred to.**

List of Acts

Uttar Pradesh State Road Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 – Regulation 64.

List of Keywords

Removal from service; Corruption; Misconduct; Disciplinary proceeding; Departmental appeal; Writ jurisdiction; Judicial review.

Case Arising From

Order dated 31.05.2002 removing the petitioner from service.

Appearances for Parties

Adv. for the Petitioner : Brijesh Kumar, Abhishek Singh, Raza Ali Khan, Sameer Singh, Syed Shabih Haider, Zuber Hasan.

Adv. for the Respondents : Mahesh Chandra, Puneet Chandra, Ratnesh Chandra.

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

1. Heard Sri Sameer Singh, learned counsel for the petitioner, and Sri Ratnesh Chandra, learned counsel for the respondents.

2. The present writ petition has been filed challenging the order dated 31.05.2002 passed by the Regional Manager, Uttar Pradesh State Road Transport Corporation (hereinafter referred to as □UPSRTC□) Lucknow Region, Lucknow, whereby the petitioner was awarded punishment of removal from service, as well as the appellate order dated 10.09.2002 by which the appeal of the petitioner was rejected by respondent no. 3, Mandaliya Pradhan Prabandhak (Central Zone), UPSRTC, Terhi Kothi, Lucknow.

3. The brief facts of the case are that the petitioner, while posted on the post of Conductor at Mirzapur Depot, Allahabad Region, was running passenger bus bearing vehicle registration no. U.R.S. 9938 en route from Renukot to Lucknow on 09.03.1990. At about 16:45 hours, between Renukot and Robertsganj, the bus was stopped by the inspection team at a place namely Gurmura, and on inspection it was found that out of 83 passengers, 30 passengers were without tickets, though the fare from them was realised by the petitioner. The inspection team was headed by Sri Heera Lal Upadhyay, Senior Centre In-charge (Checking), along with two Assistant Traffic Inspectors. The inspection team, on finding that 30 passengers were

without ticket, issued a common ticket no. 660966 for all passengers, and an inspection report dated 15.09.1990 was forwarded to the Regional Office for further action.

4. Thereafter, a charge-sheet dated 25.09.1990 was issued in which it was alleged that the petitioner realised Rs. 285 from 30 passengers out of a total of 83 passengers but did not issue tickets to them for travelling from Renukot to Robertsganj, as per inspection held on 09.03.1990 at 16:45 hours. By such conduct, the petitioner was held guilty of four charges, i.e., (i) taking 30 passengers for travel in the bus without tickets; (ii) attempt to embezzle the income of the corporation; (iii) involving himself in corruption and misconduct; and (iv) discharging duty in violation of rules. In support of the charges, the inspection report was annexed with the charge-sheet, and it was also provided that the way-bills and tickets, could be pursued by the petitioner the same in the Regional Office. It was further required by the charge-sheet that the petitioner should file a reply to the charges within 15 days and also inform about the witnesses whom he wanted to cross-examine and other evidence which he wanted to rely upon in defence of the charges against him.

5. The petitioner filed his reply to the charges vide his letter dated 30.11.1990 denying the charges, in which he specifically mentioned for examining of two passengers who were present in the bus on the date of the inspection / checking on 09.03.1990. He also made reference that the inspection report was not supported by any independent witness and, as such, could not be relied upon. During the course of inquiry, the inspection report was proved by Heera Lal Upadhyay, In-charge of the

Inspection Team, and the petitioner also cross examined Sri Heera Lal Upadhyay in detail. The petitioner could not get his witnesses examined, and in the meantime he was transferred to Faizabad Region and the Assistant Regional Manager (Karmik) was nominated as the new Inquiry Officer. Thereafter, the Inquiry Officer called upon the petitioner for personal hearing, and Sri K.P. Tiwari, Assistant Traffic Inspector, one of the members of the inspection team, was examined at the instance of the petitioner on 15.03.1998.

6. The petitioner, during the course of inquiry proceedings, produced one of his witnesses, Sri Vinod Kumar, who stated that from Renukot there were 20 to 30 passengers and after 5 to 7 kms the inspection team confronted the bus, and he overheard that there were 30 passengers. He further stated that he had come as a witness as the conductor had called upon him to give his statement in the disciplinary proceedings. On 15.01.1998, the petitioner appeared before the Inquiry Officer and recorded his statement that his reply to the charge-sheet should be considered as his defence and that he did not want to examine any other person and the inquiry might be completed.

7. The Inquiry Officer, after considering the statements of the witnesses as well as the inspection report and other evidence produced during the course of inquiry proceedings, came to the conclusion that the charges against the petitioner of allowing 30 passengers to travel without tickets after realising fare to the tune of Rs. 285, but not issuing any ticket to them, stood established and proved. Thereafter, a show-cause notice dated 29.01.1998 was issued to the petitioner by the disciplinary authority

along with a copy of the inquiry report, to which the petitioner submitted his reply vide letter dated 25.02.1998. The disciplinary authority, i.e., the Regional Manager, UPSRTC, Lucknow Region, Lucknow, thereafter passed the punishment order dated 31.05.2002 terminating the services of the petitioner by awarding the punishment of removal.

8. The petitioner thereafter filed a departmental appeal under Regulation 64 of the Uttar Pradesh State Road Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 (hereinafter referred to as □Regulations, 1981□) before the next higher authority, i.e., Mandaliya Pradhan Prabandhak (Central Zone), UPSRTC, Terhi Kothi, Lucknow, which was rejected after due consideration vide order dated 10.09.2002.

9. The petitioner has assailed the order of removal dated 31.05.2002 on the following grounds:□

(i) No date and time were fixed by the Inquiry Officer during the course of inquiry proceedings, and the disciplinary authority also did not fix any date and time before passing the order dated 31.05.2002.

(ii) The driver of the bus was not charged with the offence of carrying ticketless passengers, and only the petitioner was charged, which amounts to discrimination.

(iii) One independent witness examined by the petitioner, namely Vinod, and another independent witness, Mohd. Abbas, who was to be produced by the petitioner, could not be examined by the Inquiry Officer.

(iv) The third member of the inspection team, i.e., Sri K.P. Tiwari, Assistant Traffic Inspector, who was also part of the inspection team, was not examined by the Inquiry Officer.

(v) The disciplinary authority, vide letter dated 10.03.1998, called upon Sri Heera Lal Upadhyay for certain clarifications, but he did not appear before the disciplinary authority, and as such the disciplinary authority should not have proceeded to pass the order of punishment.

(vi) The charges against the petitioner were stale, and after four years of submission of the reply to the show-cause notice, the order of punishment was passed.

(vii) The order has been passed by the Regional Manager, UPSRTC, who is not the competent authority to pass the order of removal, as the Assistant Regional Manager is the appointing authority of the petitioner as per the resolution of the Board dated 29.02.1996.

10. Part X of the Regulations of 1981, from Regulation 61 to 69, contains the provisions with respect to conduct, punishment and appeal of the employees of the Corporation. Regulation of 1981 is applicable to Group □C□ and □D□ employees of the Corporation. The petitioner was a Group □C□ employee, and hence the disciplinary proceedings against him are governed by the provisions of the Regulations of 1981. Regulation 64 of the Regulations of 1981 provides the procedure for awarding major penalties.

11. After going through the records annexed with the record of the writ petition as well as the counter affidavit filed in the present case, it transpires that the charge-

sheet was issued on 23.09.1990, which contained definite charges against the petitioner. The inquiry report dated 17.01.1998 discloses that the petitioner was granted opportunity of examination and cross-examination of witnesses produced by the Corporation as well. The independent witness produced by the petitioner, who was a passenger traveling in the bus when the inspection / checking was done on 09.03.1990 was also examined.

12. The petitioner has alleged in memo of writ petition that Sri K.P. Tiwari, Assistant Traffic Inspector, who was the third member of the inspection team, was not examined and another independent witness, namely Mohd. Abbas, was also not examined by the Inquiry Officer which vitiates the disciplinary proceedings. From the records, it transpires that the petitioner himself insisted before the Inquiry Officer to close the inquiry on the basis of his statement and the witnesses already produced by him, along with his reply to the charges, which is evident from the statement made by the petitioner on 15.01.1998 before the Inquiry Officer. The relevant extract, as recorded in the inquiry report, is reproduced hereinbelow :-

"दिनांक-15-1-98 को परिचालक उपस्थित हुआ और अपना बयान दिया कि दिये गये स्पष्टीकरण को ही मेरा बयान माना जाये जाच अधिकारी द्वारा पूछे जाने पर स्पष्ट किया कि मुख्य रिपोर्टकर्ता से बयान होचुका है। श्री के० पी० तिवारी से पूछतांझ करता परन्तु कई तिथि लगायी गयी वे उपस्थित नहीं हुए और अब पूछतांश नहीं करनी है जांच रिपोर्ट भेज दी जाये।"

13. Thus, the claim of the petitioner that certain witnesses were not examined during the course of inquiry proceedings is

unsustainable, as the petitioner himself, during the course of inquiry proceedings, forgo his right to examine them by insisting upon the Inquiry Officer to complete the inquiry without examination of such witnesses.

14. Moreover, with regard to the testimony of independent witnesses, the Hon^{ble} Supreme Court, in the case of **State of Haryana and Another v. Rattan Singh (1977 SCC OnLine SC 145)**, has held that in a departmental enquiry, the strict and technical rules of evidence are not applicable. The Court further held that the non-recording of statements of independent witnesses, such as passengers, would not vitiate the disciplinary proceedings or render them invalid. Paragraph 5 of the said judgment is relevant for the present case and is reproduced hereinbelow:-

"5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectOrs. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the revaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal in conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal"

(emphasis added)

15. The aforesaid principle of law has been reiterated by the Hon^{ble}

Supreme Court in the case of **U.P. State Road Transport Corporation v. Suresh Chand Sharma (2010) SCC OnLine SC 648** and paragraph 16 of the said judgement is quoted hereinbelow :-

“16. In State of Haryana & Anr. v. Rattan Singh AIR 1977 SC 1512, this Court has categorically held that in a domestic enquiry, complicated principles and procedure laid down in the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 do not apply. The only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charges. However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found travelling without ticket...”

Hence, the contention of the petitioner that the enquiry proceedings stand vitiated on account of non-examination of certain witnesses is unsustainable.

16. The claim of the petitioner that the Regional Manager is not the competent authority to pass the order of removal is also not tenable, as the Regional Manager is higher in post than the Assistant Regional Manager, and as such it cannot be said that the Regional Manager was not competent to pass the order of removal against the petitioner.

17. The petitioner has also alleged that the disciplinary authority, vide letter dated 10.03.1998, called upon Sri Heera Lal Upadhyay, In-charge of the Inspection Team, before passing the order of punishment, but he did not appear, and as

such the disciplinary authority could not have passed the order of punishment. In this regard, the Court has gone through the letter dated 10.03.1998, which was issued by the Regional Manager, Faizabad Region which only reflects that for certain clarifications, Heera Lal Upadhyay was called upon with respect to the inspection report and for that purpose was required to appear before the Regional Manager on 20.03.1998. This aspect was considered by the appellate authority while passing the order dated 10.09.2002, and it has been clarified that though the Regional Manager, Faizabad Region, vide letter dated 10.03.1998 sought certain clarifications, the Regional Manager, Lucknow, who ultimately passed the punishment order, did not find it necessary to seek any such clarification and he, on the basis of the inquiry report, reply and the evidences available with the record of the enquiry proceedings passed the order of punishment, which is justified.

18. This Court is of the view that merely by issuance of the letter dated 10.03.1998 by the Regional Manager, Faizabad, seeking clarification, it cannot be said that the Regional Manager, Lucknow, should have also sought such clarification. It is the satisfaction of the disciplinary authority, on the basis of material available before him, to take a decision with regard to the charges. Once the disciplinary authority has taken the decision that the petitioner, on the basis of the material on record, i.e., the inquiry report, statements of witnesses recorded during the course of inquiry, reply of the petitioner, and other evidence, is guilty, he is well within his right to pass appropriate orders.

19. The petitioner has also raised a question mark on the findings recorded by

the Inquiry Officer on the basis of allegation of bias against the In-charge of the inspection team, Heera Lal Upadhyay. The court is of view that such allegation of the petitioner, to the extent of the conclusion arrived at by the Inquiry Officer, is also not tenable, for the reason that the petitioner has not made any specific allegation of bias. Merely, because the inspection team did not rely upon the version of the petitioner while preparing the inspection report cannot be a reason to say that the inspection team led by Shri Heera Lal Upadhyaya was biased against the petitioner.

20. The Court has also gone through the appellate order dated 10.09.2002 and finds that it is a well-considered and reasoned order. The grounds taken in the memorandum of appeal filed by the petitioner were duly considered by respondent no. 3 before passing the order dated 10.09.2002.

21. It is needless to mention that the scope of writ jurisdiction while dealing with issues relating to disciplinary proceedings is limited. The power of judicial review is confined to the decision-making process and the power of judicial review conferred on a Constitutional Court or Tribunal is limited.

22. In **State of A.P. v. S. Sree Rama Rao : AIR 1963 SC 1723**, a three-Judge Bench of Supreme Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant. It is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and

whether the rules of natural justice are not violated.

23. In **B.C. Chaturvedi v. Union of India : 1996 SCC (L&S) 80**, a three-Judge Bench of Supreme Court has held that power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

24. In High Court of **Bombay v. Shashikant S. Patil : (2000) 1 SCC 416**, Supreme Court held that interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry while exercising jurisdiction under Article 226 of the Constitution.

25. In **State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya : (2011) 4 SCC 584**, Supreme Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental inquiries.

26. In another judgment reported as **Union of India v. P. Gunasekaran : (2015) 2 SCC 610**, Supreme Court held that while re-appreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court laid down the parameters as to when the High Court shall not interfere in the disciplinary proceedings : (SCC p. 617, para 13)

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

27. In view of the aforesaid proposition of law laid down by the Hon^{ble} Supreme Court and the analysis of the facts of the present case as recorded hereinabove, this Court finds no illegality or infirmity in the order of removal dated 31.05.2002 and the appellate order dated 10.09.2002.

28. Accordingly, this writ petition fails and is **dismissed**.

29. No order as to costs.

(2025) 12 ILRA 962
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.12.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ - A No. 14162 of 2025

Amrendra Kumar Singh ...Petitioner
Versus
U.P. Rajkiya Nirman Ltd. Thru M.D. & Ors.
...Respondent

Issue for consideration

Whether inquiry proceeding can be initiated against a retired employee, when the charge-sheet has been issued after the retirement?

Headnotes

A. Service Law – Working Manual of the respondent Corporation: Rule 709(gha) - Departmental proceedings can commence only when the charge-sheet is issued to the delinquent employee. In fact, pendency of inquiry would be if such proceeding is commenced. (Para 15, 16)

In present case, this is an admitted fact that the charge-sheet has been issued on 8th August 2022, i.e., after the retirement of the delinquent employee, and therefore, the date of commencement of the disciplinary proceeding would be 8th August 2022, and therefore, the provisions of Rule 709(gha), do not attract in the facts and circumstances of the present case. (Para 17)

B. Further the Working Manual clause/table 709(cha) also does not favour proceedings undertaken by the respondent Corporation as the date of initiation of inquiry is 8th August 2025. (Para 18)

The things should be done in the manner prescribed and not otherwise, whereas the charge sheet, which has been issued against the petitioner, is not in consonance with the provisions of Rules 709 (gha) and 709 (cha) thus, the same is impermissible. (Para 19)

Charge sheet dated 8th August 2022 issued against the petitioner is hereby quashed.

Writ petition allowed. (E-4)

Case Law Cited

1. Union of India Vs. K.V. Janakiraman, (1991) 4 SCC 109 (Para 15)
2. Coal India Limited Vs. Saroj Kumar Mishra, (2007) 9 SCC 625 (Para 16)
3. Coal India Ltd. Vs. Ananta Saha, (2011) 5 SCC 142 (Para 16)

List of Acts

Working Manual of the respondent Corporation.

List of Keywords

retirement, service, inquiry proceeding, charge-sheet, recovery, financial loss.

Appearances for Parties

For Petitioner(s): Shobhit Nigam, Harish Singh, Vipul Singh

For Respondent(s): Shishir Jain

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard learned counsel for the petitioner and Mr. Shishir Jain, learned counsel for the respondent corporation.

2. The matter involves a pure question of law, and therefore, the same is hereby decided at the admission stage.

3. The present writ petition has been filed seeking following relief:-

"A) Issue a writ order or direction in the nature of Certiorari quashing the charge sheet dated

08/08/2022, contained as Annexure No. 1 to this Writ Petition."

4. The challenge is laid to the charge sheet dated 8th August 2022, issued against the petitioner, on the ground that no inquiry proceeding can be initiated after the retirement of an employee."

5. The contention put forth by the learned counsel for the petitioner is that the petitioner was appointed on the post of Assistant Accounts on 5th June 1996, and thereafter, he was promoted to the post of Assistant Accounts Officer and after attaining the age of superannuation, he retired from service, on 31st August 2021 and prior to his retirement, the petitioner was duly issued, 'No Dues Certificate' from all concerned units, where he was posted, during the service period. He next submitted that an office order was issued on 12th April 2021, wherein the inquiry officer was appointed, but no charge sheet has ever been served upon the petitioner, prior to his retirement, and that has been served, on 8th August 2022 only. He submitted that Civil Service Regulations have not been adopted, admittedly, in the department of the respondent Corporation, and it has its own Rules and Regulations regarding the inquiry.

6. He added that Rule 709(gha) of the Working Manual of the respondent Corporation reads as under:-

"709 (घ) यदि विभागीय जांच की कार्यवाही लिम्ब त रहते हु ए आरोपित कामिक अधिवर्षता आयु प्र ाप् त कर रोवा निवृत्त हो जाता है, उस िरथित में लिम्ब त विभागीय जाँच को इस िनयमावली के तहत उसके सेवा निवृत्तदेयकों से िवत्ती य क्ष ित की वसूली के िलए जारी रखा जा सकता

है। परन्तु सेवानिवृत्त कामिक को दण्ड नहीं दिया जा सकता और न ही उक्त दण्ड के उद्देश्य से कायर्वाही प्रारम्भ अथवा जारी रखी जा सकती है किन्तु विवर्तीय दण्ड दिया जा सकता है एवं विवर्तीय दण्ड देने के उद्देश्य से विवर्तीय क्ष

ति की धनराशि की वसूली हेतु जाँच की कायर्वाही जारी रखी जा सकती है।"

7. Referring the aforesaid, he submitted that the aforementioned provision prescribes that if an employee attains the age of superannuation while pendency of the departmental proceeding, such enquiry can be continued for the recovery of financial loss from the retiral dues of such employee.

8. He has further drawn attention towards Rule 709(cha) of the Working Manual, which also reads as under:-

"**709 (च)** यदि कामिक के सेवानिवृत्त के उपरान्त कोई तथ्य सामने आये तो सेवानिवृत्त के पश्चात् भी इस नियमावली के तहत अनुशासनिक कायर्वाही की जा सकती है, बशर्ते जिस घटना के सम्बन्ध में जाँच प्रारम्भ की जा रही है। जाँच करने की तिथि को उस घटना को 04 वर्ष से अधिक का समय न बीत चुका हो।"

9. Referring the aforesaid, he submitted that this provision says that the disciplinary proceedings can be done against an employee even after his retirement, provided the time period of four years has not been elapsed from the date of inquiry. He submitted that Rule 709(cha) is not applicable in the present case as the date of the incident is between 21st January 2013 to 24th December 2013, and as per the office letter dated 12th April 2021,

whereby an inquiry officer was appointed, the same is about more than eight years, from the date of the incident, more so the date of enquiry is 8th August 2022.

10. He further argued that so far as the provision regarding 709(gha) is concerned, that would also not attract and cover the field of the present issue, as though the inquiry officer was appointed on 12th April 2021, that is prior to the date of superannuation, but the charge sheet has admittedly been served upon the petitioner on the 8th August 2022, which is after the retirement, and, as per the settled law, the disciplinary proceeding commenced after the charge-sheet is furnished to the delinquent employee, and in that sense only, it would be termed as pending enquiry.

11. Concluding his arguments, he submitted that since the chargesheet has been issued after the superannuation of the employee, i.e., on 8th August 2022, and therefore, the issuance of the charge-sheet itself goes against Rule 709(gha) of the Working Manual of the respondent Corporation, and therefore, the same is unsustainable.

12. On the other hand, Mr. Shishir Jain, learned counsel for the respondent Corporation, has opposed the contention aforesaid and submitted that on 12th April 2021, the Inquiry Officer has been appointed to inquire into the matter, and therefore, the proceeding has been started from the date of appointment of the Inquiry Officer. He submitted that the petitioner retired on 31st August 2021, and the proceedings have been initiated on 12th April 2021, by the office order, whereby the Inquiry Officer has been appointed, and therefore, there is no unlawfulness while

undertaking the disciplinary proceeding against the petitioner. He next added that in furtherance of the order dated 12th April 2021, the Inquiry Officer prepared the charge-sheet and issued the same on, 8th August 2022, as such, there is no ambiguity or erroneous in the same.

13. Having heard learned counsel for the parties, it is apparent that the charge-sheet dated 8th August 2022 issued to the petitioner is under challenge. When this Court examines the matter in facts and law of the present case, it is apparent that the petitioner has been retired on 31st August 2021, after attaining the age of superannuation, and the charge-sheet has been issued on 8th August 2022, which are the undisputed facts between the parties. The letter/order dated 12th April 2021 by which the Inquiry Officer has been appointed, is also an undisputed fact.

14. This court has noticed that the respondent Corporation has its own Working Manual, which prescribes the rules for inquiry against the employees of the Department, and Rule 709(gha) reveals that the pending departmental inquiry can go on for recovery of financial loss, after the retirement of the employee, if the same was pending during his service period.

15. The date of commencement of the inquiry proceeding, has been considered, in the celebrated judgment of **Union of India Vs. K.V. Janakiraman**, reported in (1991) 4 SCC 109, wherein it has been held that the departmental proceedings can commence only when the charge-sheet is issued to the delinquent employee. In fact, pendency of inquiry would be if such proceeding is commenced. Paras 16 & 17 of the said Judgment read as under:-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity WRIA No. 14162 of 2025 4 of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the

suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

*(2) **

*(3) **

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

16. Further in the judgments rendered in the cases of **Coal India Limited versus Saroj Kumar Mishra** reported in (2007) 9 SCC 625 and **Coal India Ltd. Vs. Ananta Saha**, reported in (2011) 5 SCC 142, it has been reiterated that the disciplinary proceeding commences only when the charge-sheet is issued to the delinquent employee.

17. So far as the present case is concerned, this is an admitted fact that the charge-sheet has been issued on 8th August 2022, i.e., after the retirement of the delinquent employee, and therefore, the date of commencement of the disciplinary proceeding would be 8th August 2022, and therefore, the provisions of Rule 709(gha), do not attract in the facts and circumstances of the present case.

18. Further the Working Manual clause/table 709(cha) also does not favour proceedings undertaken by the respondent Corporation as the date of initiation of inquiry is 8th August 2025.

19. It is trite law that the things should be done in the manner prescribed and not otherwise, whereas the charge sheet, which has been issued against the petitioner, is not in consonance with the provisions of Rules 709 (gha) and 709 (cha) thus, the same is impermissible.

20. Consequently, the charge sheet dated 8th August 2022 issued against the petitioner is hereby quashed.

21. The writ petition is **allowed** accordingly.

22. Consequences to follow.

Commissioner (Judicial), Ayodhya Mandal, affirming the same.

Appearances for Parties

Advs For Petitioner: Ajay Pratap Singh, Mohammad Ehtesham Khan

Advs For Respondents: C.S.C., Mohan Singh, Rohit Agarwal

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Ajay Pratap Singh and Sri M.E. Khan, learned counsel for petitioner as well as learned Standing Counsel on behalf of respondent Nos. 1 to 5 and Sri Mohan Singh, learned counsel for respondent Nos. 6 & 7.

2. It has been submitted by learned counsel for petitioner that a suit U/S 229B of U.P. Z.A. & L.R. Act was filed by Subhash Chandra Agarwal, the late father of the petitioner with regard to Gata No. 2630 area 10-4-0 situated at Village Badel, Paragana and Tehsil - Nawabganj, District Barabanki on 03.08.1977 and the said suit was allowed in favour of father of the petitioner by means of judgment and order dated 29.1.1979 by the Pargana Adhikari, Nawabganj, now the Sub-Divisional Officer, Nawabganj, Barabanki, it was directed that the name of Subash Chandra be recorded with regard to Gata No. 2630 in Village Badel, Paragana and Tehsil - Nawabganj, District Barabanki. Subsequent to the said judgment and order, the father of the petitioner was continued to be in occupation of the said land subsequent to which the petitioner claims to be in possession.

3. It has been submitted that the order dated 29.01.1979 could not be executed and therefore the name of the father of the petitioner could not be recorded in the revenue records. It has further been stated

that subsequently one stranger to the proceedings, namely, Govind Prasad had moved an application for restoration of the order dated 29.01.1979 which was rejected on 02.11.2012 by the Sub-Divisional Officer. It has been submitted that Subhash Chandra died on 22.10.2018 leaving behind the petitioner as the sole legal heir.

4. It is the case of the petitioner that it is after the death of his father that he came to know about the order dated 29.01.1979 and then he moved an application for mutation of the aforesaid property and also approached this Court by filing a writ petition being Writ C No. 5009/2022 seeking a direction to the revenue authorities to implement the order dated 29.01.1979. This Court by means of order dated 08.08.2022 disposed of the same by passing following directions:

"This petition has been filed with a prayer to issue direction to the Sub-Divisional Officer and Tehsildar to implement the judgment and decree said to have been passed on 29.01.1979 by the Sub-Divisional Officer in a case under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act (Subhash Chandra Agarwal Vs. Gaon Sabha Barail).

If a declaratory decree has been passed by the Sub-Divisional Officer its execution can also be sought before the court which has passed the order. Accordingly, without entering into the claim of the petitioners this petition is finally disposed of with liberty to the petitioners to approach the Court which has passed the judgment and decree dated 29.01.1979 in a suit said to have been instituted under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act.

In case any such application seeking execution of the said decree is moved by the petitioners before the Sub-Divisional Officer, the same shall be considered and decided with expedition.

However, we make it amply clear and direct as well that the Sub-Divisional Officer while considering the application which may be moved by the petitioners under this order shall appropriately issue notices to the Bhumi Prabandhak Samiti of the Gram Panchayat concerned and shall also verify the authenticity of the judgment and decree dated 29.01.1979 passed by the Sub-Divisional Officer on the basis of which this petition has been filed.

The Sub-Divisional Officer shall also take into account as to whether after lapse of a period of about 43 years from the date the said decree was passed, any Amaldaramad can be made on the basis of such decree."

5. It has been submitted that it is in the compliance of the order dated 08.08.2022 passed by this Court that the Sub-Divisional Officer had called a report from the revenue authorities and also from the District Government Counsell (Revenue). The Sub-Divisional Magistrate, Nawabganj, Barabanki rejected the application after noticing that original suit proceedings were instituted by the Subhash Chandra, and the father of the petitioner and petitioner was not a party not the said proceedings and accordingly no application for execution / implementation was maintainable at the behest of the petitioner and consequently rejected his application by means of order dated 12.03.2024.

6. Aggrieved by the order dated 12.03.2024 the petitioner had preferred a

revision before the Additional Commissioner (Judicial), Ayodhya Mandal, Ayodhya who dismissed the revision as being not maintainable holding that the order passed by the Sub-Divisional Magistrate was an administrative order against which a revision was not maintainable and therefore in the aforesaid circumstances by means of present writ petition the petitioner has challenged the order dated 12.03.2024 as well as order dated 30.09.2025.

7. Learned counsel for the petitioner at the very outset submits that the proceedings for implementation of the final judgment passed in exercise of powers U/S 229B of U.P. Z.A. & L.R. Act can be implemented by the legal heirs or any person claiming his right from the original plaintiff / decree holder. He submits that the petitioner being the sole legal representative of Subhash Chandra was fully entitled to move an application for implementation of the order dated 29.01.1979 and therefore both the authorities below have committed manifest error in not exercising the jurisdiction vested therein in most illegal and arbitrary manner. In support of his submissions, learned counsel for petitioner has relied upon the provisions of Section 146 of the Civil Procedure Code.

8. He has submitted that Section 146 is an expansive provision which has been made only to facilitate the legal representatives of the plaintiff/respondents from initiating proceedings which could have been initiated by the predecessor in interest. He submits that Section 146 provides a robust mechanism for the transferee to safeguard the interest in ongoing legal proceedings ensuring that property transaction and transfers do not

leave new party vulnerable to unforeseen legal actions. Accordingly, he submits that provisions of order 22 Rule 10 CPC would apply in a situation where the proceedings are pending and necessary substitution can take place during those proceedings but once the proceedings stands concluded then it is only in exercise of powers U/S 146 appropriate action subsequent to the judgment and order can be passed at the behest of the person so claiming under the plaintiff/respondent.

9. Learned Standing Counsel on the other hand has opposed the writ petition but does not dispute the aforesaid legal provisions. He has also submitted that the Division Bench while considering the application of the petitioner in Writ C No. 5009/2022 had directed the Sub-Divisional Magistrate to take into account the delay of 43 years in filing the application and also to consider the antecedents of the petitioner before deciding his application and submits that in any view of the matter in case the matter is remanded the Sub-Divisional Magistrate would have to consider the directions of this Court passed in Writ C No. 5009/2022.

10. I have heard rival contention of the parties and perused the record.

11. There is no dispute with regard to the fact that Subhas Chand had instituted regular proceedings U/S 229B of U.P. Z.A. & L.R. Act in which proceedings it was directed that in Khata No. 1050, Gata No. 2630, the name of the gaon sabha be deleted and the name of Subhas Chand be entered in its place in the revenue records. Due to certain circumstances, the order dated 29.01.1979 could not be implemented and necessary correction in the entries in the revenue records could not be made

during the lifetime of the plaintiff/Subhash Chandra and it is due to this reason that after his death the petitioner had moved an application for implementation of the judgment and order dated 29.01.1979.

12. The Sub-Divisional Magistrate, Nawabganj, Barabanki duly considered the judgment of this Court dated 08.08.2022 and was of the considered view that the petitioner does not have any locus standi to move the application for implementation of the order dated 29.01.1979 inasmuch as he was not a party to the said proceedings and being an stranger to the said proceedings could not move any application in this regard. The revisional authority has considered the said proceedings to be mere administrative proceedings and rejected the revision.

13. The ground on which the revision has been rejected by the revisional authority is that the order dated 12.03.2024 is an administrative order and no revision would be maintainable against such an order.

14. It is noticed that Section 146 provides for initiation of proceedings by or against the representatives where such proceedings could have been taken by or against any person claiming under him.

15. Hon'ble the Supreme Court in the case of **Saila Bala Dassi Vs. Nirmala Sundari Dassi, 1958 SCC OnLine SC 140** has interpreted the provisions of Section 146 CPC and held that it has to be given an expansive interpretation to protect interest of persons who are claiming under the original plaintiff or the respondent. Merely because the plaintiff or the respondent has died or lost interest in the disputed property would not render any person claiming

under them or acquiring subsequent interest in the property to be remediless with regard to adjudication which had already taken place between the parties pertaining to the lis for which an application has been claimed subsequently. The relevant portion of the above mentioned case law is quoted hereinbelow:-

"8. It is next contended that Section 146 authorises only the initiation of any proceeding, and that though it would have been competent to the appellant to have preferred an appeal against the judgment of P.B. Mukharji, J., she not having done so was not entitled to be brought on record as an appellant to continue the appeal preferred by the second respondent. We are not disposed to construe Section 146 narrowly in the manner contended for by counsel for the first respondent. That section was introduced for the first time in the Civil Procedure Code, 1908 with the object of facilitating the exercise of rights by persons in whom they come to be vested by devolution or assignment, and being a beneficent provision should be construed liberally and so as to advance justice and not in a restricted or technical sense. It has been held by a Full Bench of the Madras High Court in Muthiah Chettiar v. Govinddoss Krishnadoss [(1921) ILR 44 Mad 919] that the assignee of a part of a decree is entitled to continue an execution application filed by the transferor-decree-holder. Vide also Moidin Rutty v. Doraiswami [ILR 1952 Mad 622] . The right to file an appeal must therefore be held to carry with it the right to continue an appeal which had been filed by the person under whom the applicant claims, and the petition of the appellant to be brought on record as an appellant in Appeal No. 152 of 1955 must

be held to be maintainable under Section 146."

16. It is in this regard, it has been observed that Section 146 provides a robust mechanism for the transferee to safeguard the interest in ongoing legal proceedings ensuring that property transaction and transfers do not leave new party vulnerable to unforeseen legal action subsequently the said provision came to be considered by another bench of Hon'ble High Court in the case of **Varadarajan Vs. Kanakawalli & Ors. (Civil Appeal No. 5673 of 2009)**, relevant portion quoted as under:-

"8. We may state that Order 22 of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order 22. This Court in a judgment in V. Uthirapathi v. Ashrab Ali [V. Uthirapathi v. Ashrab Ali, (1998) 3 SCC 148] held that the normal principle arising in a suit?before the decree is passed?that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings. This Court held as under: (SCC p. 153, paras 11-14) ?11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows: ?12. Application of order to proceedings.?Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.? 12. In other words, the normal principle arising in a suit ? before the decree is passed ? that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, ? is not applicable to cases of death of the decree-holder or the

judgment-debtor in execution proceedings.

13. In *Venkatachalam Chetti v. Ramaswamy Servai* [Venkatachalam Chetti v. Ramaswamy Servai, 1931 SCC OnLine Mad 149 : ILR (1932) 55 Mad 352 : AIR 1932 Mad 73] a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC [(Vol. 3) p. 2085 (15th Edn., 1997)] refers to a large number of judgments of the High Courts and says: "Rule 12 engrafts an exemption which provides that where a party to an execution proceeding dies during its pendency, provisions as to abatement do not apply. The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application." 14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court. 13. In another judgment in *Suresh Kumar Bansal v. Krishna Bansal* [Suresh Kumar Bansal v. Krishna Bansal, (2010) 2 SCC 162 : (2010) 1 SCC (Civ) 365], this Court held as under: (SCC p. 167, para 20) "20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as *res judicata* and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried

on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited." 14. In view of the aforesaid judgments, we find that the appellant is the sole claimant to the estate of the deceased on the basis of will. The executing court has found that the appellant is the legal representative of the deceased competent to execute the decree. In view of the said fact, the appellant as the legal representative is entitled to execute the decree and to take it to its logical end."

17. It is in the aforesaid circumstances, this Court finds that in exercise of powers U/S 146 CPC the application for execution was certainly maintainable at the behest of the petitioner who claimed himself to be the sole legal heir of Subhash Chandra who was the original plaintiff in Suit No. 107/29/30. Accordingly, the Sub-Divisional Magistrate has incorrectly appreciated the law and rejected the application of the petitioner and for this reason the order dated 12.03.2024 is set aside. The order dated 30.09.2025 not interfering with the order of Sub-Divisional Magistrate is also illegal and arbitrary and is also set aside. The matter is remitted to Sub-Divisional Magistrate to consider the application of the petitioner afresh and would consider that an application at the behest of the legal heir of the plaintiff would be maintainable to implement the order passed in proceedings U/S 229B of U.P. Z.A. & L.R. Act. While proceeding with the matter, the Sub-Divisional Magistrate shall follow the directions issued by this Court in its judgment and order dated 08.08.2022 in Writ C No. 5009/2022.

18. In light of the above, the writ petition stands **allowed**.

(2025) 12 ILRA 973
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.12.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA
CHATURVEDI, J.

Writ - C No. 22383 of 2025

M/S Kci Ltd. Formely M/S Khemba
Containers **...Petitioner**
Versus
State of U.P.& Ors. **...Respondents**

ISSUE FOR CONSIDERATION

- (i) Whether the respondent Authority could retrospectively enhance the lease rent, in absence of execution of a supplementary lease deed, as expressly contemplated under the lease deed, and justify such enhancement by relying upon subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, which was admittedly prospective in nature;
- (ii) Whether the petitioner, having commenced production within the stipulated period and remained a continuously functional industrial unit, was entitled to early production incentive rebate and waiver of penal/compound interest in terms of the applicable scheme and office order dated 05.12.2013; and
- (iii) Whether the revisional order dated 27.07.2023 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, having attained finality, was binding upon the respondent Authority and required to be implemented in its letter and spirit, and whether the impugned order and consequential demands constituted an impermissible attempt to circumvent or nullify the said revisional order.

HEADNOTE

Constitution of India – Art. 226 – U.P. Urban Planning and Development Act, 1973 – S. 41(3) – U.P. Industrial Development Act, 1976 – Lease deed dated 26.02.2002 – Enhancement of lease rent – Condition of execution of supplementary

lease deed – Retrospective enhancement without supplementary deed – Validity – Subsequent Board Resolutions – Prospective operation – Whether can override concluded contract – Early production incentive rebate – Waiver of penal/compound interest – Office order dated 05.12.2013 – Inordinate administrative delay – Legitimate expectation – Promissory estoppel – Binding nature of revisional order – Administrative discipline – Colourable exercise of power – Attempt to nullify revisional order – Correctness of impugned demand orders and consequential notices.

HELD:

Writ petition was filed challenging the order dated 12.12.2024 raising a demand of ₹5,28,85,639/- by retrospectively enhancing the lease rent and levying penal/compound interest, and rejecting the petitioner's claim for early production incentive and waiver of interest. Clause I of the lease deed, contemplates enhancement of lease rent after every ten years, conditioned upon execution of a supplementary lease deed. Admittedly, no such supplementary lease deed was ever executed between the parties. In the absence of fulfilment of the contractual pre-condition, unilateral enhancement of lease rent by the respondent Authority, that too with retrospective effect, was contrary to the express terms of the lease and could not be sustained in law. Contention of the Authority that execution of a supplementary lease deed was merely a consequential or ministerial act was not accepted, as contractual stipulations governing financial liabilities are required to be strictly construed and scrupulously adhered to, particularly by a statutory authority. Reliance placed by the respondent Authority on subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, to justify such enhancement was held to be unacceptable, the said resolution being prospective in nature. A Board Resolution, howsoever authoritative, could not override or rewrite the terms of a concluded contract, nor could it be employed to retrospectively impose financial burdens upon an allottee.

It was further held that the petitioner had commenced production within the time prescribed under the lease deed and had remained continuously operational. The

application for early production incentive rebate made in March 2003 remained undecided for over two decades, and such inordinate delay on the part of the Authority could not operate to the prejudice of the petitioner. The benefit, once accrued, could not be denied by subsequently introducing conditions not contemplated under the lease deed or the promotional scheme. Petitioner having deposited the principal lease rent dues along with advance lease rent in accordance with the office order became entitled to waiver of penal/compound interest, and the subsequent levy of penal/compound interest despite compliance with the conditions of the waiver scheme was arbitrary and unsustainable.

The revisional order dated 27.07.2023, passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, granted full relief to the petitioner and directed the second respondent to recalculate the dues payable by the petitioner. Revisional order dated 27.07.2023 having attained finality, was binding upon the respondent Authority and required to be implemented. The respondent Authority could not question the correctness of the revisional order by passing a fresh order on the same issues, nor could it rely upon subsequent Board Resolutions to dilute or nullify the effect of the revisional directions. Once the revisional authority exercised its statutory jurisdiction and granted relief, the respondent Authority was functus officio insofar as those issues were concerned. The impugned order dated 12.12.2024 constituted an impermissible attempt to circumvent and nullify the binding revisional order and amounted to a colourable exercise of power, reflecting non-adherence to the principles of administrative discipline and rule of law. **[Paras 17, 19–26]** (E-5)

CASE LAW CITED

Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409;
State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465;
Tata Chemicals Ltd. v. Commissioner of Customs, (2015) 11 SCC 628;
Union of India v. Kamlakshi Finance Corporation Ltd., 1992 Supp (1) SCC 648.

List of Acts

Constitution of India;
U.P. Urban Planning and Development Act, 1973;
U.P. Industrial Development Act, 1976.

List of Keyword

Supplementary lease deed; Retrospective enhancement; Board Resolution; Prospective operation; Concluded contract; Early production incentive; Waiver of interest; Legitimate expectation; Promissory estoppel; Binding revisional order; Functus officio; Administrative discipline; Colourable exercise of power.

CASE ARISING FROM

Challenge to the order dated 12.12.2024 passed by the Greater Noida Industrial Development Authority raising demand of Rs. 5,28,85,639/-, consequential notice dated 23.12.2024, and order dated 15.05.2025 rejecting the petitioner's claim for early production incentive.

Appearances for Parties

Advs For Petitioner: Tarun Agarwal, Sr. Adv.; Prashant Mishra
Advs For Respondents: Anjali Upadhyaya; C.S.C.; Shivam Yadav

(Delivered by Hon'ble Mrs. Swarupama Charurvedi, J.)

1. Heard Sri Tarun Agarwal, learned Senior Advocate assisted by Sri Prashant Mishra, learned counsel for the petitioner, Sri Shivam Yadav, learned counsel for the respondents no. 2 to 4 and Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State respondents.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has prayed for quashing of the order dated 12.12.2024 passed by respondent no. 3 raising a demand of Rs. 5,28,85,639/- and order dated 15.05.2025 whereby the petitioner's request for grant of early production incentive has been

rejected as well as the consequential final notice before cancellation of allotment dated 23.12.2024. Further it is prayed that a direction be issued to the respondents to recalculate the lease rent dues according to the directions contained in the revisional order dated 27.07.2023 as well as grant the petitioner the benefit of early production incentive rebate of Rs. 9.02 lacs as applied on 27.03.2003. Also a direction to respondents be issued to grant the petitioner the benefit of waiver of past interest in accordance with the office order dated 05.12.2013.

3. Brief facts of the case are that the petitioner is a company engaged in the manufacture of corrugated boxes, which got allotted Industrial Plot No. 11-B, Udyog Vihar, Greater Noida, by final allotment letter dated 09.02.2001. Thereafter, a lease deed was executed on 26.02.2002 for a period of ninety years, providing for an annual lease rent of Rs. 2,96,907/- for the first ten years. The lease deed specifically stipulated that any enhancement of rent could be effected only every ten years and strictly through execution of a supplementary lease deed.

4. The petitioner commenced construction strictly in accordance with Clause 16 of the lease deed. After obtaining due approval of the building plan from the Lessor, the Lessee was required to commence construction on the demised premises within six months from the date of possession and to make the industrial unit operational within a period of thirty-six months, or within such extended time as may be permitted by the Lessor. The petitioner duly complied with the said stipulations, commenced construction within the prescribed period, made the unit operational on 11.11.2002, and has since

continuously maintained its operations, while duly fulfilling all statutory and contractual obligations.

5. Learned counsel for the petitioner submits that the petitioner was fulfilling all conditions to receive the early production benefit under the promotional scheme, and, therefore, applied for early production incentive rebate of Rs. 9.02 lakhs in March 2003, being fully eligible under the applicable scheme. However, the Authority neither decided the application nor raised objections for over two decades and then got rejected by the means of impugned order dated 12.12.2024.

6. Learned counsel further submits that the rebate amount was almost equal to the three years of lease rent about which the petitioner could not get response from the respondents. Due to oversight and lack of regular follow up by employees of the petitioner and failure of authority to update records, lease rent for certain years got delayed, which was later regularized by depositing all principal amounts along with advance lease rent to avail waiver of interest as per the Authority's office order dated 05.12.2013. Despite this, the Authority retrospectively enhanced the annual lease rent without executing a supplementary lease deed and raised exorbitant demands along with penal/compound interest.

7. Aggrieved by this, the petitioner filed writ petition being Writ C No. 11459 of 2021, before this court seeking quashing of letter dated 1st February, 2021, by which the respondents have raised a demand of the amount outstanding against dues payable by the petitioner in connection with allotment of plot no.11B, Udyog Vihar, Ecotech-II, Greater Noida. The

petitioner alleged that he was entitled to benefits which ought to have been adjusted against the demand raised. He has also questioned the levy of interest at the rate of 20% as being violative of Section 13 of the Act of 1976 as also being un-conscionable and void under Section 23 of the Contract Act, 1872. After hearing both parties, the petition was disposed of by order of this court dated 02.08.2021, while directing the Chief Executive Officer, Greater Noida Industrial Development Authority, Greater Noida, Gautam Budh Nagar to take a decision on the representation of the petitioner dated 8th February, 2021 against the demand raised from the petitioner, preferably, within a period of six weeks with the further direction that till a decision is taken on the representation of the petitioner as directed above, the allotment of the petitioner shall not be cancelled. In compliance of this order, the order dated 26.02.2023 was passed by authority rejecting all claims of the petitioner.

8. The petitioner challenged the order dated 26.02.2023 in revision petition number 4433/appeal 40/23 under Sec 41(3) of Uttar Pradesh Urban Planning and Development Act 1973 read with Sec 12 of Uttar Pradesh Industrial Development Act 1976 and after both parties, the State Government, in revision order dated 27.07.2023, granted full relief to petitioner by holding that the petitioner is entitled to relief sought. However, instead of complying the order, the Authority passed a fresh impugned order dated 12.12.2024 raising a demand of Rs.5.28 crores, relying upon a subsequent Board Resolution dated 15.06.2024, which is prospective in nature. Consequential notices threatening cancellation of allotment and refusal to issue mortgage NOC were also issued, compelling the

petitioner to deposit large sum of amount under protest.

9. That the petitioner again approached this Court while filing writ petition with prayer to direct the respondent authority to comply with the Order No. 4433/Appeal 40/23 dated 27.7.2023 passed by the respondent no. 1 and recalculate the dues (if any) payable by the petitioner. It was observed that the counsel for the petitioner submitted there that the first respondent has already decided claim of the petitioner Company under Section 41(3) of the Act, 1973 read with Section 12 of the Act, 1976 and directed the second respondent to recalculate the dues payable by the petitioner vide order dated 27.7.2023 but till date the said order has not been complied by the second respondent. Such situation compelled the petitioner to approach this Court. After hearing counsel of all parties, this court in its order dated 22.05.2024, observed that with the consent of the parties, the writ petition is disposed of with the direction to the second respondent to take a final call in the matter in the light of the order dated 27.7.2023 passed by the first respondent, as expeditiously as possible and preferably within six weeks.

10. Learned Senior Counsel for the petitioner submits that in pursuance of the directions issued by this court, respondent no.3 has passed the impugned order dated 12.12.2024. He further submits that the Authority has passed the impugned order against law and acted in clear violation of binding order and directions in the revision order dated 27.07.2023, which attained finality and directions were required to be implemented under Section 41 of the U.P. Urban Planning and Development Act,

1973. Learned senior counsel further submits that 135th Board Resolution dated 15.06.2024 is expressly prospective and cannot be applied retrospectively to the petitioner's case. Hence, the petitioner is entitled to early production incentive rebate of Rs. 9.02 lakhs, which was neither rejected nor adjudicated for over 22 years, and cannot now be denied by importing new conditions.

11. He further submits that the petitioner fulfilled conditions for waiver of past interest under the office order dated 05.12.2013 by depositing advance lease rent and therefore denial of such benefit is arbitrary. The demand towards functional certificate and levy of penal/compound interest, are not justified in law. Learned counsel contends that the impugned demand and other notices are arbitrary, disproportionate, and against the established principles of law.

12. Per contra, Learned counsel for the Greater Noida Industrial Development Authority (in short 'GNIDA') submits that under Clause 1 of the original lease deed dated 26.02.2002, enhancement of lease rent after every 10 years (subject to a cap of 50% of the then prevailing lease rent) is a clear and mandatory stipulation. Execution of a supplementary lease deed was contemplated only as a consequential act following the demand and determination of enhanced lease rent. Since the petitioner contested the enhancement and delayed payment of lease rent for nearly 13 years without interest or penal/compound interest, the supplementary lease deed could not be executed. Subsequently, to remove ambiguity and streamline the process, GNIDA in its 135th Board Meeting held on 15.06.2024 consciously abolished the requirement of executing a

supplementary lease deed for enhancement of lease rent, a decision reiterated through office order dated 31.07.2024.

13. It is further submitted that the observations made by the State Government in its order dated 27.07.2023, particularly in paragraph 4, proceeded on an incorrect interpretation of the lease deed. The Board of GNIDA, exercising its statutory and contractual authority, considered the matter in its 134th, 135th, and 138th Board Meetings and resolved that enhancement of lease rent at 1.50% after every 10 years is consistent with the lease deed and uniformly applicable to other industrial units. The Board decisions, taken with participation of State nominees, validly justify the enhancement and negate the petitioner's claim that absence of a supplementary lease deed bars such enhancement.

14. Lastly, the petitioner's claims for early production incentive and waiver of interest are untenable. The petitioner admittedly failed to obtain a functional certificate and defaulted in timely payment of lease rent, paying only the principal amount after a delay of 13 years without interest or penal/compound interest, contrary to the lease deed. Such defaults dis-entitle the petitioner from any incentive, rebate, or equitable relief. Accordingly, the impugned demands and decisions of GNIDA are legal, reasonable, and in consonance with the lease deed and Board resolutions.

15. In rejoinder argument, counsel for the petitioner rebutted the submissions made by the learned counsel for the respondents and further submits that the lease deed governing parties clearly mandates that any enhancement of rent can

be effected only through execution of a supplementary lease deed and admittedly, no such supplementary lease deed was ever executed, rendering any unilateral and retrospective enhancement of rent by the respondent authority, illegal and unsustainable. He also reiterate that the revisional order dated 27.07.2023 passed by the State Government under Section 41(1) of the U.P. Urban Planning and Development Act, 1973 is binding upon the respondent authority, having attained finality and subsequent board resolutions and impugned orders passed by the respondents, which seek to nullify or bypass the said revisional order, are void *ab initio*, and cannot justify retrospective enhancement of rent or deviation from contractual and statutory obligations.

16. Learned counsel for the petitioner also submits that the entity has been a functional industrial unit since year 2002 and is entitled to the benefits of the early production incentive scheme because the lease deed does not prescribe issuance of a functional certificate as a condition precedent for availing any such benefits, and denial thereof on technical grounds is totally arbitrary and illegal. He further submits that the petitioner deposited advance rent in accordance with the office order dated 05.12.2013, which provides for waiver of penal/compound interest, and therefore no interest can now be levied. Any excess amount paid pursuant to the illegal enhancement of rent is liable to be adjusted. Hence, the impugned order deserves to be quashed.

17. Upon thoughtful consideration of the rival submissions and perusal of the material on record, the principal questions that arise for consideration are, whether the respondent Authority could enhance the

lease rent retrospectively in the absence of execution of a supplementary lease deed dated 26.02.2002, and whether such enhancement could be justified by relying upon subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, which is admittedly prospective in nature. Other related questions that arise are whether the petitioner, having commenced production within the stipulated period and remained a continuously functional industrial unit, is entitled to early production incentive rebate and waiver of penal/compound interest in terms of the applicable scheme. We also consider it necessary to examine that whether the revisional order dated 27.07.2023 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, having attained finality, was binding upon the respondent Authority and mandatorily required to be implemented in its letter and spirit, and whether the impugned order dated 12.12.2024 and consequential demands constitute an impermissible attempt to circumvent or nullify the said revisional order.

18. We first proceed to examine whether the respondent Authority was legally justified in enhancing the lease rent retrospectively in the absence of execution of a supplementary lease deed as expressly contemplated under the lease deed dated 26.02.2002. It is a matter of fact that the lease deed constitutes a binding contract between the parties. The counsel for the petitioner heavily relied upon conditions agreed in the lease deed to contend that it is not permissible to increase lease rent for ten years as per condition of the lease deed. For ready reference relevant lines of clause I of the lease deed are reproduced below:

“..and which said plot is more clearly delineated and shown in the attached plan there in marked in red (hereinafter referred to as "the demised premises") with their appurtenances to the Lessee to the term of 90 years commencing from the date of execution of this lease deed except and always reserving to the Lessor full rights and title to all mines and minerals in and under the demised premises or any part thereof, Yielding and paying therefor yearly lease rent in advance during the said term unto the lessor on the 26th day of Feb in each year at the rate of 2.5% of the total premium during the first ten years. The lessee shall pay lease rent unto the lessor at its office or as otherwise directed lease rent in advance on yearly basis. The lease rent would be Rs.2,96,907.00/- (Rs. Two lakhs ninety six thousands nine hundred seven only annually for the first 10 years changeable from the date of execution of the lease deed and would be payable within 10 days from the date of execution of the lease deed, without waiting for any demand notice or reminder therefor. The lease rent may be enhanced after every 10 years from the date of execution of the. lease, deed by an amount not exceeding 50% of the annual lease rent payable at the time of such enhancement and in such case a supplementary deed will be executed by both the parties. In case of default in payment of lease rent interest @ 20% per annum compounded every half yearly would be chargeable for the delayed period. When lease rent will be revised a supplementary deed will be executed.”

19. From bare reading it appears that the lease deed contemplates enhancement of lease rent after every ten years and such enhancement is expressly conditioned upon execution of a

supplementary lease deed. In the facts of the case, admittedly, no such supplementary lease deed was ever executed between the parties. In the absence of fulfillment of this contractual pre-condition, the unilateral enhancement of lease rent by the respondent Authority, that too with retrospective effect, is clearly contrary to the express terms of the lease and cannot be sustained in law. The contention of the Authority that execution of a supplementary lease deed was merely a consequential or ministerial act cannot be accepted, as contractual stipulations governing financial liabilities must be strictly construed and scrupulously adhered to, particularly by a statutory authority.

20. When the petitioner invested to build the unit, made it functional having the promise in existence as per lease deed, the legitimate expectation is to get the outcome as could be foreseen in terms of a specified amount of rent and the rebate, denying that cannot be justified in the eyes of law. The Supreme Court, in **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409** has held that:

“19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was

formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. v. Sourujmull [(1880) ILR 5 Cal 669 : 5 CLR 533]. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay v. Secretary of State [(1905) ILR 29 Bom 580 : 7 Bom LR 27].”

While referring various judgements mentioned in the paragraph, the Supreme Court has further held that:

“24. This Court finally, after referring to the decision in the Ganges Manufacturing Co. v. Sourujmull, Municipal Corporation of the City of Bombay v. Secretary of State for India and Collector of Bombay v. Municipal Corporation of the City of Bombay summed up the position as follows:

“Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisalment of the circumstances in which the obligation has arisen.”

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in

fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.”

21. To deny the petitioner from his legitimate benefits, the reliance placed by the respondent Authority on subsequent Board Resolutions, including the 135th Board Resolution dated 15.06.2024, to justify such enhancement cannot be acceptable. The said resolution is admittedly prospective in nature and cannot be applied retrospectively to alter rights and obligations that had already crystallized under the lease deed. A Board Resolution, howsoever authoritative, cannot override or rewrite the terms of a concluded contract, nor can it be employed to retrospectively impose financial burdens upon an allottee. Acceptance of such a proposition would amount to permitting unilateral alteration of contractual terms by an authority, which is impermissible in law.

22. The next issue that arises for consideration is whether the petitioner, having commenced production within the stipulated period and remained a continuously functional industrial unit, is entitled to early production incentive rebate and waiver of penal/compound interest in terms of the applicable scheme and office order dated 05.12.2013. In this regard the law is settled by the Apex Court in number of judgements, which makes it clear that benefits once accrued under a policy or scheme cannot be denied due to administrative inaction or delay. In **State of Punjab v. Nestle India Ltd. (2004) 6 SCC 465**, the Supreme Court held that legitimate expectations arising from a policy decision cannot be frustrated by arbitrary State action. Similarly, it was held in **Tata Chemicals Ltd. v. Commissioner of Customs (2015) 11 SCC 628**, that the levy of interest or penal charges contrary to the terms of the governing scheme or express waiver orders is impermissible.

23. After analysing facts of the case and perusal of records, it is clearly established that the petitioner commenced production within the time prescribed under the lease deed and has kept it operational. The petitioner applied for early production incentive rebate in March 2003, which remained undecided for over two decades. Such inordinate delay on the part of the Authority cannot operate to the prejudice of the petitioner. The benefit, once accrued, could not be denied by subsequently introducing conditions not contemplated under the lease deed or the promotional scheme. Similarly, the petitioner having deposited the principal lease rent dues along with advance lease rent in accordance with the office order dated 05.12.2013, became entitled to waiver of penal/compound interest. The subsequent

levy of penal/compound interest despite compliance with the conditions of the waiver scheme is arbitrary and unsustainable.

24. After thoughtful consideration, we find merit in the submission of the learned counsel of the petitioner that the revisional order dated 27.07.2023 passed by the State Government under Section 41(3) of the U.P. Urban Planning and Development Act, 1973, having attained finality, was binding upon the respondent Authority and required to be implemented.

25. In **Union of India v. Kamlakshi Finance Corporation Ltd., 1992 Supp (1) SCC 648**, the Supreme Court has analysed similar issue and has held that orders passed by higher statutory authorities are binding on subordinate authorities and must be implemented in letter and spirit, and that any attempt to bypass or dilute such orders strikes at the very foundation of administrative discipline. A subordinate authority cannot sit in appeal over a binding order under the guise of fresh decision-making. Supreme Court observed in Paragraph 7 that:

“7..The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction

and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the department " in itself an objectionable phrase ? and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

26. Applying above principle in facts of this case, we are of the view that the respondent Authority could not have questioned the correctness of the revisional order by passing a fresh order on the same issues, nor could it have relied upon subsequent Board Resolutions to dilute or nullify the effect of the revisional directions. Once the revisional authority exercised its statutory jurisdiction and granted relief to the petitioner, the respondent Authority was functus officio insofar as those issues were concerned. The impugned order dated 12.12.2024, passed in purported compliance of earlier judicial directions, in fact constitutes an impermissible attempt to circumvent and nullify the binding revisional order dated 27.07.2023. Raising fresh demands on grounds already considered and rejected in revision order, amounts to colourable exercise of power and reflects non-adherence to the principles of administrative discipline and rule of law.

27. In view of the foregoing discussion and conclusions recorded

hereinabove, the impugned orders dated 12.12.2024, 23.12.2024, and 15.05.2025 are hereby **quashed**. The respondent Authority is directed to implement the revisional order dated 27.07.2023 strictly in its letter and spirit and to recalculate the dues, if any, payable by the petitioner in accordance therewith and subject to the observations made in this judgment. The respondent Authority is further directed to extend to the petitioner the benefit of early production incentive rebate as well as waiver of penal/compound interest in terms of the applicable scheme and office order dated 05.12.2013. Any excess amount deposited by the petitioner pursuant to the impugned demands shall be adjusted or refunded, as the case may be, within a period of eight weeks from the date of receipt of a certified copy of this judgment. The writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

(2025) 12 ILRA 982
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ - C No. 26271 of 2025

Vision Town Planners Pvt. Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

The matter involves a legal challenge against Noida Development Authority regarding the demand for Change in Constitution (CIC) Charges and the refusal to grant a zero period due to the authority's failure to provide a separate possession certificate after the sub-division of a commercial plot.

Headnotes

Constitution of India,1950-Article 226-Income tax Act-Section 10B(8) and section 139(1)& companies Act,2013-Section 391 & 394-The court held that since condition no. 3 of the sub-division permission (dated 16.02.2010) mandatorily required a separate possession certificate, and the authority failed to issue one, the petitioner is entitled to a "zero period"-Lawful possession cannot be presumed merely because the predecessor had possession of the original undivided plot-Relying on established precedents, the Court ruled that CIC charges cannot be levied for a mere change in shareholding/management where the legal entity of the company remains the same-writ petition allowed.(Para 18 to 30) (E-6)

Held

The Court set aside the Revisional Authority's order-The authority was directed to refund the Rs. 7.38 crores in CIC charges with 9% interest per annum and provide a fresh calculation of lease rent starting only from the date a new possession certificate is issued.

Case law Cited

Central Warehousing Corporation Vs Adani Ports Special Economic Zone Ltd. (APSEZL) & Ors, M/s Ace Infracity Developers (P) Ltd. Vs State of U.P. & Ors vide order dated 09.11.2023 in Writ-C No. 14964 of 2023, Allure Developers Pvt Ltd Vs State of U.P. & 3 Ors (WRIT C No. 19361 of 2020), M/S Rudra Buildwell Projects Pvt. Ltd. Vs State of U.P. Ors (Writ-C No. 31247 of 2022.), Parmod Kumar & Anr. Vs Lt Governor of Delhi & Ors W.P. (C) No. 6704-05/2004 vide its order dated 03.12.2008, Flourish Hospitals Pvt. Ltd. Vs Delhi Development Authority in WP(C) 15333/2022, International Hospital Pvt. Ltd Vs State of U.P. & Anr. 2004(1) AWC 300-referred to.

List of Acts

Income Tax Act,1961, Companies Act,2013

List of Keywords

Zero period, Change in Constitution (CIC) Charges, Possession Certificate, Lease Rent Arrears, Sub-division of Plot, Shareholding Transfer

Case Arising From

Civil Jurisdiction- WRIT -C No. – 26271 of 2025

Vision Town Planners Pvt. Ltd. Vs. State Of U.P. & 2 Others

From the Judgment and Order dated 19.12.2025 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner:-

Tarun Agrawal

Advs. for Respondent:-

C.S.C., Kaushalendra Nath Singh, Vineet Pandey.

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard Sri Tarun Agrawal, learned counsel for the petitioner, Sri Kartikey Saran, learned Additional Advocate General State of U.P. along with Sri Vijay Shankar Prasad, learned Additional Chief Standing Counsel appearing on behalf of respondent no. 1 and Sri M.C. Chaturvedi, learned Senior Counsel along with Sri Vineet Pandey, learned counsel appearing on behalf of respondent nos. 1, 2 and 3 at length.

2. The petitioner has preferred the present petition with the following prayers:-

i) Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 17.10.2024 passed by the respondent no. 1 to the extent it refuses to set aside the demand of Rs. 168.37-Crores towards arrears of annual lease rent as well as Rs. 7.38-Crores towards CIC charges (Annexure No. 1);

ii) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent authority to forthwith restore the plot of the petitioner without demanding restoration charges in accordance with GO dated 05.11.2019.

iii) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent authority to charge annual lease rent only from the date of delivery of actual physical possession of the plot together with the possession letter;

Facts in brief as contained in the writ petition are that the predecessor in interest of the petitioner namely M/s BPTP International Trade Centre Limited was allotted a commercial plot admeasuring 3.80 lakh sq. mt. in Sector 94, Noida. The total premium of the aforesaid plot was Rs. 4,957,829-crores. M/s BPTP International Trade Centre Limited paid Rs.1115.51/-crores, and thereafter sought curtailment of the area corresponding to the payment already made by it. Accordingly, the allotted area was reduced to 85,672.17 sq. mt. corresponding to an allotment premium of Rs. 1,115.51/-crores. Since, this amount had already been paid in full a lease deed was executed between the respondent authority and M/s BPTP International Trade Centre Limited on 09.02.2009. The lease deed also provided yearly lease rent equivalent to 2.5% of the total premium of Rs 1,115.51-crores.

4. Thereafter, a request had been made by M/s BPTP International Trade Centre Limited to sub-divide the allotted plot into two smaller plots and this request was accepted by Noida vide letter dated 16.02.2010. The sub-division of plots was permitted pursuant to the government order dated 25.10.2009 and the decision of the

Board taken in its 166th Meeting dated 29.12.2009. Certain conditions were imposed while permitting subdivision of plots. Condition no. 3 provides for separate execution of a sublease deed and for independently obtaining the possession certificate.

5. Thereafter, no fresh lease deed was executed and only correction deed was executed between the respondent authority and M/s BPTP International Trade Centre Limited which had the effect of bifurcating Plot no. 2 into two smaller plots, viz, Plot no. 2A (admeasuring 28,328 sq. mt.) and Plot no. 2B (admeasuring 57,344 sq. mt.).

6. M/s BPTP International Trade Centre Limited moved application for transfer of plot No. 2A (28,328 sq. mt.) to the petitioner company. The respondent no. 2 granted permission by letter dated 22.2.2010 to transfer the plot No. 2A to the petitioner. By virtue of the transfer deed executed between M/s BPTP International and the petitioner company dated 24.02.2010, Plot no. 2A admeasuring 28,328 sq. mt was transferred to the petitioner on 24.02.2010 and registered transfer deed was executed between the petitioner and M/s BPTP International Private Limited.

7. After transfer of Plot no. 2A on 24.02.2010, the entire management and shareholding of the petitioner's-company had been changed, as such, the petitioner company applied for recording the changes of management and shareholding. The respondent no. 2 by letter dated 23.8.2010 demanded Rs.7,38,21,899.40 in pursuant to office order no. 575 dated 05.05.2010. The said amount was deposited by the petitioner in 2010 itself with the respondent authority which is admitted. When the petitioner

learnt that two Division Benches of this Court had already held that levy of CIC imposed by Noida is illegal the petitioner sought refund of Rs. 7.38 crores deposited by it.

8. The petitioner has also applied for additional FAR. for which respondent no. 2 by order/letter dated 23.3.2011 demanded Rs.1,27,25,37,000/- against which the petitioner deposited Rs. 15 crores. The respondent no. 2 by order dated 31.3.2023, rejected the application of the petitioner for purchase of additional FAR, but the amount of Rs. 15 crores was not refunded.

9. Thereafter, the respondent authority vide orders dated 02.11.2020 & 08.12.2020 cancelled the allotment of the petitioner for non payment of lease rent of Rs.1,68,370,018) (Rs.168.37 crores). The petitioner claimed that he was entitled for benefit of zero period on account of failure of the respondent authority to give a separate possession certificate to it and the petitioner also sought adjustment of excess amount of Rs.7.38 crores deposited towards CIC charges, as also Rs 15 crores deposited towards utilized additional FAR charges with the respondent-authority.

10. The orders dated 2.11.2020 and 8.12.2020 were challenged by the petitioner before the Secretary, Department of Infrastructure and Industrial Development. Lucknow by filing revision.

11. The aforesaid orders dated 2.11.2020 and 8.12.2020 were partly set aside by the Revisional Authority, vide order dated 17.10.2024 by accepting the claim for refund/adjustment of Rs. 15-crore and the order cancelling the plot was also set aside The revisional authority however

refused to grant the benefit of zero period to the petitioner and also upheld the levy of CIC charges. Aggrieved with the refusal of the to grant the benefit of zero period to the petitioner and CIC charges, the petitioner has preferred the present writ petition.

12. The dispute in the present case arising out of interpretation of Condition No.3 imposed by Noida in its letter dated 16.02.2010 by which permission was granted to sub division of the plot as well as the question of legality of the demand of Rs.7.38 crores levied by the respondent authority towards change-in constitution (hereinafter referred to as "CIC") of the petitioner company in 2010.

13. It is argued by learned counsel for the petitioner that the petitioner claims zero period on the strength of the failure of the respondent authority to issue a separate possession letter/certificate to it. He placed reliance upon the mandatory condition no. 3 imposed by the respondent authority itself in its letter dated 16.02.2010. It is admitted by the respondent authority that no such separate possession letter/certificate was issued to the petitioner.

14. So far as refund of Rs. 7.38 crores deposited towards CIC charges is concerned, the submission of learned counsel for the petitioner is that Division Bench of this Court in Writ-C No. 7852 of 2009 (M/s International Recreation Parks Pvt. Ltd. Vs. State of up & others) has held that the demand of CIC charges for change in management simplicitor is illegal. The Court has further held that clarification of the State Government dated 11.10.2010 and notification dated 27.10.2010 Issued by the Noida Development Authority will be applicable retrospectively and no CIC

charges can be leveled on transfer of share by the company and no permission of respondent development authority was required in cases, involving 100% transfer of share.

15. However, the counsel for the respondent-Development Authority has contested the claim for zero period on the ground that no such separate possession letter/certificate was required to be issued in view of the fact that the petitioner was handed over peaceful possession by M/s BPTP International Private Limited. The authority has also submitted that it is not in dispute that the petitioner in fact obtained peaceful possession of Plot no. 2A thereby obviating the need for a separate possession letter. The authority has also questioned the delay on the part of the petitioner to raise the issue of zero period as no letter was ever written by the petitioner seeking separate possession letter/certificate. It was only after the cancellation order was passed, the petitioner cooked a story of possession certificate to cover its own default of non-payment of lease premium.

16. On the issue of CIC, the respondent authority stated that the petitioner had deposited the entire demanded amount without any protest and even though, with respect to CIC charges, the petitioner did not seek refund or adjustment at any point of time. The petitioner had submitted its map for construction of a building and had also sought additional FAR for the same. The petitioner had also deposited Rs.15-crore towards additional FAR which clearly shows that the petitioner was in actual physical possession of the entire plot and that they did not ever intend to question the levy of CIC charges by the respondent authority. It was too late in the day for the

petitioner to question the levy of CIC charges and claim zero period having failed to object at any point of time in the past.

17. Heard learned counsel for the parties and perused the record.

18. After perusing the record, the Court is of the opinion that the questions to be decided in the present petition are that:-

(i) Whether the petitioner is entitled for zero period for failure of the authority to issue a separate possession letter/certificate as required under condition no 3 of the letter dated 16.02.2010.

(ii) Whether the petitioner is entitled to refund/adjustment of the CIC charges to the tune of Rs. 7.38-crores.

19. Insofar as the first issue regarding the entitlement of the petitioner for zero period is concerned, learned counsel for the petitioner placed reliance on condition no.3 appended with the Noida/Commercial/ 2010/187 dated 16.02.2010. The said condition is reproduced herein under-

(3) दोनों भूखण्डों का पृथक से साइट प्लान, उप पट्टा विलेख एवं कब्जा प्रमाण प्राप्त करना होगा.

20. The aforesaid condition found reiteration in the transfer deed dated 24.02.2010 executed between M/s BPTP International Private Limited and the petitioner. Therefore, it can be safely concluded that the requirement of obtaining a separate possession letter was mandatory in order to enable the petitioner to reap the benefits of transfer.

21. From perusal of paragraphs 15 & 21 of the impugned order it is clear that while passing the letter dated 16.2.2010 (Annexure-7 to the writ petition), it was clearly provided that separate site plan, sub-lease deed and possession certificate with regard to both the plots has to be obtained separately, but instead of execution of fresh lease deed, correction deed was executed on 24.2.2010. The respondent has not brought on record any document to establish that fresh possession certificate as contemplated in letter dated 16.2.2010 has been granted. By way of supplementary counter affidavit, the respondent brought on record the possession letter dated 10.2.2009 and by the said letter, the possession of 85672.17 square meters land of plot No. 2A, Sector 94 was handed over to M/s BPTP International Trade Centre Limited. The said plot was divided into two plots, i.e. plot No. 2A, measuring 28,328.07 square meters and plot No.2B, measuring 57,344.10 square meters in terms of 166th Board Meeting, vide letter dated 16.2.2010 and as per condition No. 3 of letter dated 16.2.2010, a separate possession letter was required, which has not been issued by the development authority.

22. The respondent No.2 itself stated that since the possession of plot no.2 has already been given to M/s, BPTP international Trade Centre Pvt. Ltd, as such, M/s Vision Town Planners Pvt. Ltd, the petitioner, was supposed to take the possession from M/s. BPTP International Trade Centre Pvt. Ltd only. Since the possession of plot no.2 as a whole has already been handed over on 20.02.2009 to M/S. BPTP International Trade Centre Pvt. Ltd, there is no occasion for the NOIDA authority to impose condition to give the separate possession of both the plots while

granting the permission for sub-division of plot separately. It is argued that once condition has been imposed it was mandatorily required to be complied with by NOIDA Authority. As is evident from the record that the possession of plot no.2A have not been given separately in compliance of condition no.3 of sub-division permission dated 16.02.2010 either to M/s. BPTP International Trade Centre Pvt. Ltd. or M/s Vision Town Planners Pvt Ltd. When possession of plot no.2A has not been given to M/s BPTP International Trade Centre Pvt. Ltd. the question of handing over the possession of plot no 2A to Vision Town Planners Pvt Ltd, never arises. Learned counsel for the petitioner placed reliance upon paragraph 14 of judgement dated 11.07.2022 passed the Hon'ble Apex Court in the case of Principal Commissioner of Income Tax-III. Bangalore and another Versus M/s Wipro Limited (Civil Appeal No.1449 of 2022) which reads as follows:

In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B (8) of the IT Act. We hold that for claiming the benefit under Section 10B (8) of the IT Act, the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of Income under section 139(1) are to be satisfied and both are mandatorily to be complied with: Accordingly, the question of

law is answered in favour of the Revenue and against the assessee. The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on noncompliance of the twin conditions as provided under Section 10B (8) of the IT Act, as observed hereinabove. The present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

23. Hon'ble Supreme Court in the case of **Central Warehousing Corporation Versus Adani Ports Special Economic Zone Limited (APSEZL) And Others** held that two limbs of the government should not speak in two voices. Paragraph Nos. 37, 45 and 52 reads as follows:-

37. The said proposal was put up for consideration before the BoD. The BoD. in principle, accepted the said proposal on the following conditions:

"(i) M/s. APSEZ may provide a suitable alternative land of the same size as the existing one as selected by CWC outside the SEZ area at Mundra Port.

(ii) A godown of 66000 MT (as per existing) may be created by M/s. APSEZ as per the specification of CWC within the period of twelve (12) months

(iii) M/S. APSEZ shall take the whole covered space so created along with remaining open area at CWC's existing public tariff with 6% annual escalation (compoundable) warehousing basis for entire period of lease i.e., till 16.2.2031, underwriting the business and other risks

of the Corporation and shall sign an agreement, giving suitable amount of bank guarantee to this effect.

45. The High Court, in effect, forces the MD of the appellant- CWC, which is a statutory body, to accept the first two conditions and leave the 3rd condition to be settled mutually through mediation. The offer given by APSEZL on 9th March 2019 was a composite one so also the acceptance thereof by the appellant- CWC was a composite one. The acceptance of the first two conditions was also dependent upon the 3rd condition. If the High Court was so concerned about settlement of the dispute. then, while compelling the appellant-CWC to accept the first two conditions, it also ought to have compelled APSEZL to accept the 3rd condition.

45. We are of the considered view that it does not augur well for the Union of India to speak in two contradictory voices. The two departments of the Union of India cannot be permitted to take stands which are diagonally opposite. We may gainfully refer to the following observations made by a three Judges Bench of this Court In the case of Lloyd Electric and Engineering Limited Vs. State of Himachal Pradesh and Others.

14. The State Government cannot speak in two voices. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31-3-2009, up to 31-3-2013, and the Notification dated 29-3-2009, accordingly, having been issued by the Department, concerned viz. Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be

taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the government policy and not their own policy.

c. The Hon'ble Apex Court while deciding the Appeal in Azam Jha Bahadur (Dead) By His Legal Expenditure Tax Officer, Hyderabad held that logic and reason cannot be of much avail in interpreting a taxing statute.

24. Allahabad High Court and Delhi High Court in various cases has held that when possession has not been given by NOIDA, it is not authorized to realize the lease rent handing over of possession. The aforesaid, judgments reads as follows:-

I. M/s Ace Infracity Developers (P) Ltd. Vs. State of UP & Others vide order dated 09.11.2023 in Writ-C No. 14964 of 2023 (para no. 12)

12. Consequently, writ petition is allowed. The demand notice dated 29.3.2023 placing demand for additional compensation, instalment of lease premium and annual lease rent is set aside.

Respondents are directed not to realize the lease premium amount as well as the lease rent from the petitioner for the period between 19.12.2014 to till date and also adjust the due interest amount of the said period. Respondent Authority is also directed to consider the revised building plan regarding Plot No. SC-02/G, Sector 150. Noida having an area of 60,000.54 sq. mtrs in accordance with law considering the observations made herein above.

In paragraph 15 of the judgment dated 23.05.2022 in the case of **Allure**

Developers Private Limited Vs. State Of U P. And 3 Others (WRIT C No. 19361 of 2020), the same thing was again reiterated. Paragraph 15 reads as follows:-

15. Accordingly, the writ petition stands allowed The order dated 11.2.2021 passed by the respondent No. 2 in relation to Plot No.SC-02/C. Sports City, Sector 150, Noida, Gautam Budh Nagar, U.P., is set aside. The respondent No. 2 is directed to grant benefit of zero period to the petitioner from 19.4.2014 up to 21.8.2020 and not charge the lease rent in respect of the area of the plot, the possession of which has not been handed over at the time of allotment.

In paragraph 34 of the judgment dated 16.11.2023 in the case of **M/S Rudra Buildwell Projects Pvt. Ltd. Vs. State of U.P. & Others (Writ-C No.31247 of 2022)**, the same thing was again reiterated. Paragraph 34 reads as follows:-

34. Accordingly, the writ petition stands allowed. The Order dated 30.07.2020 passed by the Respondent Authority in relation to Plot No. GH-05A, Sector 16, Greater Noida, is set aside. The Respondent No. 2 is directed to grant benefit of zero period to the petitioner from the date of allotment till actual possession ie. April, 2023 and not charge the lease rent and interest accruing thereon in respect of the area of the plot, the possession of which has not been handed over at the time of allotment.

The Delhi High Court again in case of **Parmod Kumar & Anr. vs Lt. Governor of Delhi & Ors. in W.P. (C) No.6704-05/2004** vide its order dated 03.12.2008 held that

6. The petitioner cannot, therefore, be subjected to any liability in

respect of the said plot which is yet to be delivered to him, except to require him to pay the balance price, which he has already paid. The respondent cannot seek to charge ground rent for the plot when, as a matter of fact, the respondent was not in a position to deliver possession of the plot to the petitioner, and the possession has not yet been delivered to the petitioner.

8..... In the present case, though the allotment can be said to have been made at the time when the auction was held in the year 2002 wherein the petitioner emerged as the highest bidder, as a matter of fact, on account of the aforesaid circumstances, the petitioner has not been placed in possession of the plot till today. The reasons for this delay are attributable to the respondent, and not to the petitioner.

9. However, in a case where the date of allotment is separated by a long period from the date when the DDA is in a position to deliver possession of the plot, for reasons attributable to the DDA, the liability to pay the ground rent cannot start from the date of allotment, and must start only from the date when the allottee is placed in possession of the plot under a conveyance.

The Delhi High Court again in case of **Flourish Hospitals Pvt. Ltd. vs Delhi Development Authority in WP(C) 15333/2022** decided on 28.02.2025 held that:-

38. In *Vivekanand Pratisthan Parishad (Regd) Vs. Delhi Development Authority: 2000 SCC Online Del 897*, the formal possession was distinguished from actual possession and it was held that ground rent was rather payable from 'actual and not formal possession.

44..... Therefore, the demand of ground rent, before clarifying the actual land area and demarcation, would potentially amount to unjust enrichment, especially when DDA, itself, is largely responsible for generating ambiguity uncertainty.

45. In view of the peculiar facts and circumstances of the case, it will be in the fitness of things if DDA is directed to treat ground rent of Re 1 per annum until 14.06.2021. taking into account the fact that the exact area of the land was ascertainable only after preparation of the modified layout plan, which could have provided clarity about the exact boundaries and dimensions of the plot.

46. The ground rent @ of 2.5% per annum on the premium of the plot would thus be leviable only w.e.f 15.06.2021"

Delhi High Court in the case of **Vivekanand Pratisthan Parishad VS Delhi Development Authority in AIR 2001 Delhi 104 dated 23.11.2000**, para 7 which is reproduced as under.-

When the respondent itself has written to the petitioner on 19-9-1990 that till date they have not handed over the possession, insertion of Clause (4) in the lease-deed is highly improper and illegal thereby stating that the petitioner is entitled for payment of ground rent from 27-2-1989. One cannot lose sight of the fact that for starting any activities or construction over the land in question, no objection from DDA was sine qua non. DDA having given the same in the year 1995, cannot turn now and say that the petitioner is liable to pay ground rent from 1989. The building plans can be sanctioned only after no objection is

granted and lease-deed is executed. The building plans are valid for a specific period and if construction is not raised, then the building plans have to be revalidated. In this case, if the date as shown in Clause (4) of the draft lease-deed is taken to be correct, then a great anomaly will be created vis-a-vis the right of the petitioner. The ground rent will be leviable from 1989, although no objection certificate has been granted by the DDA only on 26-9-1995 and lease-deed has not been executed and only a copy of the draft lease-deed was sent to the petitioner on 10-10-1996. The respondent/DDA is directed to execute fresh lease-deed taking the date from the date of actual handing over of the possession on 21-8-1995. After the lease-deed is executed the building plan submitted by the petitioner with the respondent will be sanctioned by the competent authority in accordance with law within a period of six months. 8 Petition stands disposed of.

25. In view of the aforesaid fact and law laid down by Apex Court as well as this Court, it is clear that the respondent development authority cannot take two stands, i.e., (1) while granting permission for sub-division asked for obtaining fresh possession certificate and (2) say that the possession which was delivered to M/s BPTP International Trade Centre Limited Prior to grant of permission of sub-division of plot is sufficient compliance of condition no. 3 of order dated 16.2.2010. In the entire proceeding and document, the development authority has not at all denied that the condition no. 3 of order dated 16.2.2010 was not imposed or condition no. 3 of order dated 16.2.2010 was complied by the development authority. It is well settled law that while executing any transfer deed, the delivery of possession is mentioned and the

said delivery may be actual or symbolic. The lease hold right of M/s BPTP International Trade Centre Limited stand transferred to the petitioner company and symbolic possession of the leased land was given by M/s BPTP International Trade Centre Limited to the petitioner, but as per the order dated 16.2.2010, independent possession by way of possession certificate of two divided plots was not handed over to M/s BPTP International Trade Centre Limited, as such, lawful possession of the petitioner cannot be presumed over plot No. 2A, Sector 94 Noida. As already held by series of judgments of this Court, once the lawful possession of divided plots i.e. plot No. 2A was not handed over either to M/s BPTP International Trade Centre Limited or the petitioner, the respondent development authority is not entitled to charge lease rent and the said period i.e. from the date of execution of sub-lease deed by M/s BPTP International Trade Centre Limited to the petitioner is worthy to be allowed, as zero period.

26. So far as CIC Charges is concerned, the Division Bench of this Court in case of ***International Hospital Pvt. Ltd. Vs. State of U.P. and another, reported in 2004(1) AWC 300*** has held that merely by change of share holding, the status of the company is not changed, as the company has its separate legal entity, which is different from its shareholding. The Court has held as under:

7. Unitech Investments Ltd. having 49,99,970 shares was one of the main promoters of the petitioner company. It was a 100% subsidiary of Unitech Holdings Ltd. It appears that a scheme for amalgamation was filed u/s. 391 and 394 of the Companies Act by Unitech Investments Ltd. to merge it with its holding company,

i.e., Unitech Holdings Ltd., before the Delhi High Court being Company Petition Nos. 162 of 2005 and 163 of 2005. The Delhi High Court vide judgement and order dated 25.7.2005 allowed merger of Unitech Investments Ltd. (100% subsidiary) with Unitech Holdings Ltd. (holding company of Unitech Investment Ltd.). The relevant portion of the order of the Delhi High Court dated 25.7.2005 reads as follows:-

"This court doth hereby sanction the scheme of amalgamation setforth in Schedule I annexed hereto and doth hereby declare the same to be binding on all the shareholders and creditors of the Transferor and Transferee Companies and all concerned and doth approve the said scheme of amalgamation with effect from appointed date, i.e, 1-4-2004. □

That as on date, the entire share capital of the transferor company is held by the Transferee Company. Accordingly, upon the transfer and merger of Transferor Company under the scheme into transferee Company, there would be no issue of equity shares of Transferee Company to the shareholder(s) of Transferor Company, since the provisions of the Act do not permit Transferee Company to hold its own shares, upon the dissolution of Transferor Company. Under the terms of this scheme, all the shares held by Transferee Company in Transferor Company shall stand cancelled upon the scheme becoming effective without any further act or deed."

As a result of amalgamation of Unitech Investments Ltd. with its holding company, namely, Unitech Holdings Ltd., shares of the petitioner company in the hands of Unitech Investments Ltd. came to be held by Unitech Holdings Ltd. Accordingly,

Unitech Holdings Ltd. came to own 49,99,970 shares of the petitioner company w.e.f. 1.4.2004, the appointed date under the sanctioned scheme.

27. This Court further in Writ-C No. 7852 of 2009 (M/s International Recreation Parks Pvt. Ltd. Vs. State of U.P. & others) had followed the aforesaid judgment, which was affirmed by dismissal of SLP No. 692 of 2005 dated 24.3.2006. The Division Bench of this Court, relying upon counter affidavit filed by Noida Development Authority and the supplementary affidavit filed by the petitioner in that case has held that the Noida Development Authority had not been charging CIC charges in similar other cases referred in para 20 of the aforesaid judgment. The Court has further held that the State Government has issued only clarification on 11.10.2010, which was further clarified by the Noida Development Authority by issuing notification dated 27.10.2010. The Court has held as under:

20. *Here it is pertinent to mention that in supplementary counter affidavit filed by NOIDA authority, it tried to set up a case that the notification dated 27-10-2010 is applicable only prospectively and therefore, the petitioner company is not entitled to its benefit. In order to prove that the aforesaid stand of the NOIDA authority is apparently false and that the NOIDA authority itself had given benefit of the said notification to various companies in whose favour lease deeds were executed much before the issuance of the said notification, petitioner company had brought on record various instances in this regard by filing second supplementary affidavit. These instances are as follows :-*

(a) In case of M/s. Raga Impex Pvt. Ltd. allotment / lease deeds are dated

30-5-2005 and 2-6-2005 and 100% transfer of shares in the said company was not regarded as change in constitution by Noida Authority.

(b) In case of M/s. MKG Creations Pvt. Ltd. allotment / lease deeds are dated 9-10-2009 and 8-12-2009 and 100% transfer of shares in the said company was not regarded as change in constitution.

(c) In case of M/s. Noida Electrical and Moulding Pvt. Ltd. allotment / lease deeds are dated 22-8-2007 and 15-2-2007 and 100% transfer of shares in the said company was not regarded as change in constitution.

(d) In case of M/s. Neelkanth Industrial Consultants Pvt. Ltd. allotment / lease deeds are dated 4-10-2006 and 22-12-2006 and 100% transfer of shares in the said company was not regarded as change in constitution

(f) In case of M/s. Sachdeva Packaging Pvt. Ltd. allotment / lease deeds are dated 24-6-2009 and 100% transfer of shares in the said company was not regarded as change in constitution.

21. The assertion made in this regard by the petitioner were not rebutted by Noida Authority by filing any affidavit in reply thereto. This also clearly proves that even Noida had extended the benefit of the notification dt. 27-10-2010 to the existing leases. In view of it, the petitioner company is also entitled to the benefit thereof.

22. Thus, the irresistible conclusion is that petitioner company is not liable to pay CIC charges and the demand made in this regard vide impugned orders

dated 01-01-2009, 01-10-2007 and 30-11-2007 is wholly unwarranted.

28. This being the position the levy of CIC charges on 23.08.2010, and acceptance of its deposit on 05.10.2010 is clearly unfair on the petitioner. The authority ought to have refunded the amount of Rs.7,38,21,900/-deposited by the petitioner on 05.10.2010. Pertinently M/s International Recreation Parks Private Limited (Supra) only reiterated an earlier Division Bench judgment of this Hon'ble Court in CMWP No. 13556 of 2003, where also the levy of CIC by Noida was held illegal. Thus, the respondent authority clearly knew that it could not legitimately levy CIC charges for transfer of shares simplicitor. without any change in the form and nature of the entity.

29. The authority has not been able to provide any valid justification for illegally retaining a sum of Rs.7,38,21,900/-despite the levy of CIC having been declared illegal by two Division Benches of this Court. The action of the respondent-authority is not only both unfair and unreasonable but contemptuous in nature. The petitioner is not only entitled to refund of the entire principle amount of Rs.7,38,21,900/-, but the same shall also carry interest. It has been held in series of judgment that the rate at which illegal monies ought to be refunded shall be same as the rate charged by such entity. The petitioner is therefore, entitled to receive Rs.7,38,21,900/- interest 9% per annum.

30. The present writ petition is allowed. The order dated 17.10.2024 passed by the respondent No.1/Principal Secretary (Industrial Development), U.P. Lucknow, insofar as it affirm the demand of Rs.168.37 crores towards arrear of

consistent with the Government Order dated february 28, 2020.

Constitution of India, 1950-Article 226-Under the "Mukhyamantri Krishak Durghatna Kalyan Yojna" it is not mandatory for agricultural land to be recorded in the deceased's name-Eligibility extends to family members whose primary livelihood is derived from the account holders registered land-Rejection of a welfare claim based on an undisclosed report (such as Lekhpal's report) without providing the claimant an opportunity for explanation or a hearing is a violation of natural justice-writ petition allowed.(Para 15 to 22) (E-6)

The court found the rejection was based on a “narrow interpretation” and “assumptions not supported by proper enquiry”. The matter was remanded to the District Magistrate to consider the claim afresh within eight weeks.

Union of India Vs PrabhaKaran ViJaya Kumar,
(2008) 9 SCC 527-referred to.

Constitution of India,1950, Government Order dated 28.02.2020

Mukhyamantri Krishi, Durgatna Kalyan Yojna, Beneficial legislation, Principles of Natural justice, Livelihood, Land Title, breadwinner, Re-enquiry discretion.

Civil Jurisdiction-WRIT-C No. – 29414 of 2023

From the Judgment and Order dated 18.12.2025
of the High Court of Judicature at Allahabad.

Vimal Kumar

C.S.C.

The matter pertains to petitioner whose husband died in road accident. her claim for compensation was initially rejected because a local report alleged her husband ran a general store/bangle shop, despite her assertion that he was the primary breadwinner through agricultural work on his grandfather's land. The key issue involved in this case is whether the District Magistrate rejection of the petitioner's claim under the "Mukhyamantari Krishak Durghatna Kalyan Yojna" was lawful and

(Delivered by Hon'ble Mrs. Swarupama Charurvedi, J.)

1. Heard Sri Vimal Kumar, learned counsel for the petitioner and Ms. Shruti Malviya, learned Brief Holder for the State respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of an appropriate writ, or direction in the nature of certiorari quashing the impugned order dated 25.08.2021 passed by the respondent no. 3, Additional District Magistrate, Kannauj, whereby the claim of the petitioner under the 'Mukhyamantri Krishak Durghatna Kalyan Yojana' has been rejected, and further praying for a direction in the nature of mandamus to the respondent no. 2 to take final decision on application of the petitioner dated 07.09.2021 after calling report in re-enquiry.

3. Brief facts of the case are that the husband of the petitioner, namely Late Vikas Gupta, died on 29.08.2020 in a road accident. In relation thereto, an F.I.R. was lodged on 30.08.2020 after the post-mortem of the deceased. Late Vikas Gupta was a poor farmer, and at the time of his death, he left behind his aged father, the petitioner (his widow), and three minor children. It is stated that the grandfather and father of the deceased are still alive and the agricultural land continues to be recorded in the name of the grandfather of the deceased. During his lifetime, Late Vikas Gupta was engaged in agricultural work in his village and agriculture was the sole source of livelihood for him and his family.

4. It is a matter of fact that the State Government has brought a welfare scheme known as "Mukhyamantri Krishak Durghatna Kalyan Yojana" to provide financial assistance to the families of farmers who die in accidents. In this regard, the Additional Chief Secretary, Government of Uttar Pradesh, issued a Government Order dated 28.02.2020 laying down the guidelines for extending benefits under the said scheme. Accordingly, after the death of her husband, the petitioner submitted a claim under the aforesaid scheme after completing all required formalities.

5. Learned counsel for the petitioner contends that upon submission of the claim, the concerned authorities called for reports from the Lekhpal, who submitted baseless report without conducting proper enquiry. Thereafter, in an executive meeting chaired by the District Magistrate, Kannauj, a decision was taken to reject the petitioner's claim on the ground that the deceased was earning his livelihood from a general store/ bangle shop and not from agriculture, so the claim of the petitioner was rejected by the order dated 25.08.2021.

6. Aggrieved by the rejection order, the petitioner submitted representation dated 07.09.2021 before the District Magistrate, Kannauj, stating that it was her brother-in-law, who was working merely as a helper in the general store on a monthly payment of Rs. 2,000/-, whereas her husband was a farmer and was engaged solely in agricultural work. Learned counsel for the petitioner submits that after getting no response, the petitioner approached this Court by filing the writ petition.

7. Learned counsel further submits that during his lifetime, deceased was doing agricultural work in his village and the main source of his income and also the family is through agricultural work only. It is further submitted that the deceased was very young and the bread earner for his family and due to his sudden death, entire family is suffering from the financial hardship.

8. Learned counsel for the petitioner submitted that the Additional Chief Secretary U.P. Government has issued Government Order dated 28.02.2020 for determination of the guidelines for providing benefits under the scheme of "Mukhyamantri Krishak Durghatna Kalyan Yojana" and present case is fully covered under Clause 2 of the Government Order dated 28.02.2020. Relevant part of the guideline is reproduced below for ready reference:

"Subject: Guidelines for the implementation of the "Chief Minister's Farmer Accident Welfare Scheme" in case of accidental death/disability of farmers in Uttar Pradesh.

The State Government has decided to implement the "Chief Minister's Farmer Accident Welfare Scheme" with the objective of providing social security to the families of farmers in case of accidental death or disability. The following guidelines are being issued for this purpose:

1. This scheme will be effective from September 14, 2019.

2. Eligibility (Definition of Farmer):

This scheme is for farmers residing in Uttar Pradesh who suffer

accidental death or disability. A farmer is defined as follows:

(1) Account holder/co-account holder recorded in the revenue records, i.e., the land register (Khatauni).

OR

(2) Earning members of the account holder/co-account holder's family whose primary source of livelihood is agricultural income from the land registered in the name of the account holder/co-account holder.

OR

(3) Landless individuals who cultivate land obtained on lease or on a sharecropping basis, and whose main source of livelihood is agriculture on such leased or sharecropped land. Lessees include tenant farmers, government lessees, and private lessees.

4. Age:

The farmer's age should be between 18 and 70 years on the date of death/disability.

5. Coverage of the Scheme:

(1) If a farmer suffers accidental death/disability due to fire, flood, lightning, electric shock, snakebite, attack/injury by animals/creatures, drowning in the sea, river, lake, pond, or well, storm, falling from or being crushed by a tree, house collapse, accident involving train/road/aircraft/other vehicles, landslide, earthquake, gas leak, explosion, falling into a sewer chamber, or any other cause, then financial assistance will be

provided to the farmer/legal heir(s) under this scheme.”

9. Learned counsel for the petitioner submits that on the claim of petitioner the authorities concerned invited reports from the Lekhpal who in his turn without making proper enquiry submitted the false report and on the basis of same report, Executive Meeting headed by the District Magistrate, Kannauj, the decision was taken on 31.07.2021, for rejecting the claim of the petitioner while observing that the source of income of the deceased was from the shop of the general store/ bangle shop and not from the agriculture, hence she is not entitle under the scheme.

10. Learned counsel further submits that from bare perusal of the information order dated 25.08.2021 and the decision taken on 31.07.2021, it is crystal clear that before taking impugned decision no information, explanation or opportunity of hearing has been provided to the petitioner by the committee and also the report of Lekhpal which was relied by the committee in rejecting the claim of the petitioner, was also not provided to the petitioner, which itself makes the impugned order bad in law due to the violation of principles of natural justice.

11. Per contra, learned Standing Counsel for the State respondent submits that the matter was placed before the District Level Committee and the committee has enquired the matter and found that main source of income of deceased was not agriculture but his source of income was money earned from running the general store /bangle shop, whereas petitioner has claimed in writ petition that her husband earned livelihood by carrying agricultural work on the ancestral land of

his father, which has been found to be incorrect under the eligibility criteria as specified in sub para 2 of para 2 of M.S.- 11/Ek-9-2020-2F/2018 dated February 28, 2020, because the land is mortgaged.

12. Learned counsel for the respondent submits that the petitioner's father-in-law, Sri Hari Om, is alive, but his name is not recorded in the Khatauni. Learned counsel further submits that the name of the deceased's grandfather, Sri Ram Dayal, son of Raghuvar Dayal, is recorded in respect of Gata No. 294, situated at Village Sikandarpur, Pargana Sakrava. As per the stand taken by the respondents in the counter affidavit, the deceased is not eligible for benefits under the scheme, as his grandfather's name appears in the land records and not his own. It is also contended that the land of Raghuvar Dayal, son of Ram Dayal, namely Gata No. 294, situated at Village Sikandarpur, Pargana Sakrava, was mortgaged on 28.04.2011 and a corresponding endorsement was made in the Khatauni.

13. Learned brief holder appearing for the State respondents submits that, under Point No. 11(Ra) of the Government Order dated 28.02.2020, the District Magistrate is not bound to re-examine the matter because it is specifically provided therein that only if new facts are brought to the notice of the District Magistrate by the applicant or any other person with regard to a decision taken at the district level, a fresh enquiry may be conducted at the discretion of the District Magistrate. After such enquiry, the application is to be decided again by a reasoned order, and in such a situation, the decision of the District Magistrate shall be final and binding. It is further submitted by learned counsel that,

in the present case, no new fact has been brought on record which would warrant reconsideration or a fresh enquiry.

14. In rejoinder argument, learned counsel appearing for the petitioner submits that the husband of the petitioner during his lifetime was doing agricultural work and for his livelihood the original source of income is agriculture only. After the death of the main bread earner the petitioner had applied for compensation under scheme of "Mukhyamantri Krishak Durghatna Kalyan Yojna", upon which false report has been submitted by the Tehsildar official with effect that the main source of income of deceased is earning from the general store shop, not by agriculture upon relating on the aforesaid false report the claim of the petitioner has been rejected on 31.03.2021 without any show cause to the petitioner or cross checking the facts mentioned in the report, from another Tehsil official/authority as provided in Government Order dated 28.02.2020 in point 11(B) as such the claim of petitioner has been rejected illegality without following mandatory procedure, as incorporated in point 11(B) of Government order dated 28.02.2020. The counsel for the petitioner contends that the claim is illegally rejected after relying on the false report, which has wrongly placed petitioner's brother-in-law with her husband, hence her claim is liable to be allowed after re-investigation and the District Magistrate Kannauj is duty bound to direct for re-investigation and decide same application by passing speaking and reasoned order.

15. We have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record. The principal issue that arises for consideration before this Court is

whether the rejection of the petitioner's claim under the Mukhyamantri Krishak Durghatna Kalyan Yojana by the District Magistrate, Kannauj, is in accordance with the Government Order dated 28.02.2020 and based on relevant and correct facts, and further whether the authorities were justified in denying the benefit solely on the ground that the alleged report mentions that deceased was working in a shop so not to be considered farmer while the land stood recorded in the name of the deceased's grandfather and the claim is that he was working as farmer and the alleged report wrongly records that he was working in store.

16. Having considered complete facts and circumstances, we find that it is not in dispute that the deceased died in a road accident on 29.08.2020 and that the petitioner is his legally wedded wife. What is under dispute is that the report which is disputed by the petitioner, states that the deceased was working in a store while the deceased was residing in the village and was engaged in agricultural activities along with his family as per petitioner. The submission made by the State in the counter affidavit that the agricultural land is recorded in the name of the deceased's grandfather and not in the name of the deceased himself, and that the authorities presumed that the deceased was earning his livelihood from a general store, is not the ground taken for the rejection of the claim, so this was not the ground on which the petitioner's claim has been rejected in the impugned order.

17. From a perusal of the Government Order dated 28.02.2020, it is evident that the object of the Mukhyamantri Krishak Durghatna Kalyan Yojana is to provide financial assistance

to the dependents of farmers who die in accidents. The scheme does not make it mandatory that the agricultural land must be recorded in the name of the deceased farmer alone. What is required to be examined is whether the deceased was primarily engaged in agricultural work and whether agriculture was the main source of livelihood for him and his family. In rural set-ups, it is a common practice that land continues to remain recorded in the name of the elder family member, while other members of the family carry on agricultural activities jointly.

18. In the present case, the petitioner has specifically stated that her husband was engaged in agricultural work and that her brother-in-law was working merely as a helper in a general store on a nominal monthly payment. This assertion has not been convincingly rebutted by the respondents by placing any cogent material on record to show that the deceased himself was running a shop or that his primary source of income was non-agricultural. From perusal of Khatauni, it is clear that the land is recorded with name of the grand-father of the deceased and the same land is mortgaged in the Bank of India to which the rejoinder affidavit states that it was mortgaged for purchasing tractor in the year 2011. The report submitted by the Lekhpal, on which reliance has been placed, does not disclose that any proper enquiry was conducted or that statements of villagers or family members were recorded or the same was ever provided to the petitioner.

19. The contention of the respondents that the District Magistrate was not required to reconsider the matter in the absence of new facts also does not inspire confidence. The petitioner, by her

representation dated 07.09.2021, had brought to the notice of the authorities relevant facts regarding the nature of work of her brother-in-law and the agricultural occupation of her deceased husband. Such facts were material for determining eligibility under the scheme and ought to have been examined objectively. The mechanical rejection of the claim, without addressing these aspects, reflects non-application of mind.

20. While deciding the issue of compensation, in **Union of India Vs Prabhakaran Vijaya Kumar, (2008) 9 SCC 527**, Supreme Court observed that:

“11. .. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred”

12. .. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation...”

21. Applying the principle laid down by the Hon^{ble} Supreme Court that beneficial and welfare schemes must receive a liberal and purposive interpretation so as to advance their object and not defeat it on technical grounds, the petitioner's claim could not have been rejected in casual manner because from a bare perusal of the guidelines, it is evident that the scheme is intended to protect persons and families who are engaged in farming activities and have agriculture as

22. In view of the above discussion, this Court is of the considered view that the rejection of the petitioner's claim is based on an unduly drawn narrow interpretation of the scheme and merely based on assumptions not supported by proper enquiry, and therefore, the writ petition deserves to be allowed and is hereby **allowed**. The impugned order dated 25.08.2021 passed by the respondent no. 2, District Magistrate, Kannauj, rejecting the petitioner's claim under the "Mukhyamantri Krishak Durghatna Kalyan Yojana" and the information order dated 31.07.2021 issued by respondent no. 3 are hereby quashed. The matter is remanded to the District Magistrate, Kannauj, to reconsider the petitioner's claim afresh in accordance with law and in the light of the observations made hereinabove, after affording an opportunity of hearing to the petitioner and after conducting a proper enquiry, if required. The said exercise shall be completed expeditiously, preferably within a period of eight weeks from the date of production of a certified copy of this order. No order as to costs.

The court held that section 24 of the U.P. Revenue Code, 2006 vests the SDO with statutory quasi-judicial powers for summary

settlement of boundary disputes coupled with mandatory enforcement authority for demarcation and possession restoration. The respondents are directed to execute all subject orders in the instant batch of writ petition, within four weeks from the date of order.

Case law Cited

Writ-C No. 35470 of 2025: Meena Devi Vs State of U.P. & Ors, Writ-C No 35324 of 2025 : Ramayan Vs State of U.P., Writ-C No. 39356 of 2025 : Anand Kumar & Ors Vs State of U.P., Writ-C No. 39643 of 2025 : Parasnath Vs State of U.P., Writ-C No. 40027 of 2025: Kishan Kumar Vs State of U.P., Writ-C No. 40164 of 2025: Ramnaresh Dubey Vs State of U.P., Writ-C No. 40165 of 2025 : Vinod Kumar Gupta Vs State of U.P., Writ-C NO. 35626 of 2025 Smt. Sirjawati Vs State of U.P.-referred to.

List of Acts

U.P. Revenue Code, 2006, U.P. Revenue Code Rules 2016.

List of Keywords

Demarcation (Patthar Nasab), Summary Inquiry, Geo-tagging/RCCMS portal, Wrongful dispossession, Quasi-judicial Enforcement.

Case Arising from

Civil Jurisdiction-WRIT-C No. – 35470 of 2025

Meena Devi Vs. State of U.P. & 5 Ors

From the Judgment and Order dated 18.12.2025 of the High Court of Judicature at Allahabad.

Appearances for Parties

Adv. for Petitioner:-

Rohit Pandey

Adv. for Respondent:-

Azad Rai, C.S.C

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard S/Sri Rohit Pandey, Sandeep Kumar Singh, holding brief of Digamber Dwivedi, Munna Tiwari along with Sandeep Kumar Singh, Dharamdas, Vijay

Bahadur Yadav, Anoop Kumar Sharma, Anurag Shukla along with Shubham Dwivedi, Raj Kumar Shukla and Arvind Kumar Srivastava, learned counsel for the petitioners and Sri Manish Goyal, learned Additional Advocate General, appearing along with Sri J N Maurya, learned Chief Standing Counsel, Sri Abhishek Shukla, learned Additional Chief Standing Counsel and Sri Ravi Anand Agarwal, learned counsel for the State-respondents.

2. The present batch of writ petitions raises a common grievance pertaining to non-execution of demarcation orders passed under Section 24 of the Uttar Pradesh Revenue Code, 2006, notwithstanding the fact that such orders have attained finality after due inquiry, submission of reports, and issuance of notices to the concerned parties.

3. The lead matter, being Writ-C No. 35470 of 2025 (Meena Devi v. State of Uttar Pradesh and others), typifies the nature of the controversy involved in the present set of petitions.

Factual Matrix

4. The factual background of the cases and the contentions raised on behalf of the petitioners, as reflected from the pleadings, are being set out hereinbelow:

Writ-C No.35470 of 2025 : Meena Devi vs. State of Uttar Pradesh & Others

4.1 Petitioner is a recorded bhumidhar with transferable rights of land bearing Gata No.606, ad measuring 0.0240 hectare, situate in Village Ustapur Naika, Jhunsi, District Prayagraj. The petitioner's title and possession over the said land stand

duly recorded in the khatauni of fasli years 1429-1434, evidencing her lawful rights.

4.2 Over a period of time, the boundaries of the aforesaid plot became damaged and indistinct, resulting in recurring disputes between the petitioner and adjoining land cultivators regarding the exact boundary line.

4.3 In order to resolve the boundary dispute lawfully, the petitioner along with other co-tenure holders instituted proceedings under Section 24 of the Code, 2006 for demarcation of boundaries before the Sub-Divisional Magistrate, Phoolpur, District Prayagraj. The case was registered as Case No. 191 of 2024 (Computerized No. T202402030200191) titled Meena Devi and others vs. Gram Sabha and others.

4.4 During the said proceedings, the Sub-Divisional Magistrate called for a report from the Revenue Inspector, who conducted a spot inspection in the presence of all concerned parties and submitted a demarcation report along with a map dated 28.11.2022.

4.5 On the basis of the said report, notices were issued to all concerned parties inviting objections. Despite due opportunity, no objections were filed by any party, and all stakeholders were aware of the demarcation proceedings.

4.6 After considering the material on record, the Sub-Divisional Magistrate, Phoolpur, allowed the application vide order dated 02.01.2024, confirming the demarcation report and map dated 28.11.2022, and directed the Tehsildar, Phoolpur, to execute the demarcation by installing permanent boundary stones.

4.7 In compliance of the said order, the Revenue Inspector issued notice dated 12.10.2024, informing all concerned parties that demarcation of Gata No.606 would be carried out on 19.10.2024, and requiring their presence for effective execution.

4.8 Thereafter, the petitioner was repeatedly called on several dates, namely 13.10.2024, 14.10.2024, 16.10.2024, 03.11.2024 and 05.11.2024, for demarcation proceedings. However, on each occasion, the demarcation work was deferred on the pretext of non-availability of police force, despite the existence of a valid and subsisting judicial order.

4.9 Due to persistent non-execution of the demarcation order, the petitioner submitted an application dated 02.12.2024 to the concerned authorities through registered post, requesting immediate compliance of the order dated 02.01.2024. Despite receipt of the said application, the respondents have failed to take any action.

4.10 Non-demarcation of her land has caused the petitioner grave hardship and irreparable loss, as the boundary dispute with adjoining landholders remains unresolved.

**Writ-C No.35324 of 2025 :
Ramayan vs. State of Uttar Pradesh**

5. Petitioner, Ramayan, filed a demarcation case under Section 24 of the Code, 2006 before the Sub-Divisional Magistrate, Rudrapur, District Deoria in respect of Gata Nos.174, 175, 178, 179, 181, 184 and 185. The said demarcation case was decided by order dated 06.02.2023.

5.1 During the pendency of the said proceedings, respondent nos. 4 to 9 instituted a separate case for correction of map under Section 30 of the Code, 2006 before the Additional District Magistrate (Finance & Revenue), Deoria, which is pending.

5.2 While passing the order dated 06.02.2023, the S.D.M. directed the parties to maintain status-quo only till the expiry of the limitation period for filing an appeal, noting the pendency of the proceedings under Section 30.

5.3 Despite the expiry of the limitation period, the revenue authorities have failed to comply with the demarcation order on the pretext of pendency of the proceedings (Lekhpal giving a report stating that since a case under section 30 is pending, therefore order of Section 24 cannot be complied). Repeated representations, including after dismissal of the appeal, have remained unattended.

5.4 Petitioner submitted a representation dated 22-09-2025 before respondent no.2, to comply with order dated 06-02-2023, but no action has been taken.

5.5 The inaction and refusal of the respondents to implement a final and binding order is arbitrary, illegal and unsustainable in the eyes of law, giving rise to the present writ petition seeking enforcement of the order dated 06.02.2023.

**Writ-C No. 38105 of 2025 :
Satendra Mani v. State of Uttar Pradesh**

6. Petitioner filed a case for demarcation of his land bearing Arazi No. 898, area 3.376 hectare, situated at village

Sabaya Ray, Tehsil Kasya, District Kushinagar. The said case was instituted before the Sub Divisional Magistrate (Judicial), Tehsil Kasya, District Kushinagar, respondent no. 2, and was registered as Case No. 9568 of 2024, Computer Case No. T202405440409568 (Satendra Mani Vs. Chairman, Nagar Palika Parishad, Kushinagar).

6.1 Pursuant thereto, respondent no. 3 passed an order dated 01.04.2025 directing demarcation of the petitioner's land. However, despite lapse of more than six months from the date of the said order, the demarcation has not been carried out by the concerned authorities. Petitioner repeatedly moved applications before respondent no.2, requesting compliance of the order dated 01.04.2025, but no action was taken.

**Writ-C No 39356 of 2025 :
Anand Kumar & Others v. State of
Uttar Pradesh**

7. Petitioners instituted a case for demarcation under Section 24 of the Code, 2006, which was registered as Case No. 4673 of 2023, Computerized Case No. T202305440304673 (Anand Kumar and others Vs. Ramashasnkhar and others). The Revenue Inspector submitted his report, which was duly examined by the Sub-Divisional Officer2 (Magistrate), Tehsil Tamkuhiraj, District Kushinagar, and found to be correct.

7.1 Accordingly, vide order dated 28.06.2023, the SDO directed affixation of boundary stones over Gata Nos. 1691/4374/0.099 and 1696/0.024 situate in Village Barwa Rajapakad, Tehsil Tamkuhiraj, District Kushinagar. Despite repeated approaches made by the

petitioners for compliance of the said order, the authorities have failed to implement the same. Hence, the writ petition has been filed.

**Writ-C No.39643 of 2025 :
Parasnath vs. State of Uttar Pradesh**

8. Petitioner, Paras Nath, filed a case under Section 24 of the Code, 2006 for measurement and demarcation of Gata Nos.234 (0.229 hectare) and 285 (0.253 hectare) situate in village Chaukiya, Pargana Mahul, Tehsil Phoolpur, District Azamgarh, which was registered as Case No. 1973 of 2025 (Computerized Case No. T202515060301973), Paras Nath vs. Om Prakash and others, before the Up-Ziladhihari, Tehsil Phoolpur. In the said proceedings, a report was called for from the revenue authorities, pursuant to which the Revenue Inspector submitted a report dated 16.07.2024 after spot inspection and measurement, along with the field book, which was forwarded through the Tehsildar, Phoolpur. Though objections were filed by the private respondents alleging lack of notice and inspection, the competent authority, after considering the objections, the revenue report and relevant records, approved the report vide order dated 12.03.2025.

8.1 Despite the final order dated 12.03.2025 approving the demarcation and entitling the petitioner to possession over the aforesaid land, the petitioner has not been put in possession till date. The private respondents are obstructing the implementation of the order and are threatening the petitioner and the local police authorities are not extending cooperation. The petitioner made representations dated 14.08.2025 and 08.09.2025 before the Sub-Divisional

Magistrate seeking enforcement of the order, but no action has been taken. The continued inaction of the respondents in giving effect to a lawful and final order is arbitrary and illegal, leaving the petitioner with no alternative remedy, and hence the present writ petition has been filed seeking issuance of a writ of mandamus for compliance of the order dated 12.03.2025 and delivery of possession of the disputed land.

**Writ-C No.40027 of 2025 :
Kishan Kumar v. State of Uttar Pradesh**

9. Petitioner filed Case No. 4747 of 2021, Computerized Case No. T202102420304747 under Section 24 of the Code, 2006 on 04.06.2021, seeking demarcation. The Revenue Inspector conducted measurement in presence of concerned parties and submitted a report dated 07.07.2021, which was forwarded by the Tehsildar, Tehsil Manjhanpur.

9.1 After service of notice and absence of objections, respondent no. 2 confirmed the report vide order dated 19.05.2022 and directed affixation of boundary stones. In pursuance thereof, notices dated 06.09.2025, 08.09.2025, and 17.09.2025 were issued fixing dates for compliance, but neither the Revenue Inspector reached the spot nor were stones fixed. Repeated approaches by the petitioner to the Revenue Inspector and respondent no. 2 yielded no result. Hence, the present writ petition has been filed.

**Writ-C No.40164 of 2025 :
Ramnaresh Dubey v. State of Uttar Pradesh**

10. Petitioner is a co-sharer of Gata No. 684, area 0.434 hectare, situated at

Village Tiwaripur (Kasivar), Tehsil Sadar, District Mirzapur. Along with other co-sharers, the petitioner filed Case No. 10256 of 2024, Computerized Case No. T202416530110256 under Section 24 of the Code, 2006 seeking measurement and Patthargaddi.

10.1 Pursuant to directions dated 26.07.2024, the Revenue Inspector submitted a measurement report and map. Vide order dated 30.11.2024, Patthargaddi was directed. Subsequently, the Revenue Inspector reported on 13.01.2025 that police force was required. Correspondence ensued between the Sub Divisional Magistrate and District Magistrate, culminating in a report dated 21.03.2025, which indicated that demarcation and Patthargaddi cannot be carried out without sufficient police force. Hence, the present writ petition has been filed.

Writ-C No.40165 of 2025 : Vinod Kumar Gupta vs. State of Uttar Pradesh

11. Petitioner's father was recorded in the Khatauni of Gata No. 833, area 0.0220 hectare. Upon his death on 26.04.2021, the petitioner and his brother were mutated and remained in possession. Subsequently, the petitioner's brother filed an application dated 24.12.2024 under Section 24 of the U.P. Revenue Code, 2006 for demarcation after depositing challan on 23.12.2024.

11.1 Inspection was conducted and reports were submitted between 25.04.2025 and 23.07.2025. Despite orders restraining illegal construction and a final demarcation order dated 30.07.2025, the authorities failed to enforce the same, resulting in illegal construction by respondents. Even after application dated 06.11.2025, no

action was taken, compelling the petitioner to file the present writ petition.

Writ-C No.35626 of 2025 : Smt. Sirjawati v. State of Uttar Pradesh

12. Petitioner, a Bhumidhar with transferable rights over Plot No. 1411, area 0.4950 hectare, filed Case No. 6797 of 2025 under Section 24 of the Code, 2006 for permanent demarcation. Upon calling for reports, the Revenue Inspector submitted the demarcation report and field book, which was approved by respondent no. 4.

12.1 By order dated 28.02.2025, respondent no. 3 directed permanent demarcation within 15 days. Despite lapse of more than eight months, the said order has not been complied on the spot, causing irreparable loss to the petitioner. Hence, the present writ petition has been filed.

Common Grievance of the Petitioners

13. Submissions made on behalf of the petitioners may be summarised as follows:

13.1 Although the proceedings under Section 24 of the Code, 2006, which are summary in nature, have already culminated in final orders in favour of the petitioners, the statutory authorities have failed to execute the said orders, thereby rendering the entire proceedings ineffective.

13.2 The respondents have deliberately delayed execution, adopted obstructive tactics, and failed to discharge their statutory and administrative duties, despite repeated requests.

13.3 On account of the respondents' inaction, the petitioners continue to suffer, and the purpose of the demarcation orders stand frustrated.

13.4 The acts and omissions of the respondent authorities are arbitrary, illegal, unreasonable, and contrary to the provisions of the Code, 2006, warranting interference by this Court.

State's Response

14. In response, learned Additional Advocate General appearing for the State-respondents has submitted that the Code, 2006 provides an exhaustive procedure to deal with disputes regarding boundaries. Section 24 of the Code, 2006 read with Rule 22 of the U P Revenue Code Rules, 20163 delineates the procedural details which are to be followed for demarcation of boundaries. Referring to Section 24 of the Code, 2006, it was submitted that on an application, raising dispute regarding boundaries, the SDO, is to decide by a summary enquiry, on the basis of existing survey maps or, where they have been revised in accordance with the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of such maps, and if this is not possible, the boundaries shall be fixed on the basis of actual possession.

15. It was further submitted that as per sub-section (2) of Section 24 of the Code, 2006, if in the course of an inquiry into a dispute under sub-section (1), the SDO is unable to satisfy himself as to which party is in possession or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the SDO shall, in the first case, ascertain by summary inquiry who is the

person best entitled to the property, and shall put such person in possession; in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly.

16. It was pointed out that the procedure to be followed in this regard is under Rule 22 of the Rules, 2016, which provides that the demarcation report along with site memo is to be prepared by the Revenue Inspector, thereafter on receipt of the said report, the SDO, after giving opportunity to the concerned parties, and fixing a date of hearing, is to pass an order. The order so passed is thereafter to be complied with by the Revenue Inspector with a report being submitted to the SDO.

17. Learned Additional Advocate General submits that the State Government with an intent to ensure expeditious and effective disposal of the matters, has issued various Government Orders/Circulars from time to time. It was pointed out that taking note of the fact that the cases filed under Section 24 of the Code, 2006 are being disposed of/consigned to the record without ensuring actual demarcation on the spot, the State has issued circular dated 16.12.2025, in order to ensure that after passing of the order by the Sub-Divisional Magistrate under Section 24 of the Code, 2006, the demarcation process is carried out in accordance with law within the specified time frame with a further provision for physical verification of the same. It is submitted that directives have been issued to obtain geo-tagged photographs along with the physical verification report and to upload the same on the RCCMS portal. It has also been provided that strict action be initiated

against the concerned officers if the proceedings under Section 24 of the Code, 2006 are concluded without due physical verification. A copy of the circular dated 16.12.2025 issued by the State Government has been placed on record along with a short Counter Affidavit filed on behalf of the State-respondents.

Analysis and Discussion

18. In order to appreciate the rival contentions, the provisions with regard to settlement of boundary dispute contained in Section 24 of the Code, 2006, are required to be adverted. For ease of reference, Section 24 of the Code, 2006 is being extracted below:

“24. Disputes regarding boundaries. (1) The SDO may, on his own motion or on an application made in this behalf by a person interested, decide, by summary inquiry, any dispute regarding boundaries on the basis of existing survey map or, where they have been revised in accordance with the provisions of the Uttar Pradesh Consolidation of Holding Act, 1953, on the basis of such maps, but if this is not possible, the boundaries shall be fixed on the basis of actual possession.

(2) If in the course of an inquiry into a dispute under sub- section (1), the SDO is unable to satisfy himself as to which party is in possession or if it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the SDO shall –

(a) in the first case, ascertain by summary inquiry who is the person best entitled to the property, and shall put such person in possession;

(b) in the second case, put the person so dispossessed in possession, and for that purpose use or cause to be used such force as may be necessary and shall then fix the boundary accordingly.

(3) Every proceeding under this section shall, as far as possible, be concluded by the SDO within [three months] from the date of the application.

(4) Any person aggrieved by the order of the SDO may prefer an appeal before the Commissioner within 30 days of the such order. The order of the Commissioner shall, subject to the provisions of Section 210, be final. □”

19. Rule 22 of the Rules, 2016, which relates to settlement of boundary dispute is also being reproduced below:

22. Settlement of boundary dispute [Section 24]. □ (1) Under section 24 (1) of the Code the tenure-holder shall submit two copies of the application for settlement of boundary dispute to the Sub-Divisional-Officer for one or more than one contiguous gatas, and it shall contain the following particulars:

(a) Details of Gata □ Gata number, name of tenure holder, father/husband's name, name of village /tehsil. If the tenure holders are more than one, then particulars of all shall be mentioned; current updated khatauni shall also be attached to the application.

(b) Details of contiguous Gata □ Gata Number, name of tenure holder, father/husband's name, name of village/tehsil. If the tenure holders are more than one, then particulars of all shall be

mentioned. Current updated khatauni shall also be attached to the application.

(2) If the khata is different in khatauni, but sub-division is not done in sazra-map, then sub-division in sazra-map shall be necessary.

(3) If boundary of any property of Gram Panchayat/State Government is adjacent to gata/gatas to be demarcated, then the Chairman, Land Management Committee/Gram Pradhan and the State Government shall be made a party in the case.

(4) Only the outer boundary shall be demarcated for an application made for boundary demarcation of continuous gatas.

(5) The applicant shall deposit a fee of Rs.1000/- in Government treasury for the demarcation of gata/attached gatas. A copy of challan receipt shall also be attached with the application form.

(6) On receipt of an application for demarcation, on the same or next working day, the Sub-Divisional-Officer shall register the case in Revenue Court Computerised Management System (RCCMS). Three copies of notices shall be issued from the computerized system and will be delivered to the Revenue Inspector through Tehsildar.

(7) The Revenue Inspector shall serve notice to the concerned tenure holder/tenure holders as mentioned in sub-rule (1), through the Lekhpal or through any other mode. In absence of the tenure holders, notice will be served to the adult family member of the tenure holder/tenure holders. The information of demarcation

shall also be given to the Chairman, Land Management Committee.

(8) At the time of sending the information or before the demarcation on site, if the Revenue Inspector wants to make any other affected person, a party to the case he can do so.

(9) After fixing the date of demarcation and intimation to all the concerned tenure holders, the Revenue Inspector or any other revenue official will demarcate the land, parcel or parcels, as the case may be. During demarcation if any affected tenure holder is not a party to the case, such tenure holder shall be made a party to the case by the Revenue Inspector on the spot-And he will mention the same in his demarcation report. Demarcation shall be completed within a month from the date of order for the same by the Sub-Divisional-Officer.

(10) The Revenue Inspector or other revenue officials shall prepare the demarcation report along with the site memo. If there are no objections to the same, then after getting the consent and signature of all the concerned parties on the demarcation report, the same shall be sent it to the Sub-Divisional-Officer through Tehsildar in a week. On receipt of the aforesaid report of the Revenue Inspector, the Sub-Divisional-officer will pass the order confirming the demarcation report.

(11) If the affected parties to the demarcation have not given their consent to the demarcation, or if there is any objection to the demarcation report, notice (s) will be issued by the Sub-Divisional-Officer to all the parties, fixing a date of hearing which shall not be beyond 15 days from the date of issuance of notice.

(12) The Sub-Divisional-Officer shall pass an order on the matter of boundary demarcation after hearing all the concerned parties. The Revenue Inspector shall comply with such order within two weeks from the date of order, and shall submit his report to the Sub-Divisional-Officer.

(13) Where the boundary of gata/survey number is not recognizable due to alluvion or diluvion of land, or heavy rain, or due to damage caused by any other reason, then on the application of the Chairman of village Revenue Committee of that village, or on the report of the Revenue Inspector or Lekhpal, or on the joint application signed by all the concerned parties, the Sub-Divisional-Officer shall instruct the Revenue Inspector or Lekhpal by a general or special order in writing, that the demarcate the boundary on ground on the basis of current survey map or, where it is possible, on the basis of possession, and if there is any complaint, then on the advice of Village Revenue Committee, resolve the same on the basis of mutual consent. The Revenue Inspector or Lekhpal shall comply with such order within two weeks from the date of order, and will submit his report to the Sub-Divisional-Officer.

(14) At the time of passing order for demarcation under sub-rules (10). (13) or (14), the Sub-Divisional-Officer can direct the SHO of the concerned police station to make police force available on the spot at the time of demarcation of land, in order to maintain law and order.

(15) The SDO, will try to complete the process within the stipulated time as mentioned in section 24(3) of the

Code and if the process is not completed within such time then the reason for the same shall be recorded.”

20. It would be apposite to refer to the Government Order dated 16.12.2025 in terms of which, guidelines have been issued for strict and effective compliance of orders passed under Section 24. Relevant extract of the said Government Order is as follows:

“4- उपर्युक्त के दृष्टिगत मुझे यह कहने का निर्देश हुआ है कि धारा-24 के वादों के निस्तारण हेतु राजस्व संहिता, 2006/नियमावली 2016 में विहित प्राविधानों के अनुक्रम में निम्नवत दिशा निर्देशों का भी कड़ाई से अनुपालन सुनिश्चित कराया जाये:- 1. उ0प्र0 राजस्व संहिता/नियमावली में प्राविधानित व्यवस्था के अनुसार धारा-24 के वाद में उपजिलाधिकारी द्वारा आदेश पारित करने के पश्चात भौतिक चिन्हांकन [पत्थर नसब] की कार्यवाही निर्धारित समय में कराते हुये उक्त कार्यवाही का भौतिक सत्यापन अवश्य कराया जाये।

2. भौतिक चिन्हांकन पत्थर नसब की कार्यवाही किये जाने के स्थलीय फोटोग्राफ जियो लोकेशन सहित प्राप्त किये जायें।

3. भौतिक चिन्हांकन [पत्थर नसब] की कार्यवाही की सत्यापन आख्या को आर0 सी0 सी0 एम0 एस0 पोर्टल पर अपलोड कराने हेतु प्रारूप निर्धारित किये जाने की व्यवस्था राजस्व परिषद द्वारा शीघ्र विकसित की जाये।

4. भौतिक चिन्हांकन [पत्थर नसब] की कार्यवाही का भौतिक सत्यापन कराये बिना पत्रावली दाखित दफ्तर करने हेतु उत्तरदायी अधिकारियों के विरुद्ध कठोर कार्यवाही सुनिश्चित की जायेA”

(English Translation)

“4. In view of the aforesaid, I am directed to state that, in pursuance of the provisions of the Uttar Pradesh Revenue

Code 2006 /Rules, 2016 relating to the disposal of cases under section 24, the following guidelines shall also be strictly adhered to:

1. In accordance with the provisions of the Uttar Pradesh Revenue Code/Rules, upon the passing of an order under section 24 by the Sub-Divisional Magistrate, physical demarcation (Patthar Nasab) shall be carried out within the prescribed time-limit, and physical verification of the said demarcation shall be mandatorily ensured.

2. On-site photographs with embedded geo-location data shall be taken for physical demarcation (Patthar Nasab).

3. The Board of Revenue shall expeditiously develop a prescribed format for uploading the physical verification report of the demarcation (Patthar Nasab) process on the RCCMS portal.

4. Strict disciplinary action shall be initiated against the officers concerned who consign the records without ensuring physical verification of the physical demarcation (*Patthar Nasab*). ”

21. The present batch of writ petitions bring to the fore a seemingly systemic inaction of the concerned revenue authorities. The petitions herein raise a common grievance □ the non execution of final demarcation orders passed under Section 24 of the Code, 2006. Despite having successfully navigated the statutory procedures undergoing summary inquiries, site inspections, and obtaining final execution orders for affixation of boundary marks, the petitioner find themselves to be in a situation where the end relief remains illusionary. The orders in their favour

remain on paper, unimplemented on the spot due to inaction on part of the revenue authorities.

The Mandate of Section 24

22. Section 24 of the Code, 2006 provides a statutory mechanism for the resolution of disputes relating to boundaries of land or villages through a summary inquiry conducted by the SDO.

23. Under the said provision, the SDO is empowered to initiate proceedings either suo motu or on an application made by an interested person and to decide such disputes by adopting a summary procedure. The determination of boundaries is required to be made on the basis of existing survey maps and, where such maps have been revised under the Uttar Pradesh Consolidation of Holdings Act, 1953, on the basis of the revised maps. In situations where boundary determination is not feasible with reference to maps, the SDO is mandated to fix boundaries on the basis of actual possession.

24. During the course of the inquiry, where the SDO is unable to satisfy himself as to which party is in possession, he is required to ascertain by summary inquiry who is the person best entitled to the property and to place such person in possession. Further, if it is found that possession has been obtained by wrongful dispossession, the SDO is statutorily obligated to restore possession to the dispossessed party and is vested with the authority to use such force as may be necessary for that purpose, followed by affixation of boundaries accordingly.

25. The proceedings under Section 24 are summary in nature and are required

to be concluded, as far as practicable, within a period of three months from the date of application. Any person aggrieved by an order passed by the SDO under this section has a statutory right of appeal to the Commissioner within thirty days from the date of the order.

26. The scheme of Section 24 thus underscores the legislative intent to provide a speedy and effective mechanism for resolution of boundary disputes, based on documentary evidence in the form of survey maps or, where necessary, on evidence of actual possession.

Enforcement of Possession under Section 24

27. Possession pursuant to an order passed under Section 24 of the Uttar Pradesh Revenue Code is an integral component of the summary inquiry itself. The SDO is expressly empowered to restore or secure possession in favour of the entitled party while deciding the boundary dispute.

28. Where it is established that a party has been wrongfully dispossessed, the SDO is vested with the authority to restore possession to the dispossessed person. The provision further confers upon the SDO the power to employ necessary force to give effect to such restoration, thereby combining quasi-judicial determination with executive enforcement to ensure the efficacy of the order.

29. Section 24 provides a speedy, statutory recourse for resolution of boundary disputes with direct possession enforcement powers. In cases where determination by reference to maps is not possible, possession is required to be

assessed on the basis of actual physical possession at the time of inquiry, and boundaries are to be fixed accordingly. The statutory object of Section 24 is to avoid protracted litigation and to ensure prompt resolution of boundary disputes along with effective delivery of possession.

30. Although an appeal lies to the Commissioner against an order passed under Section 24, the order of the SDO, including directions relating to possession, remains operative and enforceable unless stayed or set aside by the appellate authority.

Time Frame for Ensuring Possession

31. Section 24 mandates that the entire summary proceeding, including the determination of boundaries and restoration or fixation of possession, shall be completed, as far as possible, within a period of three months from the date of the application. The statutory timeline reflects the legislative intent that possession must be effectively ensured and the boundary dispute settled within the three-month window, ensuring a speedy resolution mechanism. The SDO's order, including possession restoration if required, should ideally be executed within this time frame to fulfill the mandate of expedited inquiry under Section 24.

The procedural rigour of Rule 22

32. Rule 22 prescribes procedural requirements for applications under Section 24, mandating the submission of updated khatauni, particulars of all tenure holders, and accurate reference to land parcels. Compliance is mandatory for a valid summary inquiry.

33. In terms of Rule 22, an application under Section 24(1) is required to be submitted in duplicate before the SDO. The application must disclose complete particulars of the disputed land, including the Gata number, name of the tenure holder, parentage or spousal details, and the village and tehsil concerned. Where the land is jointly held, particulars of all tenure holders are required to be furnished. The application must further be accompanied by an updated khatauni of all parties involved.

34. Where the dispute relates to contiguous Gata numbers, the particulars of such adjoining plots, along with corresponding details of tenure holders and updated khatauni records, are also required to be annexed. In cases where the khata is shown separately in the khatauni but no corresponding sub-division exists in the sazra map, Rule 22 mandates that such sub-division be carried out in the sazra map is necessary.

35. Upon receipt of an application for demarcation, the SDO is required, on the same day or on the next working day, to register the case in the Revenue Court Computerized Management System (RCCMS). Thereafter, three copies of the notice shall be generated from the computerized system and to be delivered to the Revenue Inspector through the Tehsildar for due service and further necessary action.

36. The Revenue Inspector, thereafter, is to ensure service of notice upon the concerned tenure holder or tenure holders, as referred to in sub-rule (1), either through the Lekhpal or by any other mode. In the event of absence of such tenure holder or tenure holders, service of notice

is to be effected upon an adult member of the family. The information regarding the proposed demarcation is to be communicated to the Chairman, Land Management Committee.

37. The object underlying these procedural requirements is to ensure that complete information relating to the land in dispute and the parties concerned is available before the SDO, thereby facilitating an effective and meaningful summary inquiry.

38. Rule 22 has been consistently interpreted as laying down mandatory procedural requirements which must be complied before proceedings under Section 24 can validly be undertaken. It has been held that non-compliance with Rule 22, including failure to file updated khatauni records, omission to disclose particulars of all tenure holders, or lack of clarity regarding sub-division in the revenue map, would vitiate the summary inquiry contemplated under Section 24.

39. The SDO is required to satisfy himself, at the threshold, that the application conforms to the requirements of Rule 22, and only thereafter proceed to adjudicate the boundary dispute. Matters under Section 24 are to be decided only after ensuring due compliance with Rule 22, thereby underscoring the mandatory nature of the Rule and the procedural safeguards embedded therein.

40. The procedure prescribed under Rule 22 is not to be a mere technical or formal requirement, but a substantive safeguard intended to prevent ambiguity in land identification, protect the rights of all affected parties, and ensure fairness in summary adjudication. Any order passed

under Section 24 in disregard of the requirements of Rule 22 has to be held to be vulnerable to challenge on the ground of procedural illegality.

The recent Government Order

41. In regard to enforcement of orders passed under Section 24, due notice may be taken of a recent Government Order dated 16.12.2025 which reiterates the obligation of the State authorities to ensure physical demarcation and affixation of boundary marks with geo-tagged photographic evidence, and strict accountability. In particular, it provides for:

(i) Physical Verification: Mandatory spot verification of demarcation;

(ii) Geo-tagging: Requirement of geo-tagged photographs of physical verification of affixation of boundary marks to be uploaded on the RCCMS portal; and

(iii) Accountability: Strict disciplinary action against officers who consign files to record without actual physical verification.

Principles governing exercise of Administrative and Quasi-judicial Powers

42. The SDO, while acting under Section 24, exercises both quasi-judicial and administrative functions. The SDO acts as a quasi-judicial authority at the stage of adjudication and as an administrative/executive authority at the stage of enforcement. The exercise of such powers is regulated by settled principles of administrative and quasi-judicial law as

well as by the scheme under the Code, the Rules and executive instructions issued from time to time.

42.1 Rule of Law, Natural Justice and Fair Procedure: The SDO is bound by the rule of law and must act within the four corners of the Code, the Rules and binding Government Orders, without being guided by extraneous or irrelevant considerations. As a quasi-judicial authority, the SDO must follow the principles of natural justice, which include: (i) prior notice of the proceedings (ii) a reasonable opportunity of filing objections and of being heard; and (iii) impartial decision making without bias or, pre-determination.

42.2 Reasoned and Speaking Orders: Every order under Section 24 must be a speaking order, demonstrating application of mind to (i) pleadings of the parties; (ii) revenue records relied upon (khatauni, khasra, maps); (iii) demarcation report and any objections thereto.

The order must clearly: (i) record the facts and the nature of the boundary dispute; (ii) specify the basis on which the boundary is fixed. (iii) record findings on claim of possession or wrongful dispossession, where applicable; (iv) direct, in explicit terms, demarcation, fixation of boundary pillars and, where necessary, restoration of possession.

Reasoned orders are essential to ensure transparency, accountability, judicial review and to prevent arbitrariness.

42.3 Time-Bound Decision: Section 24 confers a summary jurisdiction, intended to afford a speedy and efficacious remedy in boundary disputes without

driving parties to prolonged litigation. The SDO is under a statutory obligation to endeavour to conclude proceedings within the prescribed period of three months under the Code and to ensure that all consequential steps are undertaken within the stipulated time frame. Unexplained or avoidable delay in deciding the case or in implementing the final order constitutes failure of statutory duty.

42.4 Enforcement as Integral

Part: Unlike purely judicial orders, quasi-judicial administrative orders include enforcement powers—possession restoration and use of force—to achieve effective resolution. The power under Section 24 is not confined to mere adjudication; it expressly includes enforcement powers, namely: (i) putting the person “best entitled” in possession when possession is unclear; (ii) restoring possession to a person found to have been wrongfully dispossessed; and (iii) using or causing to be used such force as may be necessary for restoring possession and fixing the boundaries accordingly.

In administrative law terms, effective enforcement is integral to the exercise of quasi-judicial power. An order which is not implemented on the spot reduces the entire proceeding to a paper exercise and defeats the legislative intent. Executive aids (Tehsildar, Revenue Inspector, police authorities) are to be utilized as implementing arms of the SDO’s quasi-judicial order.

42.5 Appeal Mechanism: The appeal to the Commissioner serves as an internal check but does not suspend enforcement unless specifically ordered. The statutory appeal to the Commissioner provides an internal check against error,

perversity or illegality in the SDO’s order.

However, mere filing of an appeal would not operate as an automatic stay. Unless an express interim order is granted by the appellate authority, the SDO’s order remains operative and must be executed. The appellate jurisdiction is also quasi-judicial and is subject to the same requirements of fairness, reasoned decision-making and adherence to statutory limits.

42.6 Public Interest:

Maintaining land records, avoiding conflict, and upholding possession are vital for public order and governance. In exercising both quasi-judicial and administrative powers, the SDO must balance individual rights with the larger public interest in ensuring (i) sanctity of land records; (ii) predictability and stability of possession; and (iii) avoidance of conflict and law and order issues.

42.7 General Administrative

Law Constraints: In addition to the above, the exercise of powers by the revenue authorities is to be within the constraints of the general principles governing administrative and quasi-judicial power:

42.8 *Ultra vires* and Jurisdictional limits

The proceedings contemplated under Section 24 of the Code, 2006, are inherently summary in nature and are strictly confined to the demarcation of boundaries and restoration of possession based on the relevant revenue records. The jurisdiction of the SDO under this

provision does not extend to the adjudication of complex questions of title or ownership. In cases where a genuine dispute regarding title arises, the SDO's authority remains limited to the determination of boundaries; any attempt to adjudicate proprietary rights under the guise of a Section 24 inquiry would be ultra vires and beyond the scope of the powers to be exercised.

42.9 Non-arbitrariness and equality

Discretion must not be exercised arbitrarily, capriciously or selectively. Similarly situated litigants in boundary disputes should receive consistent treatment, in line with statutory provisions.

42.10 Proportionality and minimal intrusion

Use of force for restoration of possession must be proportionate, necessary and limited to the extent required to secure compliance with the order and to maintain peace.

Guidelines for Enforcement of Orders under Section 24

43. In order to ensure effective implementation of orders passed under Section 24 of the Code, 2006 and to obviate recurring grievances arising out of non-enforcement of such orders, it is deemed appropriate to formulate certain broad guidelines, keeping in view the statutory provisions and relevant government orders.

I. Pre-Adjudication: Application & Registration :

The revenue authorities, at the threshold, are to ensure that every application filed under Section 24 of the Code is in strict conformity with the statutory mandate, (Section 24 of the Code, 2006; Rule 22 of the Rules, 2016), Government Orders dated 16.12.2025 and administrative law principles. The application under Section 24 is to fully comply Rule 22 requirements—two copies containing Gata particulars, updated khatauni, contiguous Gata details and challan receipt, before proceedings commence. On receipt of an application for demarcation, on the same or next working day, the SDO shall register the case in Revenue Court Computerised Management System (RCCMS). Three copies of notices shall be issued from the computerized system and would be delivered to the Revenue Inspector through Tehsildar.

II. Demarcation & Inquiry:

After fixing the date of demarcation and intimation to all the concerned tenure holders, the Revenue Inspector or any other revenue official would demarcate the land, parcel or parcels, as the case may be, During demarcation if any affected tenure holder is not a party to the case, such tenure holder shall be made a party to the case by the Revenue Inspector on the spot and same would be mentioned in the demarcation report. Demarcation shall be completed within a month from the date of order for the same by the SDO.

The Revenue Inspector shall prepare the demarcation report along with site memo. If there are no objections to the same, then after getting the consent and signature of all the concerned parties on the demarcation report, the same shall be sent

it to the SDO through Tehsildar within a week. On receipt of the report, the SDO shall pass order confirming the same. If the affected parties do not give their consent or if there is any objection to the demarcation report, notice would be issued by the SDO to all parties, fixing a date of hearing which shall not be beyond 15 days from the date of notice, and thereafter, pass an order of boundary demarcation after hearing all concerned parties.

III. Execution, Physical enforcement, Prompt and Effective restoration of Possession :

The SDO, after having ascertained by summary inquiry the person best entitled to the property, shall put such person in possession. If in the course of inquiry, it is shown that possession has been obtained by wrongful dispossession of the lawful occupant, the SDO shall put the person, so dispossessed in possession and for that purpose use or cause to use such force as may be necessary and shall be fixed the boundary accordingly. SDO's written requisition to Station House Officer under Rule 22(14) for police force would be mandatory where any resistance or obstruction is apprehended. The SDO would endeavour to complete the process within the stipulated time period of three months as specified in Section 24 (3) and, if the process is not completed within such time, then reason for the same shall be recorded.

IV. Post-Execution Compliance & Reporting:

Compliance report detailing pillar locations, possession status must accompany geo-tagged photographs (GPS-enabled) and form part of record. RCCMS

upload of verification report in Board of Revenue-prescribed format would be mandatory.

V. Expeditious disposal of Appeals:

Appeals preferred before the Commissioner against orders passed under Section 24 shall be taken up and disposed of with promptitude. As a matter of practice, such appeals should ordinarily be decided without undue delay. Mere filing would cause no automatic stay - execution is to continue unless express interim stay granted. Pendency of Section 30 proceedings or title dispute would ipso facto not suspend Section 24 execution in the absence of any stay order having been granted.

VI. Interim protection and preventive measures:

Pending inquiry/enforcement, SDO may pass interim orders including maintaining of status quo, restraining illegal construction, interference, or dispossession. Where disputes threaten breach of peace, SDO shall exercise administrative powers concurrently for urgent possession restoration. The police authorities shall render requisite protection and assistance in discharge of their duties.

VII. Enforcement of the order as part of proceedings:

An application under Section 24 is not to be treated to be ☐decided☐ and proceedings not ☐concluded☐ unless affixation of boundary marks consequent to the order under the section has been made on the spot. The file is not to be consigned to the record room unless a physical

verification report with geo-tagged photograph is uploaded.

VIII. Monitoring Reporting and Accountability:

The SDO shall maintain periodic records of compliance showing the status of enforcement of orders passed under Section 24.

IX. Accountability and Consequences of Non-compliance:

Persistent delay beyond statutory timelines, repeated non-execution or any willful failure/deliberate inaction on the part of the officials in complying with orders relating to possession shall invite appropriate departmental action.

X. Implementation Protocol:

Board of Revenue shall endeavour to expeditiously develop Standard Operating Procedures for RCCMS verification format and also appropriate training modules for the concerned revenue officers.

XI. Jurisdictional limits:

These proceedings, being summary, exclude genuine title disputes□SDO jurisdiction being strictly confined to boundary disputes and possession. Complex ownership claims would require civil adjudication; and any overreach would render the orders ultra vires.

Directions and Disposal

44. Section 24 of the UP Revenue Code, 2006 vests the SDO with statutory

quasi-judicial powers for summary settlement of boundary disputes coupled with mandatory enforcement authority for demarcation and possession restoration. Execution is not discretionary but integral to the provision's efficacy□failure to enforce renders the entire summary mechanism otiose and defeats the legislative intent. The broad guidelines formulated aim at providing for a structured framework harmonizing statutory mandates (Section 24 of Code, 2006; Rule 22 of Rules, 2016), executive instructions (Government Order dated 16.12.2025), administrative law principles, and constitutional imperatives of fairness and public order. The concerned respondents, in particular the SDO and Collector, are under law bound to ensure that orders under Section 24 are effectively enforced.

45. The Secretary, Department of Revenue, State of Uttar Pradesh, shall ensure statewide circulation of aforesaid guidelines to all revenue authorities within the State. A mechanism for providing mandatory training and RCCMS protocol compliance may also be ensured.

46. The respondents, particularly the concerned SDOs are directed forthwith to execute all subject orders in the instant batch of writ petition, within four weeks from the date of production of a certified copy of this order, strictly as per approved site memo/demarcation report, by ensuring affixation of boundary marks and also possession restoration, wherever required.

47. The writ petitions are `in the manner as indicated above.

(2025) 12 ILRA 1018
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 626 of 2024
 &
 Connected With Other Cases

Canara Bank Branch Office & Anr.
...Petitioners
Versus
Sri Ashok Kumar @ Heera Singh
...Respondent

Issue for Consideration

Whether the Rent Authority constituted under the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 has jurisdiction to entertain an application filed by a landlord in cases where tenancy agreement has not been executed and the landlord has failed to file particulars of tenancy with the Rent Authority.

Headnotes

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 4(3), 4(7) — Tenancy created prior to commencement of Act — No written agreement — No intimation of particulars — Effect — Maintainability of eviction application.

The Act of 2021 does not incorporate the disabling consequence contained in Section 4(6) of the Model Tenancy Act. The Legislature has consciously omitted any provision disentitling the landlord from seeking relief in absence of submission of statement of information.

Section 4(3) contemplates tenancies created before commencement of the Act including cases where no agreement in writing was entered into. The proviso enables parties to file particulars separately where they fail to reach agreement.

Section 4(7) clarifies that in absence of any statement of information under sub-sections (1), (2) and (3), the landlord may file an application for eviction on that ground alone.

Failure to intimate particulars of tenancy does not divest the landlord of right to seek eviction under Section 21(2) of the Act.[Paras 33–41, 45–52]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 38(2) — Jurisdiction of Rent Authority — Scope — Whether dependent upon submission of tenancy agreement.

Section 38(2) circumscribes jurisdiction of the Rent Authority by restricting it from adjudicating questions of title or ownership and by confining it to disputes relating to tenancy agreement.

The provision does not confer jurisdiction conditional upon execution or submission of tenancy agreement. Jurisdiction of the Rent Authority to entertain application under Section 21(2) is not dependent upon execution of written agreement or submission of particulars under Section 4. [Paras 53–60]

Interpretation of Statute — Use of expression “shall” — Whether mandatory or directory — Section 4(3) of Act of 2021.

The use of expression “shall” in Section 4(3) is directory. The provision does not prescribe penal consequence in case of non-compliance and does not render proceedings non-maintainable.[Paras 61–66]

Pre-Act Tenancies — Unwritten tenancy — Applicability of Act of 2021.

The scheme of Section 4(3) contemplates tenancies existing prior to commencement of the Act, including those not reduced into writing. The Act does not exclude unwritten tenancies from its ambit. [Paras 42–44, 67–69]

Coordinate Bench Decisions — Alleged conflict — Larger Bench reference — Whether warranted.

Judgments in *Amit Gupta v. Gulab Chandra Kanodia*, *Alok Gupta v. District Judge/Rent Tribunal*, *Amarjeet Singh v. Smt. Shiv Kumari Yadav* and *Vishal Rastogi v. Rent Controller/Additional District Magistrate (Judicial)* operate in different factual contexts and legal issues. There is no conflict necessitating reference to a Larger Bench. [Paras 70–79] (E-14)

Case Law Cited

- Relied on
- *Milap Chandra Jain vs. State of Uttar Pradesh*, 2001 (2) ARC 488.
- *Milap Chandra Jain vs. Roop Kishore*, (2014) 3 AWC 2286.
- *Neena Jain vs. State of U.P. and others*, Civil Appeal No. 1082 of 2017.
- *Babita Lila vs. Union of India*, (2016) 9 SCC 647.
- *Petroleum and Natural Gas Regulatory Board vs. Indraprastha Gas Ltd.*, (2015) 9 SCC 209.
- *Sree Balaji Nagar Residential Assn. vs. State of T.N.*, (2015) 3 SCC 353.
- *Kailash vs. Nanhku*, (2005) 4 SCC 480.
- *State of Bihar vs. Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472.
- *State of U.P. vs. Manbodhan Lal Srivastava*, AIR 1957 SC 912.
- *State of U.P. vs. Babu Ram Upadhyaya*, AIR 1961 SC 751.
- *M/s. Sainik Motors, Jodhpur and others vs. State of Rajasthan*, AIR 1961 SC 1480.
- *Indu Bhusan Bose vs. Rama Sundari Debi*, (1969) 2 SCC 289.
- *Ashoka Marketing Ltd. and others vs. Punjab National Bank and another*, (1990) 4 SCC 406.
- *Rajendra Diwan vs. Pradeep Kumar Ranibala*, (2019) 2 SCC 143.

Considered / Discussed

- *Amit Gupta vs. Gulab Chandra Kanodia*, 2023 (10) ADJ 23.
- *Alok Gupta vs. District Judge/Rent Tribunal and others*, 2024 0 Supreme (All) 360.

- *Amarjeet Singh vs. Smt. Shiv Kumari Yadav*, 2024 (4) ADJ 380.
- *Vishal Rastogi vs. Rent Controller/Additional District Magistrate (Judicial) and Another*, 2025 (168) ALR 473.
- *Raman Arora vs. Susheel Kumar (Deceased) and others*, SCC Revision No. 95 of 2023.
- *Sri Mohammed Aslam Khan vs. Sri Saravana Eswar P Kumar*, House Rent Revision Petition No. 5 of 2021 (Karnataka High Court).
- *Balaji vs. Principal Secretary and others*, Writ Petition Nos. 3985 and 7400 of 2020 (Madras High Court).

Referred to

- *Administrator, Municipal Committee Charkhi Dadri vs. Ramji Lal Bagla*, AIR 1995 SC 2329.
- *Shah Faesal and others vs. Union of India and another*, (2020) 4 SCC 1.
- *Ram Krishan Grover and others vs. Union of India and others*, (2020) 12 SCC 506.

List of Acts / Statutes

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972; Provincial Small Cause Courts Act, 1887; Transfer of Property Act, 1882; Code of Civil Procedure, 1908; General Clauses Act.
Constitution of India.

List of Keywords

Rent Authority; Tenancy agreement; Non-execution; Non-intimation; Jurisdiction; Unwritten tenancy; Directory provision; Small Cause Suit; Eviction.

Case Arising From

(A) Matters under Article 227 No. – 626 of 2024

Order dated 02.12.2023 rejecting application under Order VII Rule 11(d) CPC.

Result: Writ petition dismissed. S.C.C. Suit No. 9 of 2022 held not barred by Act of 2021.

(B) Matters under Article 227 No. – 5714 of 2024

Order dated 18.01.2024 passed by Rent Tribunal setting aside eviction order.

Result: Order dated 18.01.2024 set aside. Matter remanded to Rent Tribunal to decide within two months. Writ petition partly allowed.

(C) Matters under Article 227 No. – 6623 of 2024

Order dated 25.01.2024 passed by Rent Tribunal setting aside eviction order.

Result: Order dated 25.01.2024 set aside. Matter remanded to Rent Tribunal to decide within two months. Writ petition partly allowed.

(D) Writ – A No. – 5411 of 2024

Appeal allowed by Rent Tribunal reversing dismissal of application under Section 21(2)(m).

Result: Writ petition dismissed. Six months' time granted to vacate subject to conditions.

(E) Writ – A No. – 5413 of 2024

Appeal allowed by Rent Tribunal reversing dismissal of application under Section 21(2)(m).

Result: Writ petition dismissed. Six months' time granted to vacate subject to conditions.

(F) S.C.C. Revision No. – 44 of 2024

Preliminary issue regarding bar under Section 38 decided in favour of landlord.

Result: Revision dismissed. S.C.C. Suit No. 10 of 2022 to be decided within six months.

Appearance for Parties**Matters under Article 227 No. – 626 of 2024**

Counsel for Petitioner(s): Krishna Mohan Asthana

Counsel for Respondent(s): Himanshu Mishra, Punya Sheel Pandey, Suvansit Kumar Jaiswal, Vipul Raj Gautam

Matters under Article 227 No. – 5714 of 2024

Counsel for Petitioner(s): Ravi Anand Agarwal, Shreya Gupta

Counsel for Respondent(s): Atipriya Gautam, Saurabh Patel

Matters under Article 227 No. – 6623 of 2024

Counsel for Petitioner(s): Akriti Chaturvedi, Shreya Gupta

S.C.C. Revision No. – 44 of 2024

Counsel for Revisionist(s): Narendra Kumar Chaturvedi

Counsel for Opposite Party(s): Prashant Pandey, Sabya Sachee Rai, Suneel Kumar Rai

Writ – A No. – 5411 of 2024 and Writ – A No. – 5413 of 2024

Counsel for Petitioner(s): Rakesh Kumar Singh, Sr. Advocate

Counsel for Respondent(s): Kunal Shah

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Petitioners in these six cases, nominated to this Court by orders of Hon'ble the Chief Justice dated 5th May, 2025, are either tenants or landlords in respect of buildings let out to them for residential or commercial purpose. Five of the writ petitions are under Article 226 and 227 of Constitution of India while the sixth case is S.C.C. Revision filed under Section 25 of Provincial Small Cause Courts Act, 1887 (*hereinafter called as "the Act of 1887"*).

2. The issue raised in all the connected matters, "whether the rent authority, constituted under the provisions of the Act of 2021, has the jurisdiction to entertain application filed by landlord in cases where tenancy agreement has not been executed, if not executed, the landlord having failed to file particulars of tenancy with rent authority" is the same, and with consent of learned counsel for the parties, is being heard and decided together by a common order.

PRELUDE

3. Before advertng to decide the issue in hand, a brief glance of legislative history

of both Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (*hereinafter called as "the Act of 1972"*) and Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (*hereinafter called as "the Act of 2021"*) is necessary for better appreciation of the case.

4. Before enactment of the Act of 1972, the field in regard to control of rent and eviction was guided and controlled by United Provinces (Temporary), Control of Rent and Eviction Act, 1947. With passage of time and in view of continuing increase in urban population and relatively slow pace house building activity, mainly due to shortage of materials, the problem of shortage of accommodation became chronic. To tackle the problem, State Government introduced the Bill in the year 1970 with following statement of objects and reasons:-

STATEMENT OF OBJECTS AND REASONS

THE United Provinces (Temporary), Control of Rent and Eviction Act, 1947, was passed as a temporary Act with a view mainly to continuing in force provisions relating to control of letting and rent of accommodation similar to those contained in orders which had been issued under the Defence of India Rules, 1939. It was expected that the situation of shortage of accommodation would be tided over after a short period, and accordingly an Ordinance was promulgated in 1946, and it was replaced by a temporary Act in 1947. In view, however, of the continuing increase in urban population and the relatively slow pace of house-building activity due, mainly, to shortage of materials the problem of shortage of

accommodation has become chronic, and the life of the Act, has had to be extended from time to time. Various amendments were also made in its provisions as and when problems arose. Some of the provisions attracted criticism on various grounds in Courts of law and also criticism by informed public opinion. Government gave an assurance to the Legislature that they would soon replace the Act by a new comprehensive legislation, and accordingly, this Bill has been prepared.

The salient features of this Bill are as follows:

1. It is proposed to make the new law a permanent one instead of a temporary measure.

2. Instead of fixing a particular date and applying the law only to buildings constructed till that date it is proposed that the new law shall apply to all buildings after a period of 10 years from the date of completion of their construction. Thus the number of buildings that will be brought under regulation shall be rising progressively as time passes. Ten year holiday from regulation is being provided to give incentive for construction of new buildings.

3. Under section 3 of the old Act the powers of the District Magistrate in the matter of grant of permission for institution of a suit for eviction of a tenant were not defined and he had an unfettered discretion to allow eviction on any ground whatsoever. The grounds on which such eviction of a sitting tenant may be permitted or release of a vacant building allowed, have now been restricted. Further in order to reduce multiplicity of proceedings and also to reduce the

congestion in civil courts it has been provided that proceedings for eviction shall lie before the prescribed authority instead of in the civil court.

4. The provision for revision to the State Government against allotment and release orders and orders of eviction of unauthorised occupants has been omitted. Instead, appeals against allotment orders and orders of release of vacant buildings that may be passed by the District Magistrate or his delegate shall lie to the Commissioner and appeals against orders of the District Magistrate or his delegate determining or refixing rent and orders of the prescribed authority in release proceedings against sitting tenants shall lie to the District Judge, and the decision of the Commissioner or the District Judge shall be final.

5. Suits for eviction on the grounds specified in section 3 of the old Act which lay in the Court of Munsif of Civil Judge shall now lie in the courts of Small Causes. This will do away with the multiplicity of appeals, as only a revision will lie against the decision of the Small Cause Court as in other small cause cases. Further, out of the grounds specified in the old Act, some have been modified. As it appears that allegations of causing a nuisance were sometimes made for creating a fictitious ground of eviction, this ground has been omitted. Moreover, mere making of material alterations will not be a valid ground of eviction and only structural alterations in the building will form such ground.

6. Buildings held by educational institutions on charitable societies or buildings built and held by co-operative societies, companies and

firms for their own occupation or for the occupation of their employees, etc., shall be exempt from the operation of the new law.

7. Certain provisions have been made with a view to ensuring that buildings are not deliberately got under-assessed, and the local authorities get their due share of taxes according to the correct letting value. Re-fixation of rent on the application of the tenant is also being provided for in such cases.

8. Suits for eviction pending against tenants of buildings brought under regulation for the first time shall not be decreed, and decrease for eviction already obtained shall not be executed except on specified grounds.

9. After the death of a tenant the surviving members of his family shall be entitled to the same protection as the deceased.

10. In the case of such repairs as are essential to keep a building wind-proof and water-proof the tenant is being allowed to deduct two months' rent instead of one month's rent.

11. The tenant's liability to pay enhanced house tax is being reduced from one-third of the amount of enhancement to one-fourth thereof.

12. The provisions regarding allotment, maintenance of the building in wind-proof and water-proof condition and of amenities attached to it, and deposit of rent in Court in certain circumstances have been retained, and certain loop-holes in the various provisions have been sought to be plugged.

This Bill is, accordingly, introduced."

5. The Bill was passed and the Act of 1972 came into force on 15.07.1972. The Act provided for regulation of letting, rent and eviction of tenants from certain class of buildings situated in urban areas. Chapter IV provided for regulation and eviction, and only under Section 20 under the ground specified in sub-section (2), a landlord could get the tenant evicted. However, Section 21 provided for release of building under occupation of tenant under circumstances provided therein. Apart from this, there was no provision under the Act of 1972 which could balance the equity in favour of landlord.

6. As provisions contained in the Act of 1972 had virtually led to freezing of rent determined in the year 1972 for all times to come, a coordinate Bench of this Court in **Milap Chandra Jain vs. State of Uttar Pradesh, 2001 (2) ARC 488** declared unconstitutional the provisions leading to such a consequence after finding the same to be highly unreasonable and violative of Article 14 of Constitution of India. However, the Court directed State Government to consider redefining the expression "standard rent" in accordance with model rent control legislation published by the Government of India in July, 1992, and a proper legislation in this respect to be enacted. The relevant para of the judgment is extracted hereasunder:-

"Accordingly, the definition of the "standard rent" under Section 3 (k) of the Act and the corresponding provisions under Sections 4(2), 5, 6, 8 and 9 of the Act are declared ultra vires of the Constitution of India. The respondent No. 1 is directed to consider the matter in the light of

observations and to redefine the "standard rent" or "fair rent" in accordance with the model rent control legislation published by the Government of India in July, 1992 at least in respect of the buildings which were in the possession of the tenants at the commencement of U. P. Act No. XIII of 1972 to remove injustice done to a class of landlords. The proper legislation in this respect is expected to be enacted at the earliest."

7. As the directions given in the above case were not complied, the co-ordinate Bench in another case **Milap Chandra Jain vs. Roop Kishore (2014) 3 AWC 2286** observed as under:-

"37. This Court in Milap Chand Jain (supra) way back on 12.9.2001 had struck down certain provisions of the Act in relation to 'standard rent' and re-fixation of fair rent with the direction for enactment of proper new legislation on the model rent control legislation published by the Government of India in July, 1992. Another Lordship of this Court in Bal Kishan v. Additional District Judge, 2003 (2) ARC 545, had made strong recommendation to consider for providing a general provision enhancement of rent but the people of the State have not seen any amendment in the existing Act and the new legislation is also not in sight.

38. The Act is not applicable to buildings constructed on or after 26th April, 1985 for a period of 40 years and to those tenancies having rent of Rs. 2000/- and above. In other words, it covers only old tenancies with meagre rent of less than Rs. 2000/- p.m. The landlord of such buildings are the worst suffers as they are not in a position to increase the rent or to get the building vacated from tenants. They

are unable to utilise their property in a more appropriate or beneficial method suiting to its value. Therefore, it is imperative and high time for the legislature to give a re-look to the existing statute as had been directed earlier.

39. The apathy shown by the law makers to the suggestions for improvement in the Act and to the directions of the Courts to come out with proper and better legislation, reminds me the decision of the Supreme Court in Union of India v. Raghubir Singh, AIR 1989 SC 1333, wherein it quoted Lord Reid "There was a time when it was thought almost indecent to suggest that Judges make law. But we do not believe in fairy tales any more", suggesting that time has come when the Courts may under compulsion took over the work of legislation.

40. If the lawmakers neglect their duty and do not care to enact proper legislation in time or despite directions of the Court, the people would agitate and force them to make the necessary law and even if this fails a day is not far when the Courts will have to clothe themselves with the power to enact law.

41. It would be a grim position causing overlapping of jurisdiction but non the less is a sign of caution to the legislature to wake up and to leave aside governance a little and to serve the people more.

42. Let a copy of this judgment be placed before the Chairman, Law Commission, U.P. and the Legal Remembrancer who shall prepare a report on the follow up action on the directions of the Court in Milap Chand Jain (supra) and Bal Kishan (supra) and to oversee the

implementation of the above decision. The report shall be submitted by him to the Court within a period of three months of receiving a copy of this judgment."

8. Another Civil Misc. Writ Petition No. 50870 of 2004 was filed by one Neena Jain before this Court for declaring the Act of 1972 as unconstitutional. On 04.04.2014, the Division Bench dismissed the petition and overruled the judgment rendered in both the cases of **Milap Chandra Jain (supra)**. The Division Bench observed as under:-

"45. Before parting with the case we may observe that it is for the State legislature to take into account, after considering the relevant material, which includes collection of data and statistics, and the needs of the society with fair representation of class of persons, who are owners of the building and tenants to make provisions for periodical increase of agreed rent to those buildings, who still continue to enjoy the protection of the U.P. Act No. 13 of 1972. The State Government may consider to appoint a Commission, for such purpose and to consider its recommendations for making appropriate amendments to the Act. The writ petition as well as the transfer application are dismissed."

9. The said judgment was assailed before Hon'ble Supreme Court through Special Leave Petition, which was converted into Civil Appeal No. 1082 of 2017 (Neena Jain vs. State of U.P. and others). The Hon'ble Supreme Court on 27.02.2020 required State Government to bring on record the steps taken by State in furtherance of directions issued by Division Bench in case of **Neena Jain (supra)**. On 04.03.2020, the State Government apprised

the Apex Court that despite recommendations of various committees, nothing effective had transpired, however, State assured that needful on urgent basis will be done within four months.

10. In the meantime, Central Government framed Model Tenancy Act, for adoption by State and Union Territories, however, its approval by Central Government remained pending.

11. The State Government apprised the Apex Court on 03.11.2020 regarding approval being pending by Central Government and its inability to issue Ordinance, the Apex Court observed that there was no good reason for State to wait for Model Tenancy law to take its final shape and that it may bring forth its own State Legislation by taking some guidance from the draft legislation.

12. Thus, on the lines of Draft Model Tenancy Act prepared by Central Government, the State of Uttar Pradesh on 09.01.2021 promulgated the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021. As the Bill replacing the Ordinance was not passed within a period of six weeks, it lapsed on 31.03.2021. Again, on 09.04.2021, Uttar Pradesh Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 was promulgated. On 02.06.2021, Union Cabinet approved the Draft Model Tenancy Act and it was circulated to all States/Union Territories for its adoption.

13. However, the second ordinance was replaced by the Act of 2021 and it received the assent of Governor on 24.08.2021 and was made applicable in the State of U.P. from 11.01.2021.

DISCUSSION

14. An insight into the facts leading to the enactment of the Act of 2021 reveal that State Legislature intended to enact on the lines of the Model Tenancy Act, 2021 prepared and approved by the State Government. Paragraph 2 of the Statement of Objects and Reasons appended to the Bill reveals that it was considered expedient to introduce the Bill in view of the directions passed by the Hon'ble Supreme Court as also to bring the law relating to tenancy in urban areas in tune with the Model Tenancy Act prepared by the Central Government. Statement of Object and Reasons of Act of 2021 is reproduced hereunder:-

“STATEMENT OF OBJECTS AND REASONS

The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act no. 13 of 1972) (hereinafter referred to as the "said Act") has been enacted for the regulation of letting, and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith and incidental thereto. It was observed that under the scheme of said Act several difficulties were being faced in settling disputes arising between the tenant and the landlord, a large number of tenancy disputes were also pending in the Courts, and the owners of the building were also not getting proper rent for their property. Apart from the above, certain sections of the said Act had also been declared excessive by the Hon'ble Allahabad High Court. The said order of the Hon'ble High Court has not yet been challenged in any Court and thus this order is still in effect.

In view of the directions given by the Supreme Court of India in certain matters; the Draft Model Tenancy Act prepared by the Government of India; and on the basis of the recommendations made by the Uttar Pradesh State Law Commission in this regard, it was decided to repeal the said Act of 1972 and replace it with a new law.

Accordingly, the Uttar Pradesh Regulation of Urban Premises Tenancy Ordinance, 2021 (U.P. Ordinance no. 2 of 2021) was promulgated by the Governor on January 9, 2021. Due to the sudden adjournment of the first session of 2021 of the State Legislature on March 4, 2021, proceedings of which was determined from February 18, 2021 to March 10, 2021, replacing Bill of the said Ordinance could not be passed by the Houses of the State Legislature. Therefore, the Ordinance promulgated on January 9, 2021 lapsed on March 31, 2021 as the replacing Bill therefore could not be enacted within six weeks of re-assembly of the State Legislature as required under Article 213 of the Constitution.

In view of the aforesaid, it was decided to bring a new tenancy law to keep the provisions of the aforesaid Ordinance in force even after March 31, 2021 to establish Rent Authority and Rent Tribunals to regulate renting of premises, to protect the interests of landlord and tenants, and to provide speedy adjudication mechanism for resolution of disputes and for matters connected therewith or incidental thereto.

Since the State Legislature was not in session and immediate legislative action was necessary to Implement the aforesaid decision, the Uttar Pradesh

Regulation of Urban Premises Tenancy (Second) Ordinance, 2021 (U.P. Ordinance no. 3 of 2021) was promulgated by the Governor on April 9, 2021.

This Bill is introduced to replace the aforesaid Ordinance.

By order,

ATUL SRIVASTAVA,

Pramukh Sachiv”

15. For composite study, Section 4 and 40 enshrined in Chapter II and VIII of the Model Tenancy Act are reproduced herein-below:-

“4. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement.

(2) Where the landlord and the tenant fail to jointly inform the execution of the tenancy agreement referred to in sub-section (1), the landlord and tenant shall separately inform the execution of tenancy agreement to the Rent Authority within a period of one month from the date of expiry of the period specified in sub-section (1).

(3) The Rent Authority shall, within three months from the date of its appointment, put in place a digital platform in the local vernacular language or the language of the State/Union territory for

enabling submissions of document in such form and manner as may be prescribed.

(4) The Rent Authority shall, after receiving information about the execution of tenancy agreement along with the documents specified in the First Schedule, -

(a) provide a unique identification number to the parties; and

(b) upload details of the tenancy agreement on its website in local vernacular language or the language of the State/Union territory,

within seven working days from the date of receipt of such information, in such manner along with such documents as it may deem fit.

(5) The terms of authorisation of the property manager, if any, by the landlord to deal with the tenant shall be such as agreed to by the landlord and tenant in that behalf in the tenancy agreement.

(6) The information provided under sub-section (1) and sub-section (2) shall be conclusive proof of the facts relating to tenancy and matters connected therewith, and in the absence of any statement of information, the landlord and the tenant shall not be entitled to any relief under the provisions of this Act.

40. (1) *Save as otherwise provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the provisions of this Act.*

(2) The jurisdiction of the Rent Court shall be limited to tenancy agreement submitted to it as specified in the First

Schedule and shall not extend to the question of title or ownership of premises.”

16. Though, the State Legislature intended to enact law regulating urban tenancies on the lines of Model Tenancy Act prepared by Central Government, however, while enacting Act of 2021, State took a conscious departure from Model Tenancy Act as regards mandatory nature of execution of tenancy agreement and its intimation to the rent authority in case of execution as also non-execution.

17. Model Tenancy Act is at idem with Act of 2021 in providing that tenancy agreement executed between the landlord and tenant under the Act would serve as conclusive proof of landlord-tenant relationship, there is marked departure regarding the consequences emanating on the ground of the failure of the parties to intimate to rent authority about its execution or non-execution.

18. Sub-section (6) of Section 4 of Model Tenancy Act expressly provides that on ground of failure of parties to intimate about execution or non-execution of tenancy agreement would preclude the landlord and tenant from claiming any relief, while Act of 2021 enacted by State Government has deliberately chosen to omit prescription of such consequences in case of failure of parties to intimate the rent authorities about the execution or non-execution of tenancy agreement.

19. The Act of 2021 in Section 2(c) defines a premise, while sub-section 2(i) provides for “tenancy agreement”, which means an agreement in writing executed between the landlord and tenant for the purpose of letting the premises of payable rent.

20. Chapter II of the Act of 2021 in Section 4 provides for tenancy agreement which is as under:-

“4. Tenancy Agreement. – (1) *Notwithstanding anything contained in this Act or any other law for the time being in force, no person shall, after the commencement of this Act, let or take on rent any premises except by an agreement in writing, which shall be informed to the Rent Authority by the landlord and tenant jointly, in the form specified in the First Schedule within a period of two months from the date of tenancy agreement:*

Provided that in cases of residential tenancies for a period of less than twelve months, the landlord and tenant shall not be required to inform the Rent Authority about such tenancy.

(2) Where the landlord and the tenant fail to jointly inform the execution of the tenancy agreement referred to in sub-section (1), the landlord and tenant shall separately inform the execution of tenancy agreement to the Rent Authority within a period of one month from the date of expiry of the period specified in sub-section (1).

(3) Where, in relation to a tenancy created before the commencement of this Act,-

(a) if an agreement in writing was entered into between the landlord and the tenant, they shall jointly present a copy thereof to the Rent Authority within three months of the commencement of this Act.

(b) if no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy and present the same

to the Rent Authority within three months of the commencement of this Act:

Provided that where the landlord or the tenant fail to present jointly a copy of the tenancy agreement or fail to reach an agreement within specified period, such landlord and tenant shall separately file the particulars about such tenancy with the Rent Authority within one month from the date of expiry of period mentioned in clause (b) above, in the form specified in First Schedule. If the landlord has submitted his particulars within the specified period but tenant fails to submit such particulars, the landlord may file an application for eviction on this ground alone:

Provided further that during such eviction proceedings, the Rent Authority shall, notwithstanding anything contained in this Act, decide interim rent payable by the tenant during such adjudication.

(4) The State Government shall, put in place a digital platform in the Hindi or English language for enabling submissions of document in such form and manner as may be prescribed.

(5) The Rent Authority shall, after receiving information about the execution of tenancy agreement along with the documents specified in the First Schedule, provide a unique identification number to the parties.

(6) The terms of authorization of the property manager, if any, by the landlord to deal with the tenant shall be such as agreed to by the landlord and tenant in that behalf in the tenancy agreement.

(7) The information provided under sub-sections (1), (2) and (3) shall be

conclusive proof of the facts relating to tenancy and matters connected therewith, and in the absence of any statement of information, the landlord may file an application for eviction on this ground alone.”

21. From the reading of above provisions, it is clear that the Legislature was conscious of the fact that provision for fresh tenancy as well as for old tenancy was required.

22. Section 4 starts with a *non obstante* clause, the Legislature in sub-section (1) provided for those tenancies for which agreement was required in writing between landlord and the tenant for the premises to be let out by landlord or taken on rent by the tenant. It provided for written agreement to be forwarded to rent authority within two months from the date of agreement.

23. However, in respect of tenancy for residential purpose which was for less than twelve months, the information to the rent authority was dispensed with. Sub-section (2) provides for joint information about the execution of agreement to the rent authority, but in case of failure, any of the parties, i.e. landlord or tenant, could inform within one month after expiry of the period provided under sub-section (1).

24. Sub-section (3) of Section 4 is of great relevance. It deals with the tenancy created before the commencement of the Act. Clause (a) of sub-section (3) deals with a situation wherein an agreement in writing was entered between the landlord and tenant, and they have to jointly present a copy to the rent authority within three months from the commencement of the Act. While, clause (b) deals with another

situation where no agreement in writing was entered between the parties, the landlord and tenant will now have an opportunity to enter into an agreement in writing in regard to tenancy and intimate it to the rent authority within three months from the commencement of Act.

25. Proviso to Section 3 envisages a situation where tenancy agreement is not placed jointly or they fail to reach an agreement within a time limit prescribed therein, then the landlord or tenant may file particulars of such tenancy with rent authority within one month from the date of expiry of period mentioned in clause (b), in the forms specified in the first schedule. The proviso further provides opportunity to landlord for initiating proceedings in case particulars are submitted by him and not by tenant.

26. Sub-section (4) mandates State Government to place a digital platform for the submission of documents, and once they are placed in prescribed manner, the rent authority after receiving such information will allot a unique identification number to the parties. Sub-section (4) and (5) had been enacted to give a legal status to both landlord and tenant in regard to the tenancy which is recorded with the rent authority and unique number is allotted.

27. Sub-section (7) of Section 4 records that information provided under sub-sections (1), (2) and (3) shall be the conclusive proof of the fact relating to tenancy and matter connected therewith. It further clarifies that in absence of any statement of information which is required under sub-section (1), (2) and (3), the landlord may file an application for eviction on this ground alone.

28. It seems that the the Legislature was well conscious that in case of tenancy created prior to the commencement of Act, where no written agreement being entered between the parties, and information also not sent to rent authority, then it will not disable the landlord from seeking remedy under the Act. Consciously, Legislature added the word “the landlord may file an application for eviction on this ground alone”.

29. This part of sub-section (7) of Section 4 is missing in the Model Tenancy Act. It is trite law that where omissions in a statute are conscious, Legislative intendment are not accidental, the omissions made by the Legislature in its wisdom are to be respected and same cannot be filled up by judicial interpretive process. The Hon’ble Apex Court in **Babita Lila vs. Union of India, (2016) 9 SCC 647** held as under:-

“64. More recently, this Court amongst others in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd. [Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2015) 9 SCC 209] had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Assn. v. State of T.N. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise

noticed in a statute or in a provision thereof had been a conscious legislative intendment.”

30. Thus, conscious omission on the part of State Legislature would not provide fatal consequences like nature as envisaged under sub-section (6) of Section 4 of draft Model Tenancy Act, 2021, which makes manifestly clear that Legislature did not intend to deprive the landlord of his right to seek expedient eviction under Act of 2021.

31. The use of expression “shall” in sub-section (3) of Section 4 is only for the purpose of requiring landlord and tenant to submit the particulars of tenancy as envisaged under sub-section (3) of Section 4 only to serve as the conclusive proof of the fact relating to tenancy.

32. It caters to this limited purpose that Act of 2021 provides intimation about the tenancy to rent authority. In case where there is no dispute as to the landlord-tenant relationship, no mileage can be drawn out of the expression “shall” employed in sub-section (3) of Section 4 as well as its first proviso to intend that non-intimation by landlord would divest him of all the right under the Act of 2021.

33. Moreover, the said provision does not envisage a penal consequence *vis-a-vis* the landlord in case of failure to intimate the particulars of tenancy to rent authority, and thus, requirement of intimation by landlord as regards particulars of tenancy cannot be characterised as a mandatory requirement, despite the use of expression “shall” in sub-section (3) of Section 4 of the Act of 2021.

34. In **Kailash vs. Nanhku, (2005) 4 SCC 480**, Hon’ble Apex Court while

dealing with question whether the provision is a mandatory or directory held that "language" alone is not always decisive. Regard must be given to the context, subject matter and the object of the provision. It further held that for ascertaining real intention of Legislature, the Court may consider the nature and design of the statute, and the consequences which would follow from construing it to the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances namely that the statute provides for contingency of non-compliance with the provisions; fact that non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered. If object of the enactment is defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. Relevant paragraph 28 is reproduced hereunder:-

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless

to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar¹⁰ are pertinent: (SCC p. 777, paras 5-6)

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence much as substantive."

35. In **Administrator, Municipal Committee Charkhi Dadri v. Ramji Lal Bagla AIR 1995 SC 2329** as well as in **State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472**, the Hon'ble Apex Court held that absence of provision for consequence in case of non-compliance with the requirements prescribed would indicate directory nature despite use of word "shall". Relevant paragraphs 14 and 18 respectively are extracted hereunder:-

"14. In our considered opinion, Section 44-A cannot be held to be mandatory in the sense that non-compliance with it leads to nullification of the acquisition which has already become final. Such non-compliance cannot also result in divesting of title of the trust nor is there any obligation to restore the unutilised portion(s) of land to its erstwhile owners/persons interested. The reasons are the following:

(a) *The section while using the expression 'shall' does not provide the consequence of non-compliance with its requirement. One of the well-accepted tests for determining whether a provision is directory or mandatory is to see whether the enactment provides for the consequence flowing from non-compliance with the requirement prescribed. (State of U.P. v. Manbodhan Lal Srivastava. The proviso to Section 44-A empowers the Government to extend the said period. The proviso does not prescribe the outer limit beyond which extension cannot be granted. Nor does it indicate in any manner that the said power can be exercised by the Government only once and no more.*

A question may then arise, why was the proviso put in at all? What is the purpose it seeks to achieve, if not to give a mandatory character to the requirement in the main limb of Section 44-A? Having regard to the totality of circumstances [including those mentioned under (b) and (c) occurring hereinafter] we are of the opinion that it appears to be a form of governmental control over those statutory bodies. If the trust does not execute the scheme within the period of five years — and the Government does not see sufficient reason to extend time therefore — the Government may take any of the steps contemplated by Chapter V-A, which chapter was introduced by the Haryana Legislature by the very same Amendment Act (17 of 1973) which introduced Section 44-A. Chapter V-A vests in the Deputy Commissioner the power of control over the trusts. Section 55-A empowers the Deputy Commissioner to call for information, statements, accounts and reports from the trusts and to enquire generally into their working and affairs. Section 55-B confers upon the Deputy

Commissioner the power to suspend any resolution or order of the trust. More important, Section 55-C empowers the Deputy Commissioner to provide for performance of duties in case of default of the trust in performing its duties. Section 55-C reads as follows:

“55-C. Power to provide for performance of duties in case of default of trust. — (1) When the Deputy Commissioner after due enquiry, is satisfied that a trust has made default in performing any duty imposed on it by this Act, or by any order or rule made under this Act, he may, by an order in writing duly supported with reasons fix a period for the performance of the duty; and should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expenses thereof shall be paid, within such time as he may fix, by the Trust.

(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the trust fund to pay the expense, or so much thereof, as may from time to time be possible, from that balance in priority to all other charges against the same.

The section is self-explanatory and needs no elaboration at our hands. Section 44-A has to be read and understood along with this section which means that the Deputy Commissioner will have to take action under Section 55-C, in case of the failure of the trust to execute the scheme within the period of five years. If the time is extended under the proviso and yet the trust fails to execute the scheme within the extended time, the Deputy Commissioner can — ought to — resort to Section 55-C.

Sections 55-D and 55-E make the acts and orders of the Deputy Commissioner subject to Government's order. It, therefore, cannot be said that Section 44-A or its proviso have no purpose behind them or that they are a mere surplusage.

(b) The more important and substantial reason, of course, is that Section 44-A does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in Section 44-A is only directory notwithstanding the use of expression 'shall' therein. The said provision is meant to impress upon the trust and its authorities, the desirability of the time-frame within which the schemes should ordinarily be executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the section which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has

not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilised for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilised. A question arises what is 'utilisation'? Suppose, a road is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilisation or not? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners? Whether they are liable to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in Section 44-A not being mandatory in the sense it is sought to be understood by the respondents.

(c) Yet another feature to be noticed is the placement of the Section 44-A. It occurs in Chapter IV which provides for preparation and publication of the schemes under the Act. Chapter V speaks of powers and duties of the Trust where a scheme has been sanctioned and Chapter VI contains provisions relating to

acquisition of land required for execution of the scheme and other incidental matters. If the legislature intended to say that failure to execute the scheme within the time prescribed in Section 44-A leads to nullification of acquisition with all the attendant consequences, the section should have found its place in Chapter VI — and with specific and clearer language.”

36. Somewhat similar view has been taken by the Karnataka High Court while considering provisions under the Karnataka Rent Act, 1999 requiring the execution of tenancy agreement and in case of failure of execution to intimate about the particulars to the rent authority as also the non-prescription of consequences qua the filing of application by landlord for the eviction of the tenant. In **Sri Mohammed Aslam Khan vs. Sri Saravana Eswar P Kumar, House Rent Revision Petition No. 5 of 2021**, the Court held as under:-

“6. It is the submission of learned counsel for the petitioners that the execution of an agreement or submission of the particulars about such tenancy before the prescribed authority is a condition precedent or sine quo non without which no relief could be granted to the landlord under the Rent Act, 1999. Referring to the term "Landlord" as defined under section 3(e) read with section 4 of the Rent Act, 1999, learned counsel would submit that in the absence of a written agreement of lease, the provisions of the Rent Act, 1999 cannot be invoked by the landlord to seek eviction of the tenant and therefore, the impugned order passed by the Small Causes Court, Bengaluru solely relying on the decision of the Rent Controller and the documents of title relating to the eviction petitioners cannot be sustained.

8. Insofar as the compliance of the requirements of section 4 of the Rent Act, 1999 is concerned, it is relevant to note that section 4 does not provide for any legal consequence for non filing of the a declaration by 'tenant' or 'landlord'. Failure to comply with the said requirement does not take the petition premises outside the purview of the Rent Act, 1999 nor does it take away the right of the landlord to seek eviction of the tenant on proof of the grounds enumerated in Section 27 of the Rent Act, 1999. In that view of the matter, the impugned order passed by the Small Causes court being in conformity with the provisions of Rent Act, 1999, does not warrant any interference by this Court. Viewed from another angle, the term "Landlord" is defined in section 3(e) of the Rent Act, 1999 as under:-

"Landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant."

The term 'tenant' is defined in section 3(n) as under:-

"Tenant" means any person by whom or on whose account or behalf the rent of any premises, is or but for a special contract would be, payable and includes.-

(1) a subtenant;

(2) any person continuing in possession after the termination of his tenancy but does not include any person to

whom a licence as defined in Section 52 of the Indian Easements Act, 1882 has been granted.

9. A plain reading of the above definitions indicate that a person qualifies to be a "landlord" as and when he is entitled to receive the rent in respect of the premises falling under the Rent Act, 1999.

10. Moreover in the instant case, the records of the previous proceedings between the parties clearly disclose that right from the inception, there was no dispute with regard to the jural relationship between the parties. Both the parties claim their right and title through their predecessors. The previous proceedings initiated by the ancestors of the petitioners/tenants clearly indicate that the predecessors of the petitioners has admitted to be the tenants in respect of the petition schedule premises under the predecessors of the eviction petitioners. Rent Act, 1999 does not require any attornment unlike the provisions of the Transfer of Property Act, 1882. Under section 5 of the Rent Act, 1999, the tenancy is heritable subject to the terms and conditions provided therein. Under the said circumstances, there being clear material as evidenced in Exs. P10, P11 and P12 to show that the petitioners were the tenants of the petition schedule premises, the contention urged by the petitioners that for want of lease agreement, the eviction ordered by the Small Cause Judge is without jurisdiction cannot be sustained. There being clear material to show that the premises in question is a residential premises fetching a rent of Rs. 1,500/- as determined under Section 7 of the Rent Act, 1999 and there being clear and cogent material to show that the petitioners are occupying the schedule premises as tenants

in succession to late Alkar Mohammed Khan who was inducted as a tenant, in my view, the learned Small Causes Judge had jurisdiction to entertain the petition and to order eviction of the petitioners on satisfying of the grounds under section 27(2)(r) of the Rent Act, 1999. As such, I do not find any justifiable reason to interfere with the impugned order. Consequently, the petition falls and the same is liable to be dismissed."

37. The Constitution Bench of Hon'ble Apex Court in **State of U.P. vs. Manbodhan Lal Srivastava, AIR 1957 SC 912**, held that word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. Relevant para 11 is extracted hereasunder:-

"11. An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily

mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction — Article 261 at p. 516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other... ."

38. In another Constitution Bench of Apex Court in **State of U.P. vs. Babu Ram Upadhyaya**, AIR 1961 SC 751, the majority view was that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute.

"29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature

and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

39. Another Constitution Bench of Apex Court in case of **M/s. Sainik Motors, Jodhpur and others vs. State of Rajasthan**, AIR 1961 SC 1480 also held that ordinarily though the word "shall" is mandatory, it can be interpreted as directory if context or intention otherwise demands.

40. It is thus clear that Act of 2021 unlike draft Model Tenancy Act provides for no penal consequences qua the failure of the landlord to intimate about the particulars of the tenancy to the Rent Authority, the requirement of intimation as envisaged under sub-section (3) of Section 4 of the Act of 2021, which is ordained by the expression "shall" must be held directory and consequent failure on part of the landlord to intimate about the particulars of the tenancy to the Rent Authority would not divest him of his rights to seek eviction on ground of personal need under the Act of 2021.

41. Chapter III of the Act of 2021 deals with rent. Section 8 provides for the rent payable in respect of the premise let out. While, Section 9 provides for the revision of rent. Sub-section (5) provides

for the revision of rent in cases of tenancy which were entered prior to commencement of Act, and landlord by giving notice of 30 days, can ask for enhanced rate of rent as payable under sub-section (3) and the tenancy agreement would be deemed to be amended and enhanced rent shall be payable as rent payable under Section 8.

42. Proviso to sub-section (5) provides for the contingencies where no tenancy agreement was executed between the parties prior to the commencement of Act, the landlord and tenant may mutually agree to execute tenancy agreement for enhanced rate of rent, failing which rent authority shall determine the enhanced rent subject to the provision of Section 10. Thus, proviso to sub-section (5) of Section 9 envisages for a tenancy which is unwritten between the landlord and tenant prior to the commencement of Act and also no written agreement executed subsequent to the enactment.

43. The entire thrust of the enactment is the relationship between the landlord and tenant in respect of the premises let out though the Act mandates for written agreement in respect of the premises let out post enactment. While, it visualises two situations for tenancy which is in existence prior to the commencement of Act.

44. Chapter V provides for the protection for tenant against the eviction and recovery of possession of premises by landlord. Section 21(1) deals with protection of tenant against eviction. While sub-section (2) provides for rent authority to pass an order for eviction and recovery of possession on application made by the landlord on the ground provided from (a) to (m). Chapter VI

deals with rent authority, rent tribunal, their power and appeal.

45. Chapter VII provides misc. provisions and Section 38 is of great relevance, which bars jurisdiction of Civil Court in respect of certain matter. The said provision is extracted hereas under:-

“38. (1) The Rent Court shall, on an application filed by any party, execute an order of a Rent Court or a Rent Tribunal or any other order made under this Act, in such manner as may be prescribed, by-

(a) delivering possession of the premises to the person in whose favour the decision has been made; or

(b) attaching one or more bank accounts of the opposite party for the purpose of recovering the amount specified in such order; or

(c) appointing any advocate or any other competent person including officers of the Rent Court or local administration or local body for the execution of such order.

(2) The Rent Court may take the help from the Local Government or local body or the local police for the execution of the final orders:

Provided that no applicant shall obtain police help unless he pays such costs as may be decided by the Rent Court.

(3) The Rent Court shall conduct the execution proceedings, in relation to its order or an order of a Rent Tribunal or any other order passed under this Act, in a

summary manner and dispose of the application for execution made under this section within a period of thirty days from the date of service of notice on opposite party.”

46. Sub-section (1) provides that no Civil Court shall entertain any proceedings insofar as it relates to the provisions of Act, while sub-section (2) provides for the jurisdiction of rent authority to tenancy agreement submitted to it as specified in first schedule and not to dwell into question of title or ownership of the premises.

47. Section 38 is not a provision which confers jurisdiction, rather it limits the jurisdiction of rent authority to decide such disputes as may have arisen between the landlord and tenant under the tenancy agreement submitted to it. It is clearly evident that provision limits jurisdiction of rent authority and not confers any jurisdiction.

48. Sub-section (2) of Section 38 does not provide that rent authority shall exercise its jurisdiction in cases where there may be no tenancy agreement executed between the parties, but intimation in this regard has been given by both the landlord and tenant or the landlord alone.

49. Sub-section (1) and (2) of Section 4 deals with new tenancy created after Act of 2021, while sub-section (3) deals with old tenancy which includes written and unwritten agreements. Proviso to sub-section (3) provides that in case of failure to jointly place the tenancy agreement or failed to reach an agreement, the landlord and tenant shall separately file particulars with the rent authority in form specified in first schedule.

50. In case landlord and tenant failed to enter into written tenancy agreement, but both of them submit particulars of tenancy agreement with rent authority, it would still be a case where there would be no tenancy agreement governing relationship between the landlord and tenant.

51. Moreover, proviso to sub-section (1) of Section 4 provides that in case of residential tenancy of less than 12 months, there shall be no requirement on the part of the landlord and tenant to inform rent authority about the tenancy, meaning thereby that with respect to such tenancy, parties have not executed tenancy agreement.

52. Dispute between such classes of landlord and tenant who are not governed by written agreement may still arise with respect to eviction which are specifically envisaged under the Act to be addressed by rent authority.

53. Thus, sub-section (2) of Section 38 is not a provision conferring jurisdiction, but rather is a provision that circumscribes the jurisdiction of rent authority proscribing it to not venture into adjudication of dispute of title or ownership and keeping itself to be convenient to the dispute that may arise under the tenancy agreement. Sub-section (2) of Section 38 therefore does not make jurisdiction of rent authority dependent upon execution of tenancy agreement. It shall however have jurisdiction of such tenancies also where no tenancy agreement is entered between the parties, but are still covered under the Act of 2021.

54. As tenancy agreement contains host of conditions governing the relationship between landlord and tenant. It may consist of provisions like the

responsibility on either parties to pay Municipal taxes, time within which the rent would be payable, interest on delayed payment of rent, time at which the tenant should enter the premise, the maximum number of persons he may keep along with him, and so and so forth. With different conditions being envisaged under the tenancy agreement, it is obvious that disputes relating to such conditions would also arise warranting its remedy.

55. All that sub-section (2) of Section 38 does is that it sets the contours within which the disputes arising between the landlord and the tenant is to be decided. In doing so, the rent authority would keep itself confined to the tenancy agreement and would not transgress to the issue touching the title and ownership.

56. Once the parties to the dispute are falling within the definition of landlord and tenant and there is no dispute to the said relationship, and once there is legislative intendment in omitting prescription of fatal consequence of divesting of rights of the landlord under the Act in case of his failure to intimate about the particulars of tenancy, the legislative purpose of which otherwise is to conclusively establish the relationship of landlord and tenant and once there is no provision that makes the jurisdiction of the tribunal dependent upon information being furnished by the landlord in case of non-execution, it logically follows that in situation of non-execution of tenancy agreement, filing of particulars of tenancy by the landlord with the rent authority is not a *sine qua non* for maintaining an Application for release of the tenant under Section 21(2) of the Act of 2021.

57. The issue in hand was placed before this Court due to different views

being taken by the courts below in respect of non execution of written agreement between the landlord and tenant, and proceedings being initiated before the rent authority under the Act of 2021. Rent authorities are relying and interpreting the orders passed by the coordinate Benches of this Court as per their convenience which is leading to filing of petitions on large numbers before this Court on daily basis.

58. A coordinate Bench of this Court, for the first time, in case of **Amit Gupta vs. Gulab Chandra Kanodia, 2023 (10) ADJ 23**, had the occasion to consider two questions posed before it as to the maintainability of small cause suit (SCC) already instituted prior to enactment of the Act of 2021 and also the SCC revision arising therefrom. The second question raised was whether the bar created under Section 38 of the Act of 2021 is an absolute bar or not and SCC suit for arrears of recovery of rent and eviction would still be maintainable. The Court framed two legal questions for consideration which are as under:-

"(a). Whether a Small Cause Suit already instituted, since prior to coming into force of the new Tenancy Act, 2021 and so also such SCC revision arising therefrom would stand saved or the SCC suit and SCC Revision being not mentioned in the repeal and saving clause of Section 46, the proceedings of such suit and revision would stand abated; and

(b). Whether the bar created under Section 38 of the Tenancy Act is not an absolute one and so Small Cause Suit for arrears of recovery of Rent and Eviction (SCC Suit) and SCC Revision arising therefrom would still be maintainable even after the enforcement of

the New Tenancy Act, 2021 qua the of tenancies not covered by tenancy agreements provided for under Tenancy Act, 2021."

59. While deciding question (a) the coordinate Bench not only examined the provisions of the Act of 2021 but also the Act of 1887 and the Transfer of Property Act, 1882 and held as under;

"79. Looking at and examining all the provisions of the new Tenancy Act, 2021, I find that in the entire regime of the Act the written tenancy agreement has been made the only recognized mode of tenancy except for eleven months tenancy and even the old tenancies are made to survive but for written agreement. The Legislature in its wisdom seems to have given go by to unwritten tenancy agreements but no mechanism was laid down to meet claims arising out of such tenancy, possibly because the SCC suits were taken to be still maintainable as Amendment Act, 1972 was already in force. Thus by no cannon of construction Section 38 and 42 can be taken to have made SCC suits not maintainable any further more even in respect of unwritten existing tenancies.

80. While it is true that finding a defect in an enactment a judge should not sit back to find fault with the draftsman and should endeavour for an interpretation to find real intention of the Parliament but then he can not do violence to a provision in the zeal of achieving a law by substituting words or placing words in between the words, moreso when issue is of legislative competence. It was rightly held "we can not aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there (Crawford v. Spooner

(1846) Moore PC 1 pp 8,9)". "It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so (Renula Bose (Smt.) v. Rai Manmathnath Bose, AIR 1945 PC 108, p.110). Similarly it is wrong and dangerous to proceed by substituting some other words for words of the statute (Pinner v. Everett, (1969) 3 All ER 257, p. 259) Speaking briefly the court cannot reframe the legislation for the very good reason that it has no power to legislate (State of Kerala v. Mathai Verghese, (1986) 4 SCC 746. (Statutory Interpretation by Justice G.P.Singh, 14th Edition pp 68,69)

81. So entire scheme of the new Tenancy Act if is minutely scrutinised, the legislative intent appears to be to enact a comprehensive law embracing every aspect of tenancy law relating to urban buildings viz a viz tenant-landlord relationship referable to entry 18 of the state list of the VIIth schedule of the constitution. However, still certain grey areas have remained unattended and in my view willingly by the lawmakers looking to the existing central enactments.

82. This above view of mine is for rule of harmonious construction in interpreting the provisions of the new Tenancy Act 2021, Amendment Act, 1972 and Transfer of Property Act 1882. The courts while they examine scope and ambit of an enactment must assume that lawmakers have surely held deliberations while enacting law covering a particular field and so also must have given due consideration to the existing law touching the field and if still some areas have been left untouched, the legislative intent to permit interplay of existing law not expressly repealed, must be assumed. This assumption is based on sound principle

that wisdom of Parliament is unquestionable and all that courts do is to interpret a provision in synthesis with the other to draw a meaning in context with the object with which the law is enacted. Any interpretation that makes a provision redundant or any over zealous approach to place in a word so as to enlarge the scope of a provision, would amount to substituting court's wisdom to that of law makers and that must be avoided. Courts interpret provisions of an Act to ensure that objectivity with which such law must have been enacted, is not lost and any effort of court beyond that would be intruding the field of legislation which is definitely beyond the competence of law courts.

83. In the present case the literal constructions leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction.

84. Thus to sum up on first question "(a)", I hold that pending SCC suits and SCC revisions on the date of enforcement of the new Tenancy Act, 2021, shall not abate notwithstanding the provisions as contained under Section 42 of the New Tenancy Act, 2021 as no such intendment can be drawn inasmuch as, Section 6 of General Clauses Act would apply. Still further SCC suits would stand saved as where conceived of under old Rent Control Act, proceedings whereof have been saved under sub section 2 of Section 46 of the new Tenancy Act, 2021."

60. Further, while deciding the question (b), the Court held as under;

"96. In earlier part of this judgment, I have already referred to scope and ambit of the provisions of the new

Tenancy Act, 2021 with reference to individual sections therein and I have also discussed the tenancy agreement referable to Section 4 of the new Act. During discussion in respect of point no. (a) above, I found, while 11 months unwritten agreement tenancy was conceived under the new Act but the remedial aspects so as to enable land lord to seek eviction of tenant had not been touched by the legislature. Section 38(2) defines jurisdiction of Rent Authority and limits it to dispute relating to tenancy agreement submitted to it as specified in the first schedule. First schedule agreements are there that create tenancy after new Tenancy Act has come into existence and also the written tenancy agreements that were in existence when the new Act came into force, provided such agreements were submitted to the Rent Authority as per Section 4(3) of the new Act. The word "tenant" though includes old tenant at the time of enforcement of the new Act vide Section 2(j) but only for agreement in writing as per Rule 4 (3) and if there is no agreement in writing as per Rule 4(3), such tenant can be evicted only in one condition that is where land lord has submitted details as per first schedule but tenant has failed to discharge his part of obligation vide proviso to Section 4(3) of the new Tenancy Act. However, if land lord also fails and so also the tenant to comply with Section 4(3), no eviction of tenant has been provided for.

97. Thus the tenant has a narrow escape as noticed above and that is sufficient for him but the land lord cannot be left remediless. So if section 21 of the new Tenancy Act is found to be unworkable, a SCC suit would be the only remedy available. Section 21(2)(j) which provides for land lord to apply for eviction

"where the tenancy stands determined by efflux of time" would be referable to such tenancy that are by written agreements and such agreements expired or 11 months unwritten agreement tenancy and would not apply to tenancies, not conceptualized under Section 4 but are in existence.

.....

103. Upon bare reading of the above provisions, I find that Transfer of Property Act No. 1882 defines lease vide Section 105 and refers to duration of lease, rights and obligations vide Section 106 and 108, but both these Sections save contracts, operation of local law and usage. Section 107 provides how lease could be made. It refers to oral agreement if accompanied by delivery of possession, such contracts once stand saved under Section 107, in my considered view would not be rendered bad just for there being no agreement in writing and so right and obligation under Section 108 would be enforceable .

104. Entry 18 of the State list provides for States to make law related to land tenures including relationship of landlord and tenant. This being subject matter in the State list and it is the State that enacts laws relating to that, it would not be said to be in conflict with any power of Central Legislature but of course in the areas not covered under the Central Act.

105. The new Tenancy Act, 2021 having not covered the unwritten tenancies and rights and obligations in respect thereof, the existing law under the Transfer of Property Act, 1882 and the forum of SCC Suits, even in respect of buildings situate in areas covered under the Tenancy Act, 2021, therefore shall apply.

106. In my considered view when entry 18 of the State list provides for the State to enact law in matters of land tenure including land lord - tenants relationship, this power is exclusive to that extent, moreso in the face of the fact that contracts, local laws and usages have been saved under Section 105 and 108 of Transfer of Property Act in matters of Rent leases/ agreements. The Transfer of Property Act is pre-constitutional law saved under Article 272 and so power of State under entry 18 of the State list stands only protected to the extent of consistency. However, the areas of rent agreement that are left untouched in the State enactment, the Central Act would continue to prevail as per the constitutional scheme.

107. To sum up on question "(b)" I am of the view and so hold that Small Cause Suits would still be maintainable in cases of tenancies not covered under Section 4 and relating to rights accrued, if any under the Transfer Property Act, 1882 where a tenancy is unwritten, and a tenancy is on month to month basis. Overriding effect of Section 42 will give way to the Central Act, and there could be no doubt about that if the Central Act has occupied the field to certain extent."

61. Thus, both the questions, so framed, were answered holding that though there was no written agreement between the parties, the suit instituted before the Judge, Small Cause Court, would be maintainable in view of the Central Act and the proceedings would not abate.

*62. Another coordinate Bench of this Court in case of **Alok Gupta vs. District Judge/Rent Tribunal and others, 2024 0 Supreme (All) 360**, while dealing with bunch of matters where there were no*

written agreement executed between the parties and proceedings were initiated under Section 21 (2) of the Act of 2021, held that no information was required under Section 4 and the proceedings were maintainable and held as under;

"23. A conjoint reading of the various sub-sections of Section 4 of the Act reveals that the intention of legislature for requiring both the landlord and the tenant to inform to the Rent Authority in the form specified in the First Schedule within a certain time frame is to treat the information as conclusive proof of the facts relating to the tenancy and matters connected with it. It does not appear to be the sine qua non for maintaining an application under Section 21 (2) of the Act. Where the tenancy is admitted, in the opinion of the Court, no such information as contemplated under Section 4 of the Act is warranted. Where the tenancy or its terms are disputed, it is always open for the parties to adduce evidence in support of their respective cases before the respective authorities."

63. The same coordinate Bench, thereafter, in case of **Amarjeet Singh vs. Smt. Shiv Kumari Yadav, 2024 (4) ADJ 380**, when faced with the similar question, held that Section 4 (7) of the Act of 2021 permit for initiating proceedings under Section 21 (2) in case the information is not supplied by the landlord or the tenant, which is not a sine qua non, the Court held as under;

"13. I have gone through the observation made by the co-ordinate Bench in the decision cited by Ms. Shalini Goel. In the case cited, the issue before the Court were:-

"(a). Whether a Small Cause Suit already instituted, since prior to coming into force of the new Tenancy Act, 2021 and so also such SCC revision arising therefrom would stand saved or the SCC suit and SCC Revision being not mentioned in the repeal and saving clause of Section 46, the proceedings of such suit and revision would stand abated; and

(b). Whether the bar created under Section 38 of the Tenancy Act is not an absolute one and so Small Cause Suit for arrears of recovery of Rent and Eviction (SCC Suit) and SCC Revision arising therefrom would still be maintainable even after the enforcement of the New Tenancy Act, 2021 qua the of tenancies not covered by tenancy agreements provided for under Tenancy Act, 2021."

14. The issued urged in this petition is as to whether information to the Rent Authority in form specified in the First Schedule by the landlord is a sine qua non for maintaining an application under Section 21 (2) of the Act. The observation made by the co-ordinate Bench reproduced hereinabove does not help the petitioner inasmuch as, it ignores the import of Section 4 (7) of the Act. The import of the Section 4 has been explained in the preceding paras of this order."

64. Another coordinate Bench of this Court in case of **Vishal Rastogi vs. Rent Controller/Additional District Magistrate (Judicial) And Another, 2025 (168) ALR 473**, took a similar view and held as under;

"35. So a tenancy agreement can be in writing or oral, and there is no express Provision in the U.P. Act No.16 of

2021 or it follows by necessary implication by reading the Provision of U.P. Act No.16 of 2021 that it excludes and does not recognize oral tenancy agreement between the parties.

36. The expression 'tenancy agreement' submitted to it as specified in the First Schedule in Section 38(2) of U.P. Act No.16 of 2021 must be construed to include the oral tenancy agreement and does not oust the jurisdiction of the Rent Authority if the tenancy agreement has not been reduced into writing and there is an oral tenancy agreement between the parties. The jurisdiction of Rent Authority is not barred to decide the application of landlord for eviction even in cases where the landlord or tenant failed to reach an agreement and particulars of the tenancy has not been submitted either by the landlord or by the tenant.

37. Thus, it can be safely said that the legislature by incorporating term "tenancy agreement submitted to it as specified in the First Schedule" Section 38(2) of the U.P. Act No.16 of 2021 did not bar the jurisdiction of the Rent Authority to entertain the application under Section 21(2) of the U.P. Act No.16 of 2021 in case information specified in the Schedule-I relating to tenancy agreement has not been submitted to the Rent Authority. Therefore, this Court is of the view that the Rent Authority is vested with the jurisdiction to consider the application under Section 21 even in cases where no intimation as specified in the Schedule-I in respect to tenancy agreement is given to the Rent Authority as there is no tenancy agreement between the landlord or the tenant.

38. The only rider or limitation on the power of the Rent Authority is that it

cannot enter into the question of title or ownership of the premises and its jurisdiction is limited only to the extent of determination of the rights of the parties in relation to tenant and landlord. Therefore, this Court is of the view that the submissions advanced by the learned counsel for the petitioner is devoid of merit."

65. It appears that in a subsequent dispute in case of **Raman Arora vs. Susheel Kumar (Deceased) and others, SCC Revision No. 95 of 2023**, decided on 23.1.2025, the counsel for the revisionist had placed reliance on the decision rendered in case of **Amarjeet Singh (supra)**, while the respondent had relied upon the decision rendered in case of **Amit Gupta (supra)**. From the reading of the judgment, it appears that the counsel for the respondent had given impression to the Court that after the decision in case of **Amit Gupta (supra)** the matter should have been referred to Larger Bench, while dealing the case of **Amarjeet Singh (supra)**, the coordinate Bench proceeded to observe about the binding precedent and the propriety demanded the matter to be referred to Larger Bench. However, the Court in the said case proceeded to set aside the order passed by the court below regarding the applicability of the Act of 2021 and held the SCC suit to be maintainable.

66. Sri Vishnu Gupta, learned Senior Counsel, Ms. Shreya Gupta, Sri Narendra Kumar Chaturvedi and Sri Kunal Shah, learned counsels appearing in connected matters, submitted that there was no overlapping in the judgments of coordinate Benches of this Court, nor there was any conflict in the judgment of **Amit Gupta (supra)**, **Amarjeet Singh (supra)**, **Vishal**

Rastogi (supra) and Raman Arora (supra). According to them, the question posed before the Court in Amit Gupta's case was entirely different to the issue decided by the coordinate Bench in case of **Alok Gupta (supra)** and **Amarjeet Singh (supra)**.

67. The question as to the applicability of the Act of 2021 in case of unwritten agreement and non supply of information by the landlord or the tenant to the rent authority would not outcast the proceedings at the behest of a landlord, was the issue in case of **Alok Gupta (supra)** and **Amarjeet Singh (supra)**. While the question answered by the Court in case of **Amit Gupta (supra)** was to the maintainability of SCC suit under the Act of 1887 and proceedings not to abate after the enforcement of the Act of 2021.

68. In case of **Amit Gupta (supra)** the Court had taken into note the unwritten agreement and non supply of information by the parties as provided under Section 4 (3) but the issue was not decided as to whether proceedings before the rent authority was maintainable by a landlord in case of non execution of the document between the parties and its information.

69. There is no conflict between two judgments which could be referred to a Larger Bench as has been suggested by Sri P.K. Jain, learned Senior Counsel, appearing in one of the matter on behalf of tenant. The judgments of coordinate Benches, placed before this Court, dealt and operate in different areas, as the Act of 2021 was enforced on 24.8.2021 w.e.f. 11.1.2021. Matters have come before this Court in regard to certain provisions for clarification especially as to the applicability of the Act of 2021 and

proceedings pending before the courts below prior to the enactment. Coordinate Benches have only clarified as to the saving and repeal clause and also the jurisdiction in case of dispute. In case of **Amit Gupta (supra)**, His Lordship had observed in paragraph no. 81 that *"still certain grey areas have remained unattended"*. Thus, submission made that it decided lis as to unwritten agreement cannot be accepted.

70. The judgment rendered by coordinate Bench in case of **Alok Gupta (supra)** was challenged before the Apex Court in case of **Ankit Nanda vs. Anjali Gupta, Special Leave to Appeal (C) No. 10671 of 2024**, which was dismissed on 13.5.2024, confirming the said order. Thus, I find that there is no conflict or overlapping in the judgments rendered by coordinate Benches of this Court and the matter does not need to be referred to Larger Bench for consideration.

71. In case of **Balaji Vs. Principal Secretary and others, Writ Petition No. 3985 and 7400 of 2020**, the Division Bench of Madras High Court had the occasion to consider the constitutional validity of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. The Court, after hearing the counsel for the parties, framed the questions for consideration which are as under;

"(1) Whether the legislative power of the impugned enactment in pith and substance is traceable to Entry-18 of the State List or to Entries 6,7 and 13 of the Concurrent list?

(2) Whether the impugned enactment is repugnant to the Central legislations viz., the Transfer of Property

Act, 1882 (Act 4 of 1882); the Specific Relief Act, 1963 (Act 37 of 1963) and the Registration Act, 1908 (Act 16 of 1908), Hindu Succession Act, 1984 etc.?

(3) Whether the provisions of the impugned enactment are unconstitutional on the grounds of manifest arbitrariness and for violation of the fundamental rights under Articles 14, 19 and 21 of the Constitution of India?

(4) To what other reliefs, the parties are entitled to?"

72. While answering the question no. (1) as to whether the enactment is traceable to Entry-18 of the State List or to Entries 6, 7 and 13 of the Concurrent List of VIIIth Schedule of the Constitution of India, the Court relied upon the judgment of Constitutional Bench of Apex Court in case of **Indu Bhusan Bose vs. Rama Sundari Debi, 1969 (2) SCC 289**, wherein the Apex Court had opined that the expression 'land tenure' in Entry 18 of List II would not cover the tenancy of building or of house accommodation and would only relate to vacant lands and the law governing the tenancy and leases of buildings would be within the scope of Entries 6, 7 and 13 of List III. Relevant paragraph no. 13 of the said judgment is extracted hereasunder;

"13. On behalf of the appellant, reliance was placed on some decisions of some of the High Courts in support of the proposition that the power of Parliament under Entry 3 of List I does not extend to regulating the relationship between landlord and tenant which power vests in the State Legislature under Entry 18 of List II. The first of these cases is A.C. Patel v. Vishwanath Chada [ILR 1954 Bom 434] where the Bombay High Court was dealing with Entry 2

of List I of the Seventh Schedule to the Government of India Act, 1935 and Entry 21 of List II of that Act. The Court was concerned with the applicability of the Bombay Rent Restriction Act No. 57 of 1947 to cantonment areas. Opinion was first expressed that the Rent Restriction Act had been passed by the Provincial Legislature under Entry 21 of List II and reliance was placed on the English interpretation Act to hold that land in that entry would include buildings so as to confer jurisdiction on the Provincial Legislature to legislate in respect of house accommodation. Then, in considering the effect of Act 57 of 1947, the Court said:

"As the preamble of the Act sets out, the Act was passed with a view to the control of rents and repairs of certain premises, of rates of hotels and lodging houses, and of evictions. Therefore, the pith and substance of Act 57 of 1947, is to regulate the relation between landlord and tenant by controlling rents which the tenant has got to pay to the landlord and by controlling the right of the landlord to evict his tenant. Can it be said that when the Provincial Legislature was dealing with these relations between landlord and tenant, it was regulating house accommodation in cantonment areas? In our opinion, the regulation contemplated by Entry 2 in List I is regulation by the State or by Government. Requisitioning of property, acquiring of property allocation of property, all that would be regulation of house accommodation, but when the Legislature merely deals with relations of landlord and tenant, it is not in any way legislating with regard to house accommodation. The house accommodation remains the same, but the tenant is protected quoa his landlord."

73. The said view was reiterated by the Apex Court in case of **Accountant and**

Secretarial Services Pvt. Ltd. and another Vs. Union of India, 1988 (4) SCC 324. Another Constitution Bench of Supreme Court in case of **Ashoka Marketing Ltd. and others Vs. Punjab National Bank and another, 1990 (4) SCC 406** held that rent control legislation enacted by the State Legislatures would fall within the ambit of Entries 6, 7 and 13 of List III of the VIIth Schedule of the Constitution of India. Relevant paragraph no. 46 of the said judgment is extracted hereasunder:-

“46. As regards rent control legislation enacted by the State legislatures the position is well settled that such legislation falls within the ambit of Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution (See : Indu Bhushan Bose v. Rama Sundari Devi [(1969) 2 SCC 289 : (1970) 1 SCR 443] ; V. Dhanpal Chettiar case [(1979) 4 SCC 214 : (1980) 1 SCR 334] ; Jai Singh Jairam Tyagi v. Mamanchand Ratilal Agarwal [(1980) 3 SCC 162 : (1980) 3 SCR 224] and Accountant and Secretarial Services Pvt. Ltd. v. Union of India [(1988) 4 SCC 324].”

74. In case of **Rajendra Diwan Vs. Pradeep Kumar Ranibala, 2019 (2) SCC 143** a Constitution Bench of the Apex Court while considering the validity of Section 13 (2) of the Chhattisgarh Rent Control Act, 2011 held that Entry 18 of the State List enables the State Legislature to enact the said law, however, both the Constitutional Bench judgments rendered in cases of **Indu Bhushan Bose (supra)** and **Ashoka Marketing (supra)** were not brought to the notice of the Court while deciding the said case. The Constitutional Bench of the Apex Court in case of **Shah Faesal and others vs. Union of India and**

another, 2020 (4) SCC 1 while considering the importance of law of precedents, elucidated the nature of a binding precedent and held as under:-

“25. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9 Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. ... A decision is only an authority for what it actually decides. ... The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.”

75. Recently, in case of **Ram Krishan Grover and others Vs. Union of India and others, 2020 (12) SCC 506**, the Apex Court reiterated the position taken in case of **Ashoka Marketing (supra)** and held that the powers would traceable only to

Entries 6, 7 and 13 of the Concurrent List and the expression 'land' in Entry 18 cannot be read to mean the building and housing within its ambit. The relevant paragraph no.28 is extracted as under:-

“28. In Accountant & Secretarial Services (P) Ltd. v. Union of India [Accountant & Secretarial Services (P) Ltd. v. Union of India, (1988) 4 SCC 324] , this Court had examined the question of repugnancy and interplay between the Central enactment viz. the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 based on the pattern of the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the West Bengal Premises Tenancy Act, 1956 and the question which of these enactments would prevail. The Court had interpreted Entries 3, 32, 43 and 44 of List I, Entry 18 of List II and Entries 5, 6 and 7 of the List III and the corresponding entries in the Government of India Act, 1935 to hold that all the three legislations were passed in exercise of powers conferred with respect to matters contained in the Concurrent List. In view of the repugnancy and conflict between the Central enactment on one hand and the State law on the other, in terms of Article 254, the Central enactment shall prevail. Further, notwithstanding the earlier precedents, the Court had examined the question of the relevant entry applicable to the tenancy legislation and rejected the contention that Entry 18 of List II should be interpreted as encompassing within its ambit legislation on the relationship of landlord and tenant in regard to housing and buildings. Setting out several reasons it was observed that the power to legislate in respect of tenanted premises would fall within the ambit and scope of Entries 6, 7 and 13 of the Concurrent List and would not be referable

to Entry 18 of List II. The expression “land” in Entry 18 of List II should be given as wide a construction as possible, but has to be read with the relevant entries in other Lists to give meaning and content to all of them. Inclusion of buildings and housing in the Concurrent List is appropriate and to place buildings and housing within the ambit of the expression “land” in Entry 18 of List II would denude other entries in Lists I and III concerning transfer of property, devolution and succession of land and buildings, etc. of their vigour and would render them otiose.”

76. The Madras High Court in case of **Balaji (supra)**, relying upon the judgment of Constitutional Bench of Apex Court, proceeded to answer the first question and held as under;

"11.14. Thus, we answer the question that the legislative power of the state in enacting the impugned legislation, in pith and substance, is traceable to Entries 6,7 and 13 of List-III of the Seventh Schedule of the Constitution of India."

77. While dealing with the second question the Madras High Court held as under;

"18. Thus, we hold that the impugned enactment is not repugnant to any of the provisions of the Central Legislations as contended and operates in its field and as stated supra and we had already read down Sections 4 and 4-A to operate only for the purposes of this Act and not beyond."

78. Thus, dealing with the questions posed under the Tamil Nadu Rent Control Act, the Division Bench had taken a clear

view that the legislative power of the State in enacting the legislations in respect of rent control matters, in pith and substance is traceable to Entries 6, 7, 13 of List III of the VIIth Schedule of the Constitution of India. Simultaneously, it also held that the State Rent Control Act was not repugnant to any of the provisions of the Central Act such as the Transfer of Property Act, Specific Relief Act, Registration Act, Hindu Succession Act etc. as it operates in its field.

79. Now, I proceed to take up the matters individually.

Matters under Article 227 No. 624 of 2024

80. In the instant case, on 18.05.2013, a registered lease deed was executed between the landlord and petitioner (tenant) for letting the premises at Plot No. 2, Carpet Area 1125 square feet, ground floor at VPO-Farah, Tehsil & District, Mathura for a period of 20 years w.e.f. 01.12.2012 to 31.11.2032, at a monthly rent of Rs.15,000/- for first 10 years and, thereafter, Rs.18,000/- per month for next 10 years. On 31.05.2022, the landlord filed S.C.C. Suit No. 9 of 2022 for ejectment and arrears of rent. In the plaint, it was alleged that material alteration has been done by tenant and further there was default of rent. On 19.10.2022, tenant denying the plaint allegation filed his written statement. A replication was filed by landlord on 11.05.2023. The petitioner on 28.07.2023 filed an application under Order VII Rule 11(d) of Code of Civil Procedure (CPC) on the ground that after the enforcement of the Act of 2021, the suit stood barred by Section 38. The application was opposed by landlord who filed his reply. The court below on 02.12.2023 rejected the

application. The order rejecting the application of tenant is under challenge in the instant writ petition.

Writ Petition No. 5714 of 2024

81. In this case, petitioner is landlord of shop bearing Municipal No. 132-A, Civil Lines near Chowki Crossing, Bareilly. Respondents are tenant at monthly rent of Rs.400/- plus taxes since 1984. As default in rent was committed, a notice was given by landlord for payment of rent and vacating the premises. As notice remained unreplyed, proceeding for eviction was initiated under the Act of 2021 which was registered as Application No. 1127 of 2022. The rent authority allowed the application and passed order for eviction and arrears of rent on 23.06.2023. The tenant-respondent filed appeal before rent tribunal which was registered as Rent Appeal No. 60 of 2023. The rent tribunal allowed the appeal vide judgment impugned dated 18.01.2024 and held that proceeding before rent authority was not maintainable under the Act of 2021 as there was no written agreement as per Section 4(3). Hence, this writ petition.

Writ Petition No. 6623 of 2024

82. This writ petition has been preferred by owner/landlord of shop bearing Municipal No. 127 situated at Civil Lines, Chaupala-Ayyub Khan Chauraha Road, near Hanuman Mandir, Bareilly. The shop in question was let out to respondent-tenant on 12.11.2009 at monthly rent of Rs.1440/-. Since petitioner retired from service on 31.07.2021, he wanted the shop to be vacated for running his own business. A notice was served upon respondent-tenant who denied the *bona fide* need of landlord. A release application under Section 21 and 22 of the Act of 2021 was

filed before rent authority which was registered as Application No. 509 of 2022. Proceedings were contested by respondent-tenant. The application was allowed by rent authority on 31.05.2023, against which an appeal under Section 35 of the Act was preferred being Rent Control Appeal No. 54 of 2023. By the judgment impugned dated 25.01.2024, the rent tribunal had allowed the appeal and set aside the order of rent authority. Hence, the present writ petition.

Writ Petition No. 5411 of 2024

83. This is tenant's petition. The dispute relates to shop situated in House No. 6/212, Mohalla Dakhnai Gate, Taj Ganj, Agra. According to petitioner, the rate of rent is Rs.600/- per month and an application under Section 21(2)(m) of the Act of 2021 was filed by respondent-landlord on the ground that after retiring from Government job, he wants to start his medical practice from the shop in question. The application of landlord was dismissed on 08.11.2023 against which an appeal under Section 35 of the Act was filed before rent tribunal which has been allowed on 16.03.2024. Hence, the present petition.

Writ Petition No. 5413 of 2024

84. This is also tenant's petition. The dispute relates to shop situated in House No. 6/212, Mohalla Dakhnai Gate, Taj Ganj, Agra. According to petitioner, the rate of rent is Rs.1500/- per month and an application under Section 21(2)(m) of the Act of 2021 was filed by the respondent-landlord on the ground that after retiring from the Government job, he wants to start his medical practice from the shop in question. The application of landlord was dismissed on 08.11.2023 against which an

appeal under Section 35 of the Act was filed before rent tribunal which has been allowed on 16.03.2024. Hence, the present petition.

S.C.C. Revision No. 44 of 2024

85. The respondent-landlord filed S.C.C. Suit No. 10 of 2022 for eviction and arrears of rent in respect of accommodation let out to revisionist. In the written statement filed by revisionist, ground was taken that S.C.C. suit was not maintainable in the light of provisions of the Act of 2021. The trial court framed preliminary issue no. 9 that whether suit is barred by Section 38 of the Act of 2021 or not. The said preliminary issue was decided in favour of landlord on 05.10.2023 against which the present revision has been preferred.

SUBMISSIONS

86. Sri Krishna Mohan Asthana, learned counsel appearing for petitioner in Writ Petition No. 626 of 2024 submitted that plaintiff-landlord had filed S.C.C. suit before Judge Small Cause Court on 31.05.2022 while the Act of 2021 had come into effect from 11.01.2021, thus, it was barred under Section 38 of the Act of 2021. He further submitted that the judgment rendered in case of **Amit Gupta (supra)** was not applicable and the court below had wrongly proceeded to dismiss the application filed under Order VII Rule 11(d) CPC.

87. Counsel for the respondent submitted that in view of judgment of **Amit Gupta (supra)**, any agreement arrived prior to enforcement of the Act of 2021, S.C.C suit would be maintainable. He then contended that there is no conflict between

the judgment of **Amit Gupta (supra)** and **Amarjeet Singh (supra)** passed by co-ordinate Bench as they operate in different areas. He also contended that there are two views in case rent agreement is not submitted to rent authority, firstly, as per **Amit Gupta's case (supra)** that a S.C.C. suit is not barred and as per **Amarjeet Singh's case (supra)**, it has been held that submission of rent agreement before rent authority is not *sine qua non*, thus, rent authority has jurisdiction to entertain an application for eviction of a tenant. He further laid stress that **Amarjeet Singh's case (supra)** nowhere holds that a S.C.C. suit is barred. He also contended that Section 38(2) only limits jurisdiction of rent authority to dispute relating to tenancy agreement submitted as per Section 4. The bar would operate to that extent, the agreement referred to rent authority as per mandate of Section 4 in form provided in Schedule I of the Act and in matters where tenancy agreement has not been submitted before rent authority, a S.C.C. suit would lie to evict a tenant and such tenancy dispute would stand covered under Transfer of Property Act to attract small cause case suit.

88. In respect of Section 42, he submitted that Act does not provide overriding effect for Union while as it only confers overriding effect over the State Laws. He further contended that when a bench of coequal strength is faced with conflicting judgments of other coequal benches, the judgment delivered earlier will continue to govern the field of law, till such time, the same is overturned or in case the question of law, if referred to the larger bench is answered. Reliance has been placed upon a decision of this Court in case of **M/s. Geo Miller and Company Pvt. Ltd. vs. U.P. Jal Nigam and others (Civil**

Misc. Arbitration Application No. 4 of 2024), decided on 17.05.2024.

89. Lastly, it was contended that for preferring an application for eviction of tenant under the Act of 2021, the same has to be submitted in Form 7 as per Rule 7 of Uttar Pradesh Regulation of Urban Premises Tenancy Rules, 2021 which mandates the unique identification number to be provided under Section 4(5) of the Act. Once the number has not been provided, the application before rent authority was not maintainable and landlord was left with no option but to approach Judge Small Cause Court.

90. Ms. Shreya Gupta, learned counsel appearing in Writ Petition No. 5714 and 6623 of 2024 submitted that there was no conflict between judgments of **Amit Gupta (supra)** and **Amarjeet Singh (supra)**, and they operate in different fields. In both cases, the Court had proceeded to decide the question framed therein. In **Amit Gupta (supra)**, the questions framed were whether S.C.C. suit instituted prior to coming into Tenancy Act, 2021 and revision arising therefrom would stand saved or they being not mentioned in the repeal and saving clause of Section 46 would stand abated. Further, whether bar created under Section 38 of the Act of 2021 is not absolute one and so S.C.C. suit for arrears of rent and eviction and S.C.C. revision would still be maintainable even after enforcement of the Act of 2021 qua the tenancies not covered by tenancy agreement provided under the Act of 2021. While in **Amarjeet Singh (supra)**, the question was whether information to rent authority in form specified in first Schedule by landlord is *sine qua non* for maintaining an application under Section 21(2) of the Act of 2021.

91. Both these questions were decided by respective Benches which are not overlapping and, thus, do not need consideration of a larger Bench. She then contended that intention of Legislature in Section 4 is only for intimation to the rent authority about the agreement entered between the parties, and in case it was not provided, still the proceeding under Section 21 was maintainable, as it does not lay down any embargo for maintaining the application for eviction proceeding. According to her, the rent tribunal was not correct in setting aside the order of rent authority holding the application to be not maintainable on the ground of non execution of the document and information required to be provided to the authority.

92. Sri N.K. Chaturvedi, learned counsel appearing in S.C.C. Revision No. 4 of 2024 submitted that after enforcement of the Act of 2021, it would encompass the dispute related to written tenancy which has been filed before the rent authority. According to him, the court below was not correct to hold that S.C.C. suit was maintainable as no new agreement was executed after its enforcement and on the basis of earlier agreement, the court proceeded to decide the issue as to maintainability of S.C.C. suit. The court below had wrongly relied upon the judgment of **Amit Gupta's case (supra)**.

93. Sri P.K. Jain, learned Senior Counsel appearing in Writ Petition No. 5411 and 5413 of 2024 submitted that rent authority had rightly rejected the application filed under Section 21(2)(m) of the Act of 2021 but the rent tribunal has wrongly allowed the same holding the need of landlord to be *bona fide* while no documentary evidence was filed in support of the claim of the landlord. He further

submitted that as no written agreement was executed between the parties, proceedings under the Act of 2021 was barred in view of Section 38. The application has not been filed under Rule 7 of Rules of 2021. He lastly contended that in case petitions are dismissed, some breathing time may be granted to tenant to vacate the premises in question.

94. Sri Kunal Shah, learned counsel appearing for landlord submitted that entire scheme of Section 4 does not provide for ouster of proceedings for eviction at the behest of landlord in case of unwritten agreement. Once it is an admitted case of relationship of landlord and tenant, proceedings under Section 21(2) can be initiated on the ground provided under sub-clause (a) to (m).

95. The entire thrust of argument was that the very object of enacting the Act of 2021 was to balance the equity between landlord and tenant in regard to tenancy as the earlier Act tilted in favour of tenant. He then contended that Model Tenancy Act provided that in case of failure on the part of parties to intimate about execution or non execution of tenancy agreement would preclude the landlord and tenant from claiming any relief. While enacting the Act of 2021, the Legislature has deliberately chosen to omit prescription of such consequences. Thus, it cannot be presumed that non-execution of tenancy agreement would disentitle the landlord from approaching the rent authority under the Act of 2021. He also contended that sub-section (2) of Section 38 is not conferring any jurisdiction on the rent authority but is rather a provision that circumscribes the jurisdiction of rent authority prescribing it to not venture into adjudicating dispute of title or ownership and keeping itself

confined to the disputes that may arise under tenancy agreement. He also contended that sub-section (7) of Section 4 should be read in continuation with sub-section (3) of Section 4 requiring information to be provided by parties to tenancy under sub-section (1), (2) and (3) and further in absence of such information, the landlord may file an application of eviction on this ground alone.

96. According to him, none of the provisions are restricting the landlord from approaching rent authority for redressal of his grievance under Section 21(2) in case of unwritten tenancy and information having not being supplied. According to him, if such hyper technical view is taken, then the very object of the Act would be frustrated.

CONCLUSION

97. I have heard counsel representing different parties as well as many counsel addressing the Court on the question framed, "whether the rent authority, constituted under the provisions of the Act of 2021, has the jurisdiction to entertain the application filed by landlord in cases where tenancy agreement has not been executed, if not executed, the landlord having failed to file particulars of tenancy with rent authority".

98. In earlier paragraphs while considering Model Tenancy Act prepared by Central Government, and the Act of 2021 enacted by State Legislature, I found that there is a conscious departure as to mandatory character of tenancy agreement and its intimation to rent authority in case of execution and also non execution.

99. On the one hand, Model Tenancy Act expressly provides in sub-section (6) of

Section 4 that on ground of failure of parties to intimate about execution or non execution of tenancy agreement, would both preclude landlord and tenant from claiming any relief. While on the other hand, State Legislature while adopting Model Tenancy Act to certain extent has chosen to omit prescription of such consequences, debarring failure of parties to intimate about execution or non execution of tenancy agreement to rent authority.

100. Tenancy agreement as envisaged in Section 4 under the Act of 2021 is divided into two parts, firstly, mandatory nature in regard to fresh tenancy entered after enforcement of the Act. While Legislature being conscious of the fact that old tenancy consists of both written and non written agreement, it thus provided that in case of written agreement, it was to be jointly presented to rent authority, while in case no agreement was entered, parties were required to enter into an agreement and intimate the rent authority. The proviso further clarified the position to extent that in case of failure to present the agreement jointly or failing to reach an agreement, only particulars submitted separately with the rent authority by the parties would suffice as to tenancy.

101. The Legislature further visualised contingencies where only landlords submit particulars with the authority, then in that case he could file an application for eviction against the tenant.

102. The Legislature in sub-section (7) further went to the extent that in absence of information provided under sub-section (1), (2) and (3), the landlord may file an application for eviction on this ground alone, meaning thereby that intention was

not to restrict for proceeding of eviction in case of an admitted tenancy between the parties.

103. Section 4 only envisages different types of situation in which a tenancy agreement is arrived between the landlord and tenant. It nowhere restricts any right of the parties who admit the status of landlord and tenant. Had the intention of Legislature was to restrict the parties to only approach rent authority in case of execution of agreement or intimation, then it would have adopted sub-section (6) of Section 4 of Model Tenancy Act.

104. The conscious omission on part of State Legislature would not provide fatal consequences depriving the right of landlord to expedient eviction under the Act of 2021. I have already in previous paragraph nos. 31 to 39 dealt with expression “shall” occurring in sub-section (3) of Section 4, as it caters to limited purpose regarding providing for information of tenancy to rent authority. Once there is no dispute as to landlord-tenant relationship, no mileage could be drawn out of the expression “shall” employed therein.

105. The Legislature for revision of rent under Section 9 has visualised a situation for unwritten tenancy prior to commencement of the Act, where agreement is not arrived between the landlord and tenant, then the rent authority, shall have jurisdiction to determine the enhanced rent. This provision clarifies the position that in cases in which no written agreement was existing prior to commencement of the Act and parties thereafter also failed to enter into an agreement, then the rent authority would intervene and enhance rent under Section 10.

106. This provision leads to conclusion that jurisdiction of rent authority under the

Act of 2021 cannot be narrowed down only in cases of written agreement and its intimation to rent authority. Had the Legislature thought of giving limited access to landlord or tenant to approach rent authority only in cases of written agreement or its intimation, then proviso to sub-section (5) of Section 9 would not have been there in the Statute Book.

107. The intention of Legislature cannot be ascertained merely on the basis of single provision, and regard must be given to other sections as well as the context, subject-matter and the object of the provision.

108. The Court has to ascertain real intention of Legislature i.e. the nature and design of the Statute, and consequences which would follow from construing it to the one way or the other.

109. Much emphasis has been laid on sub-section (2) of Section 38 so as to interpret Section 4 of the Act.

110. I have already dealt with scope of sub-section (2) of Section 38 in the above paragraph nos. 47 to 55. Sub-section (2) of Section 38 is not a provision conferring jurisdiction upon rent authority, rather it circumscribes jurisdiction prescribing it to not venture into adjudication of dispute regarding title or ownership and only confines to dispute arising under tenancy agreement. It does not make jurisdiction dependent upon the execution of tenancy agreement, rather it shall have jurisdiction of such tenancies also where no agreement was entered between the parties but are still covered under the Act of 2021.

111. The section sets contours within which dispute arising between the landlord and tenant is to be decided. It cannot

transgress to the issue touching the title and ownership between the parties and remain confined to tenancy agreement.

112. Thus, I find that there is no conflict or overlapping between the judgments rendered by co-ordinate Benches in cases of **Amit Gupta (supra)**, **Alok Gupta (supra)**, **Amarjeet Singh (supra)** and **Vishal Rastogi (supra)**. They were decided by co-ordinate Benches on the issue raised before the Court.

113. Thus, the question which has been posed stands answered that rent authority constituted under the provisions of the Act of 2021 has jurisdiction to entertain application filed by landlord in cases where tenancy agreement has not been executed, and landlord having failed to intimate particulars of tenancy to the authority.

114. Considering the facts and circumstances of cases referred to this Court, I find that in Matters under Article 227 No. 626 of 2024, the court below had rightly rejected the application filed under Order VII Rule 11(d) CPC holding that S.C.C. Suit No. 9 of 2022 was not barred by enforcement of the Act of 2021. The challenge made by tenant-petitioner fails and the writ petition stands dismissed.

115. Writ Petition No. 5714 of 2024 and Writ Petition No. 6623 of 2024 stand decided on the basis of conclusion arrived above and proceedings initiated by landlord-petitioner in both writ petitions under Section 21(2) of the Act of 2021 was maintainable despite there being no written agreement. Both the orders dated 18.01.2024 and 25.01.2024 are hereby set aside.

116. In view of above, both the writ petitions are partly allowed and matters are remanded back to rent tribunal to decide the same, within a period of two months, from the date of production of certified copy of this order in view of finding recorded above.

117. Writ Petition No. 5411 of 2024 and Writ Petition No. 5413 of 2024 raise similar issue and application moved under Section 21(2)(m) of the Act of 2021 was dismissed by rent authority against which appeal of the landlord was allowed holding that proceedings were maintainable despite there being no written agreement. It has also been held that proceeding under the Act of 2021 is maintainable despite there being no written agreement between the parties nor any particular having been submitted to rent authority. Both the writ petitions filed by tenant need no interference and stand dismissed. However, six months' time is granted to petitioners to vacate the premises in question by 30.06.2026 subject to following conditions:-

“(a) Tenants-petitioners shall file an undertaking before court below that they shall hand over peaceful possession of the premises in question to the landlord-respondent on or before 30.06.2026;

(b) The said undertaking shall be filed before the court below within two weeks from today;

(c) Tenants-petitioners shall pay entire decretal amount within a period of one month from today;

(d) In the undertaking, tenants-petitioners shall also state that they will not

create any interest in favour of the third party of the premises in dispute;

(e) It is made clear that in case of default of any of the conditions mentioned herein-above, the protection granted by this Court shall stand vacated automatically.

(f) In case the premises is not vacated as per the undertaking given by tenants-petitioners, they shall also be liable for contempt.”

118. Lastly, S.C.C. Revision No. 44 of 2024 also fails and stands dismissed on the ground that suit filed by landlord is not barred under Section 38 of the Act of 2021. The court below to proceed with S.C.C. Suit No. 10 of 2022 and decide the same, within next six months.

119. Before parting with the judgment, the Court records word of appreciation for the valuable assistance provided by Sri Vishnu Gupta, learned Senior Counsel and young counsel, Sri Kunal Shah.

(2025) 12 ILRA 1056
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.12.2025

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ A No. 18036 of 2025

Aditya Kumar & Anr. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the rejection of the petitioners' claim for appointment on the post of Assistant Teacher on compassionate ground, in view of the judgment in *Shailendra Kumar v. State of U.P. and*

others and the consequential Office Order dated 22.08.2025, was liable to be interfered with on the ground that certain other persons were granted similar appointments.

Headnotes

Compassionate Appointment — Assistant Teacher — Government Orders dated 04.09.2000 and 15.02.2013 — Struck down by Co-ordinate Bench — Parity — Negative equality — Article 14 — Writ dismissed.

HELD:

The claim of the petitioners for compassionate appointment on the post of Assistant Teacher was rejected in view of the judgment dated 16.04.2025 passed in *Shailendra Kumar v. State of U.P. and others*, wherein the Government Orders dated 04.09.2000 and 15.02.2013, insofar as they related to appointment on the posts of teachers on compassionate grounds, were struck down and the State Government was directed to cease their implementation. The said judgment had attained finality. [Paras 4, 8, 11]

The contention of the petitioners that certain persons had been granted appointment on compassionate ground in other districts could not be accepted. It is well settled that if any illegal or unwarranted order has been passed in favour of any person, such order cannot form the basis for issuing a writ compelling the authority to repeat the illegality. Article 14 does not envisage negative equality. [Paras 8–10] Wrongful conferment of a right on one person does not entitle another to claim similar benefit. The Court cannot direct perpetuation of an illegality merely on the ground of parity. [Paras 8–10]

The petitioners had also not challenged the Office Order dated 22.08.2025 issued by the Secretary, U.P. Basic Education Board, Prayagraj, on the basis of which their claim had been rejected. [Para 11]

In view of the above, no case for interference was made out and the writ petition was dismissed. [Paras 11–12]

Petition dismissed. (E-14)

Case Law Cited

Chandigarh Administration and another v. Jagjit Singh and another, (1995) SCC 745 — relied on; Tinku v. State of Haryana and others, 2024 SCC OnLine SC 3292 — relied on; Jyostnamayee Mishra v. State of Odisha, 2025 SCC OnLine SC 117 — relied on.

List of Acts / Statutes

Right of Children to Free and Compulsory Education Act, 2009; Constitution of India; Dying in Harness Rules, 1999.

List of Keywords

Compassionate appointment; Assistant Teacher; Negative equality; Article 14; Parity; Illegal order.

Case Arising From

Order dated 14.11.2025 passed by the District Basic Education Officer, Fatehpur, rejecting the petitioners' claim for appointment on compassionate ground on the post of Assistant Teacher.

Appearance for Parties

For the Petitioners: Sri Ashok Khare, Senior Advocate, Assisted by Sri Siddharth Khare

For Respondent Nos.1 & 2: Learned Standing Counsel

For Respondent Nos.3 & 4: Sri Shivendra Singh Bhadauria

(Delivered by Hon'ble Prakash Padia, J.)

1. Heard Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioners, learned Standing Counsel for respondent Nos.1 & 2 and Sri Shivendra Singh Bhadauria, learned counsel for respondent Nos.3 & 4.

2. The order dated 14.11.2025 passed by the District Basic Education Officer, Fatehpur/respondent No.4 by which the claim of the petitioners for grant of appointment on the post of Assistant

Teacher on compassionate ground has been rejected is under challenge.

3. Facts and brief as contained in the writ petition are that Shiv Kant Pal who is father of the petitioner No.1/Aditya Kumar had been died on 26.04.2021 while working on the post of Assistant Teacher in Uchch Prathmik Vidyalay Khairha Development Block Haswa, District Fatehpur and Indrajeet Singh, who is father of petitioner No.2/Yogendra Singh were had been died on 28.04.2021 while working on the post of Head Master of Prathmik Vidyalay Gadhi Development Block Asthar District Fatehpur. Since the petitioners are having requisite qualification, they submitted applications for their appointment on the post of Assistant Teacher, The aforesaid applications have been rejected pursuant to the order dated 16.04.2025 passed by this Court in Writ A No.15450 of 2024 (Shailendra Kumar Vs. State of U.P. and others). Aggrieved with the aforesaid order, the petitioners filed Writ A No.15439 of 2025 (Aditya Kumar And Another Vs. Sttate of U.P. and others). The aforesaid writ petition was disposed of by this Court vide order dated 29.10.2025 permitting the petitioner to submit an application physically to the District Basic Education Officer, Fatehpur within a period of one week and District Basic Education Officer, Fatehpur had directed to consider and decide the claim of the petitioners by passing a reasoned and speaking order physically, and not through the online portal within a period of three weeks, copy of the aforesaid judgement is appended as Annexure No.9 to the writ petition. Pursuant to the aforesaid order, the respondent No.4/District Basic Education Officer, Fatehpur has passed the order impugned rejecting the claim of the

petitioners on the basis of the judgement and order dated 16.04.2025 passed by this Court in bunch of writ petitions being leading number Writ A No.15450 of 2024 (Shailendra Kumar Vs. State of U.P. and others). Hence the present petition.

4. It is argued by learned counsel for the respondent that in the judgement and order dated 16.04.2025 passed by this Court in the case of Shailendra Kumar (supra), it is clearly held by this Court that no compassionate appointment could be granted on the post of Assistant Teachers. The direction given by this Court in the aforesaid order reads as follows:-

IX. Conclusions and Directions:

119. In the wake of preceding discussion, the following conclusions are being recorded and corresponding directions are being issued to the State Authorities:

(A). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are held to be ultra vires Articles 14, 16 and 21-A of the Constitution of India.

(B). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are violative of Section 3 of the Right to Education Act, 2009 which vests the right of free and compulsory education in children.

(C). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they relate to appointment on the posts of teachers on compassionate grounds are

in conflict with the mandate of Rule 5 of the Dying in Harness Rules, 1999.

(D). The Government Orders dated 04.09.2000 and 15.02.2013 insofar as they provide for appointment on the posts of teachers on compassionate grounds are struck down. The State Government is accordingly directed to forthwith cease the implementation of the Government Orders dated 04.09.2000 and 15.02.2013.

(E). The matter is remitted to respondents-authorities. The claim of the petitioner shall be considered by the respondents-authorities for appointment on compassionate grounds to any other post as per law and in line with the observations made in this judgement. The decision shall be taken by the respondents-authorities within a period of three months from the date of receipt of a certified copy of this order.

120. The writ petition is finally disposed of.

121. Registry is directed to send a copy of this order to the Principal Secretary, Department of Basic Education, Government of Uttar Pradesh, Lucknow.

5. It is argued that on the basis of the aforesaid judgement, Office Order had been issued by the Secretary, U.P. Basic Education Board, Prayagraj on 22.08.2025 and pursuant to the aforesaid judgement and Office Order, the claim of the petitioners have been rightly rejected by the respondent No.4.

6. On the other hand, it is argued by learned Senior Counsel as stated in paragraph 31 of the writ petition that

though the claim of the petitioners have been rejected on the ground that no compassionate appointment could be granted pursuant to the judgement passed by this Court but the respondent-authorities had granted appointments to various persons on the post of Assistant Teachers on the compassionate ground in the month of June to September, 2025. It is further stated that in different districts, various persons have been appointed on the post of Assistant Teachers on the compassionate ground in the month of June to September, 2025. On the basis of the aforesaid, it is argued that clear discrimination has been made with the petitioners.

7. Heard learned counsel for the parties and perused the record.

8. From perusal of the order dated 14.11.2025 passed by the District Basic Education Officer, Fatehpur/respondent No.4, it is clear that claim for grant of compassionate appointment on the post of Assistant Teacher has been rejected in view of the law laid down by this Court by a Co-ordinate Bench in the case of Shailendra Kumar (supra). It is admitted between the parties that the aforesaid judgement has been attained finality between the parties. Insofar as the arguments raised by learned Senior Counsel regarding the parity of other employees who had been granted similar benefit is concerned, the law is well settled that in case, any order has been passed in favour of any person and the same is contrary to law, such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another illegal order. The Hon'ble Supreme Court in the case of **Chandigarh Administration and another Vs. Jagjit Singh and another reported in**

(1995) SCC 745 has held that if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The relevant portion of the aforesaid order reads as follows:-

".... If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that Illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the Illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination...."

9. Apart from the same, the Hon'ble Supreme Court in the case of **Tinku Vs. State of Haryana and others reported in 2024 SCC Online SC 3292** has opined that

wrongful conferment of a right or claim on someone would not title a similar claim to be put forth before a court and nor would the court be bound to accept such a plea. The relevant paragraph is extracted below:

The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification."

10. Reference for the purpose can also be made to the judgment of the Hon'ble Supreme Court in *Jyostnamayee Mishra v. State of Odisha* reported in 2025 SCC Online SC 117 . The relevant extract is reproduced herein below:

"31. Another argument was raised while referring to two communications dated 28.06.1999 appointing Ms. Jhina Rani

*Mansingh and Sri Lalatendu Rath as Tracer on promotion, claiming to be from the post of Peon, on the basis of which the petitioner is claiming violation of Article 14, namely the discrimination. Suffice to add, this Court cannot put a stamp on the illegalities committed by the department while perpetuating the same. A litigant coming to the Court cannot claim negative discrimination seeking direction from the Court to the department to act in violation of the law or statutory Rules. It is a settled proposition of law that Article 14 does not envisage negative equality. Reference for the purpose can be made to a judgment of this Court in *R. Muthukumar v. The Chairman and Managing Director TANGEDCO*. Relevant para thereof is extracted below:*

*"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In *Basawaraj v. Special Land Acquisition Officer*, this court ruled that:*

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

11. From perusal of the record, it is clear that claim of the petitioner seeking

appointment on compassionate ground was rejected on the ground that order passed by this Court in the case of Shailendra Kumar (supra) and the Office order dated 22.08.2025 issued by the Secretary, U.P. Basic Education Board, Prayagraj. For the reasons best known to the petitioners, they have not challenged the Office order dated 22.08.2025 issued by the Secretary, U.P. Basic Education Board, Prayagraj in the present petition. Insofar as the claim of the petitioners that some persons have been granted appointment on the post of Assistant Teachers on compassionate ground is concerned, it has already been held by the Hon'ble Apex Court as stated above that in case any wrong or contrary order has been passed by the authority, such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

12. In this view of the matter, petition lacks merits and the same is hereby dismissed.

(2025) 12 ILRA 1061
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ A No. 19080 of 2006

Rajesh Singh ...Petitioner
Versus
Board of Governors, M.N.N.I.T & Anr. ...Respondents

Issue for Consideration

(i) Whether the disciplinary proceedings culminating in the order dated 28.02.2006

dismissing the petitioner from service were vitiated for non-compliance with the procedure prescribed in the Resolution adopted by the Board of Governors on 04.05.2004; and

(ii) Whether the punishment of dismissal with disqualification, imposed on the ground of immoral conduct arising out of a consensual relationship between a teacher and his student, was disproportionate.

Headnotes

Service Law — Disciplinary proceedings — Procedure prescribed by Resolution dated 04.05.2004 — One Man Inquiry Commission — Natural justice — Consensual relationship — Teacher and student — Standard of morality — Disproportionate punishment — Matter remanded on quantum of punishment.

Held:

The Resolution adopted by the Board of Governors on 04.05.2004 prescribes a detailed procedure for conducting disciplinary proceedings, including issuance of charge-sheet, statement of imputations, list of witnesses and documents, appointment of Inquiry Officer and Presenting Officer, and adherence to principles of natural justice. Admittedly, such procedure was not followed in the present case and no charge-sheet in terms thereof was issued. [Paras 13–14]

The disciplinary action was based on a report of a One Man Inquiry Commission headed by a former Judge of this Court. Though the detailed procedure prescribed in the Resolution was not followed, the petitioner had appeared before the Commission, submitted reply, and substantially admitted the relationship with the complainant. In the facts of the case, it was held that non-following of the detailed procedure did not cause such prejudice to the petitioner so as to vitiate the findings of misconduct. [Paras 15–16]

The relationship between the petitioner, a Lecturer, and the complainant, a student, though consensual and continued even after she left the Institution for about three years, was found by the Commission to be immoral and contrary to the expected standard of conduct of a teacher. [Paras 4, 15]

However, the Court noted that it was not a case of sexual harassment; the complainant had not lodged any FIR; the relationship was consensual; and except the said allegation, there was no other complaint against the petitioner. The termination was founded essentially on the ground of morality. [Paras 17–21]

In view of the circumstances, the punishment of dismissal from service with disqualification was held to be shockingly disproportionate. While upholding the finding of misconduct, the Court interfered only with the quantum of punishment and remitted the matter to the Disciplinary Authority to pass a fresh order on punishment in light of the observations made. [Paras 20–23]

The writ petition was accordingly disposed of. [Para 24] (E-14)

Case Law Cited

***Avinath Nagra v. Navodaya Vidyalaya Samiti and others*, (1997) 2 SCC 534 — referred to; Allahabad Bank and others v. Deepak Kumar Bhola, (1997) 4 SCC 1 — referred to; State of Tamil Nadu v. Pramod Kumar and others, (2018) 17 SCC 677 — referred to.**

List of Acts / Statutes

State Universities Act, 1973; First Statutes, 1976 of the University of Allahabad.

List of Keywords

Disciplinary proceedings; One Man Inquiry Commission; Natural justice; Consensual relationship; Teacher and student; Immoral conduct; Disproportionate punishment; Remand on quantum.

Case Arising From

Order dated **28.02.2006** passed by the Director, Motilal Nehru National Institute of Technology, Allahabad, dismissing the petitioner from service with disqualification.

Appearance for Parties

For the Petitioner: Sri Abhishek Srivastava.

For the Respondents: Sri Shivendu Ojha, C.S.C.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner was a Lecturer in the Department of Computer Science and Engineering in Motilal Nehru National Institute of Technology, Allahabad. He joined the Institute on 31.03.1999. An Ex-student (Girl) of Institute made a written complaint dated 08.01.2003 addressed to the Director of Institute inter alia alleging therein that when she was a student of Master of Computer Education in the Institute from 1997-2000, petitioner has made physical relationship with her and she described an occurrence took place on 16.11.1999 that it was against her will. Though she further stated that later on they had consensual physical relationship even after she left the Institute. A symbolic marriage was also took place between them but it appears that she being of a different religion, therefore, parents of petitioner did not allow to solemnize a proper marriage and thus their relationship was broken, therefore, she made a complaint that she was subjected to physical and emotional harassment.

2. On basis of said complaint, Director of Institute constituted a Five Members Committee and a show cause notice dated 10.01.2003 was issued to petitioner to submit reply to the complaint. A copy of complaint was admittedly served upon petitioner. A questionnaire was also submitted to petitioner. Petitioner thereafter submitted his reply that complainant was an student of petitioner between July, 1999 to June, 2000 and he admitted that it was a consensual relationship which developed during that period and continued even thereafter. They wanted to marry but due to different religion marriage could not take place.

3. On basis of record it appears that the Five Members Committee has not arrived to any conclusion and submitted a report that they do not have expertise to establish a fact that any rape was committed and that petitioner and complainant were in relationship even after complainant left the Institute and complaint was filed only when petitioner was engaged with some other girl in November, 2002. No specific conclusion was made in the report.

4. On basis of above inquiry petitioner was put under suspension vide order dated 17.01.2003 and there was an observation in said order that a charge sheet will be issued shortly. Subsequently, a One Man Inquiry Commission was constituted by Institute headed by Justice N.L. Ganguly, Former Judge, Allahabad High Court, who issued notice dated 10.06.2003 to petitioner and sought reply and that petitioner can produce any evidence, oral or documentary. Petitioner thereafter submitted a detailed reply on 12.09.2003 and has appeared before One Man Inquiry Commission also. Complainant has also made a written statement before One Man Inquiry Commission. The Commission also recorded statements of few witnesses as well as took note of observations made by Five Members Committee. The Commission also framed certain issues for consideration and finally submitted a report dated 27.12.2003 whereby petitioner was found guilty of misconduct on ground that he has shown special favour with complainant, when she was a student in the Institute and his conduct as a Lecturer of Institute and having affair with his student was contrary to the tenets of relationship of student and Teacher. His act of physical relationship with his student was considered to be an immoral conduct and it

was found to be contrary to the values of a Teacher in society and according to Section 49-A of the State Universities Act, 1973 and Clause 16.04 of the First Statutes, 1976 of University of Allahabad it was proposed that petitioner be terminated from services. For reference relevant part of One Man Commission's report is reproduced hereinafter:

"I have considered the facts and circumstances in great details and I find that Mr. Rajesh Singh is guilty of misconduct on the ground that he had shown special favour with Ms. Valentina Kujur when she was student in the institute. He had shown special favour to her by giving her special lessons for home work and would question on the said subject on the following day which act was an act of special favour shown by him to Ms. Valentina. This was not done in case of any other girl student or boy student. The conduct of Mr. Rajesh Singh as a Lecturer of the college and having affairs with Ms. Valentina Kujur when she was student of the college itself, calling her to participate in birth-day celebration in the Hotel Kanha Shyam shows and fortifies the findings recorded against him. Mr. Rajesh Singh, when Ms. Valentina Kujur was his student and was in the college, was photographed in the residential room in such a pose which is not proper for the teacher with his own girl student. I have already discussed above that Mr. Rajesh Singh was standing behind the chair on which Ms. Valentina Kujur was sitting and he was leaning on the shoulders of Ms. Valentina Kujur putting both his hands on upper portion of her breast and she was holding his wrist. This cannot be imagined to be a proper pose with a girl student by his teacher. The sexual act continued from February till May 1999, as stated by Ms. Valentina

Kujur. This act committed by Mr. Rajesh Singh is immoral conduct and in no manner can be excused. Even after Ms. Valentina Kujur ceased to be the student of Mr. Rajesh Singh, he continued having sex relationship with her, taking her to Hotels at Agra stayed there for two days and five days at Khajuraho are such facts which show that Mr. Rajesh Singh had lost all moral values of Indian culture which is never expected from a teacher. In our country teachers are worshipped and their place is at high pedestal गुरुर ब्रह्मा, गुरुर विष्णु, गुरुर देवो महेश्वरा ।

After considering the facts and circumstances in detail, I have no option left to record the finding that Mr. Rajesh Singh committed gross misconduct and according to Section 49-D of the State University Act, 1973 and Clause 16.04 of the First Statutes, 1976 of the University of Allahabad deserves to be terminated from the services. If such a teacher is permitted to continue in an educational institute of repute like MNNIT where girl students from various parts of the country come to study, there is no guarantee that he will not repeat his actions again.

I suggest that proper punishment would be termination from service so that he may be able to do other job in places other than educational institutions. The suspension allowance already paid may not be recovered back from him, but he shall not be entitled for any further emoluments.

The report of the Commission is submitted before the Chairman of the Board of Governors of MNNIT, Allahabad for his consideration and for consideration by the Board of Governors.”

5. A copy of aforesaid report was served upon petitioner who submitted his reply on 23.06.2004 that the report be set aside. The report and petitioner's reply was considered by Board of Governors in their 5th Meeting held on 18.01.2005 and accordingly a notice dated 22.02.2005 was issued to petitioner. Petitioner thereafter submitted his reply dated 05.03.2005 and subsequently impugned order dated 28.02.2006 was passed by Director of Institute whereby petitioner was dismissed from service with disqualification.

6. The aforesaid order dated 28.02.2006 is impugned in present writ petition.

7. This writ petition was filed in the year 2006 wherein no interim order was passed. Later on it was dismissed for want of prosecution on 11.07.2013 and restored vide order dated 26.07.2023.

8. Sri Abhishek Srivastava, learned counsel for petitioner has argued that service conditions of an employee of MLNIT is governed by a resolution adopted by Board of Governors in its 4th Meeting held on 04.05.2004 which provides procedure for disciplinary action, penalties and appeal also and for reference the same are reproduced hereinafter:

“8. Procedure for Imposing Penalties

The procedure for imposing penalties listed in Para 3 shall be as under:

(i) No order imposing on any member of the staff any of the penalties specified at (iv) to (vii) above shall be passed by any authority subordinate to that by which he was appointed and except after

an enquiry has been held and the member of the staff has been given reasonable opportunity of showing cause of the action proposed to be taken in regard to him.

No order imposing on any member of the staff any of the penalties specified at (i) to (iii) above shall be passed by any authority subordinate to that by which he was appointed and unless the member of the staff concerned has been given an opportunity to make a representation to the Appointing Authority.

Notwithstanding the above provisions, it shall not be necessary to follow the procedure mentioned above in the following cases:

(a) where an employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where the authority empowered to dismiss or remove the person or to reduce him in rank is satisfied that, for some reason to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause; or

If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (b) above, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

(ii) Formal penalties must be recorded in the Service Book of the employee and a copy kept along with his/her Confidential Reports. Other

punishments need not be recorded, except that a Warning given after disciplinary proceedings should be recorded.

(iii) In case of an officer on deputation, the borrowing authority may start proceedings but the lending authority should be informed and vice-versa. If at the conclusion of the proceedings started by him, the borrowing authority is of the view that a major penalty should be imposed on the delinquent official, the borrowing authority should replace his/her services at the disposal of the lending authority and transmit the record of the proceedings to the lending authority. The borrowing authority can impose a penalty on the delinquent officer but if this is not agreed to by the lending authority, then his services shall be replaced at the disposal of the lending authority.

(iv) A Flow Chart of various steps after receiving a complaint is given as under:

9. Acts, Conduct And Commissions/Omissions Which Amount To Misconduct Leading To Disciplinary Action

The employees of the Institute shall be governed by the Conduct Rules as laid down in Schedule 'B' and any violation of these rules may lead to disciplinary action.

I. The initiation of disciplinary proceedings for various penalties depends on the gravity of derelictions to be judged by the Disciplinary Authority.

II. Generally, for minor penalty proceedings at Serial (i) to (iii), could be dereliction of duty such as inefficiency or

incompetence disobedience of orders habitual late coming or minor violation of conduct rules constitute the basis.

III. Cases which may generally mere action of imposing one of the Major penalty at Serials (iv) to (vii) are,

1. Where there is a reasonable ground to believe that a penal offence has been committed by the employee but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.

a) possession of disproportionate assets;

b) obtaining or attempting to obtain illegal gratification;

c) misappropriation of Government property, money to stores;

d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.

2. Falsification of Government/Institute records.

3. Gross irregularity or negligence in the discharge of official duties with a dishonest motive.

4. Misuse of official position or power for personal gain.

5. Disclosure of secret or confidential information even though it does not fall straightly within the scope of the Official Secrets Act.

6. False claims on the Institute like TA, Reimbursement etc.

7. Sexual harassment

10. Principles of Natural Justice

The principles of natural justice have been evolved through various judicial pronouncements and are intended to provide the minimum protection to an individual against any arbitrary procedure that may be adopted by the authorities in departmental inquiries. These principles require:

(a) That every person against whom disciplinary proceedings are contemplated must have a reasonable notice of the case he has to meet;

(b) That he must have a reasonable opportunity of being heard in his defence;

(c) That the hearing must be conducted by an impartial, unbiased officer(s) that is, a person who is neither directly nor indirectly a party to the case or has an interest in it.

(d) That the disciplinary authority must act in good faith and not arbitrarily but reasonably

The reasonable opportunity mentioned at (b) above includes:

(i) An opportunity to the person concerned to deny his guilt and establish his innocence. He will get an opportunity if he is told clearly what the charges leveled against him are and the allegations on which such charges are based.

(ii) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining

himself and any other witnesses in support of his defence; and,

(iii) An opportune to make his representation as to why the punishment should not be inflicted on him. This opportunity can be provided only if the competent authority after applying its mind to the gravity or otherwise of the charges against him proposes to inflict the appropriate penalty out of the list of penalties provided for in the rules relating to such disciplinary matters.

For unbiased hearings mentioned at (c) above, the Inquiry Officer should not obviously have any personal interest in the case. During hearings, he is expected to be serene and even-handed, even though his patience at times may be tried. At the same time, he cannot permit either party to engage in every trick to delay proceedings and put a spoke the wheel of justice.

11. Proceedings for Inquiry

The flow chart of various steps in the conduct of an enquiry and award of a punishment after receiving a complaint is given at Annexure 1 and the guidelines as under:

(a) The proceedings commence with the issue of a charge-sheet to the delinquent official. The charge-sheet should contain facts and circumstances serving as the basis for the charge so that the delinquent official may have a reasonable opportunity to know fully what the charges levelled against him are and what the background is, so that he may be in a position to answer the charges and prepare himself in the departmental inquiry.

The charge-sheet to be issued to the delinquent official should include the following:

(i) a statement of charges

(ii) a statement of imputation of misconduct/misbehaviour leading to a distinct charge

(iii) a list of witnesses and a list of documents in support of charges and

(iv) a memorandum requiring the delinquent official to submit a reply within a reasonable time (say 10 days from the date of receipt) asking him to state whether he pleads guilty and whether he wishes to be heard in person

(b) After receiving the explanation from the delinquent official, the disciplinary authority may appoint an impartial officer to hold the inquiry on his behalf.

(c) When the Inquiry Officer is appointed, the disciplinary authority should simultaneously appoint a Presenting Officer. It should not be difficult to except in very complex cases for the disciplinary authority to appoint a staff member from the Institute, conversant with the case other than the one who has carried out a preliminary inquiry into it. The Presenting Officer is to conduct the proceedings on behalf of the Institute before the Inquiry Officer. He will lead evidence in support of the charges and cross-examine the witnesses deposing on behalf of the delinquent official.

The delinquent official may be allowed to have a staff member of the institute as Defence Assistant. Refusal to

engage a Lawyer/Advocate to the delinquent official does not amount to denial of reasonable opportunity or violation of the natural justice. If however the disciplinary authority appoints a legal practitioner as a Presenting Officer, it is only appropriate that the delinquent official should be informed and also allowed to engage a legal practitioner.

(d) The departmental inquiry should be commenced with an advance notice to the delinquent official intimating him the date, time and place of inquiry and calling upon him to appear before the Inquiry Officer together with his witnesses, if any. A list of witnesses to be examined for the Institute should be furnished to the delinquent official in advance.

(e) On the first day of inquiry if the delinquent official who is served with the notice of the inquiry is absent, the inquiry officer may give him another opportunity to appear instead of proceeding with the inquiry.

(f) When the delinquent official appears with reference to the notice of hearing, the Inquiry Officer should read the charges in the presence of the delinquent official and say these charges have been levelled against him on the evidence of certain persons and documents, if any.

(g) The witnesses on behalf of the disciplinary authority should be examined in the presence of the delinquent official and the evidence taken and recorded in his presence. The strict provisions of the Evidence Act however do not apply to such domestic inquiries. The delinquent official should be called upon to cross examine the witnesses and the Inquiry Officer should record the statements made by them on

such cross examinations in the presence of the delinquent official.

(h) The Inquiry Officer may take the signatures of the delinquent official on each day's proceedings and if he refuses to sign, such refusal may be noted by the Inquiry Officer in the proceedings.

(i) After the Institute closes its side, the delinquent official should be given a reasonable opportunity to produce his witnesses to give evidence of his side. He and his witnesses may be cross-examined by the Presiding Officer. If the delinquent official says that he has no evidence to offer or he fails to appear before the Inquiry Officer or protects the proceedings in spite of reasonable opportunities to produce his evidence, the Inquiry Officer should record it in the proceedings and he may then close the case. The Inquiry Officer should then obtain a brief from the Presenting Officer as well as from the Defence Assistant/Delinquent Employee.

(j) The Inquiry Officer may also take the signature of each witness to the evidence recorded by him. This equally applies to the evidence of the delinquent official.

(k) The Inquiry Officer should then draw to the report and forward it to the disciplinary authority. This should contain a brief resume of the charges framed against the delinquent official, the explanation of the delinquent official, the substance of the evidence of witnesses examined during the inquiry and the documentary evidence placed on record. It should also set out the conclusions on the charges, supported by the evidence placed on record. He should conclude which of the imputations/ charges are proved. In

case a particular charge, as such is not established, but part of the allegation referred to it in the statement of imputations is established, the Inquiry Officer should specifically bring this point out. The Inquiry Officer should forward along with his report all the record and the proceedings of the Inquiry.”

9. Learned counsel by referring the above referred procedure has submitted that there is no provision to constitute a One Man Inquiry Commission and its report could only be a supporting document and could not be a basis to take action against petitioner. No charge sheet was issued to petitioner. No oral evidence was recorded. Petitioner was not granted any opportunity to cross-examine complainant or witnesses. A detail procedure is prescribed for inquiry but not followed. Therefore, the order of removal from service based on a report of One Man Inquiry Commission is illegal.

10. Learned counsel further submitted that there is no explanation that once complainant has left the Institute and according to her case she remained in relationship with petitioner so much as that they perform a symbolic marriage and this relationship goes for about three years, even after she left the Institute, then such a belated complaint cannot be formed basis to a report of Inquiry Commission. Moreso it was filed only when the marriage was not solemnized and petitioner was got engaged with another girl. In support of his submissions, learned counsel placed reliance on judgments passed by Supreme Court in **Avinath Nagra vs. Navodaya Vidyalaya Samiti and others (1997)2 SCC 534**; **Allahabad Bank and others vs. Deepak Kumar Bhola (1997)4 SCC 1**; and, **State of Tamil Nadu vs. Pramod Kumar and others (2018)17 SCC 677**.

11. Per contra, Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, learned counsel for respondents, has submitted that petitioner was not prejudice since he has opportunity to place his case which he availed also. The contents of complaint are substantially accepted by petitioner. Being a Teacher petitioner has to preserve a higher standard of morality which he fails to do. Admittedly he made physical relationship with his student probably on ground to give her benefit and even after she left the Institute, he remained in relationship and failed to marry her. Such relationship between a Teacher and his student is contrary to the basic tenets of Guru Shishya Parampara and such a Teacher cannot be allowed to serve in a Institute, which has a high reputation.

12. Heard learned counsel for parties and perused the material on record.

13. In the present case, it not in dispute that disciplinary proceedings against petitioner was not undertaken in terms of procedure prescribed in a resolution adopted by Board of Governors in its 4th Meeting held on 04.05.2004, which is referred in detail in earlier paragraphs. Said procedure prescribes that principles of natural justice are to be followed. There is a very detail procedure for inquiry which commenced with issuance of charge sheet to delinquent official, a statement of charges, a statement of imputation of misconduct, a list of witnesses and a list of documents in support of charges and a memorandum requiring the delinquent official to submit a reply within a reasonable time etc. An Inquiry Officer was requested to be appointed to conduct an inquiry. A Presenting Officer was also required to be appointed. A detail procedure has also

further provided and admittedly in the present case since no Inquiry Officer was appointed, therefore, further procedure as prescribed was also not followed.

14. Now the question is, whether a One Man Inquiry Commission can by pass the detail procedure prescribed for conducting a disciplinary proceeding. It is no doubt that the One Man Inquiry Commission was headed by a Former Judge of this Court wherein petitioner and complainant appeared and recorded their respective statements.

15. The Commission has recorded statements of independent witnesses. Though no cross-examination was conducted but on basis of material available before One Man Inquiry Commission, essentially on a ground that petitioner has accepted his relationship with victim even after she left the Institution and it was found that petitioner has conducted a misconduct. Essence of order passed by One Man Inquiry Commission was based on standard of morality of a Teacher, relationship between a Teacher and student as well as that a Teacher has to keep morality at a very high pedestal and that if petitioner was allowed to work in the Institution, he might have repeated such act.

16. Court finds that since petitioner has substantially accepted the allegations made by complainant, therefore, only on ground that a detail proceeding in terms of above referred resolution, was not conducted and an inquiry was conducted by One Man Inquiry Commission would not prejudice him so much as that allegation is concerned. Petitioner has accepted that he had relationship with complainant (a student) for few months which continued

even after she left the Institution and they wanted to marry but it could not happen since they belong to different religion. Therefore, it is not a case where the petitioner is prejudice or if inquiry was conducted as per the procedure, outcome of inquiry report would be different.

17. Now the Court proceed to discuss and consider, whether in such circumstances when the complainant was a willing partner in the relationship and though it commenced when she was a student of petitioner and continued even after she left the Institution for three years, therefore, after such a lapse of time, specifically when marriage was not solemnized, whether such a complaint and admit nature of relationship, could invite a major penalty to petitioner. Admittedly the complainant has not lodged any FIR against the petitioner.

18. On basis of material on record maximum it may be a case of false promise of marriage but to contend by complainant that she was forced to enter into physical relationship about three and half years ago even though she remained in relationship with petitioner for more than three years does not inspire confidence.

19. There is one more factor also that in present case, complaint was filed by an Ex-student after three years, she left the Institution and after being in relationship with petitioner for these three years that whether such a complaint could be cognizable specifically in absence of any FIR lodged by complainant.

20. In aforesaid circumstances, the Court finds that on basis of material on record, as referred above, the only reason to terminate the petitioner from service with

disqualification is 'morality', i.e., a standard of morality is required to be maintained by a Teacher with their students. No doubt the petitioner has not followed or kept high standard of morality but there is another factor that except the said allegation there is no other allegation against petitioner despite he was doing job for almost three years before the order of termination was passed. In case petitioner got married with complainant after their relationship of three years, possibly no complaint was filed. Therefore, Court finds that morality has to be judged on further conduct of petitioner also and since there is no other complaint placed on record, therefore, the Court finds that punishment is shockingly disproportionate.

21. It is not a case of sexual harassment, rather admittedly it is a case of consensual relationship which continued even after the complainant left the Institution for almost three years, therefore, it may not be a case of major punishment prescribed at Serial Nos. (iv) to (vii) of Para 3 of Administrative Orders and alternatively some minor punishment may be imposed.

22. The Court further takes note that major penalties are defined at Serial Nos. 4 to 6 of Clause 9 of the Resolution. Para 3 of Administrative Orders under the heading of "Disciplinary Action, Penalties and Appeal" provides major penalties at Serial Nos. (iv) to (vii), i.e., reduction to lower service, grade or post or to lower time scale or to a lower stage in a time scale; compulsory retirement; removal from service which shall not be a disqualification for future employment in the Institution; and, dismissal from service which shall ordinarily be a disqualification for future employment in the Institute as well as

minor penalties are prescribed at Serial Nos. (i) to (iii) of same Para, i.e., censure; withholding of increments or promotion; and, recovery from whole or part of any pecuniary loss caused to the Institution by negligence or breach of orders.

23. In view of above, impugned order dated 28.02.2006 is interfered qua to quantum of punishment and matter is remitted to Disciplinary Authority to pass a fresh order so far as quantum of punishment is concerned, keeping in view of observations of this Court.

24. The writ petition is accordingly disposed of.

(2025) 12 ILRA 1071

REVISIONAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 09.12.2025

BEFORE

THE HON'BLE CHAWAN PRAKASH, J.

Criminal Revision No. 6131 of 2023

Nahni & Ors.

...Revisionists

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Whether a criminal revision is maintainable against an order passed by the Magistrate under Section 156(3) Cr.P.C. directing the police to register an F.I.R. and investigate, at the instance of the proposed accused against whom neither cognizance has been taken nor process issued.

Code of Criminal Procedure, 1973 — ss.156(3), 397(2) — Revision — Direction to register F.I.R. — Interlocutory order — Maintainability — Proposed accused — Bar under Section 397(2) — Revision dismissed.

Held:

The Full Bench of this Court in *Father Thomas v. State of U.P. and Another* has authoritatively held that an order of the Magistrate made in exercise of powers under Section 156(3) Cr.P.C. directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued. [Paras 7–9]

It has further been held that an order under Section 156(3) Cr.P.C. directing investigation in a cognizable case is an interlocutory order and the remedy of revision against such order is barred under Section 397(2) Cr.P.C. [Paras 8–9]

In the present case, the learned Magistrate allowed the application under Section 156(3) Cr.P.C. and directed the police to register an F.I.R. and investigate. Since no revision lies against such an order, the present criminal revision filed by the proposed accused/revisionists is not maintainable. [Paras 9–10]

Accordingly, the criminal revision was dismissed. [Para 11]

Revision dismissed. (E-14)

Case Law Cited

Father Thomas v. State of U.P. and Another, Criminal Revision No. 1640 of 2001 (Full Bench, decided on 22.12.2010) — relied on; Ajay Malviya v. State of U.P. and others, 2000 (41) ACC 435 — referred to.

List of Acts / Statutes

Code of Criminal Procedure, 1973.

List of Keywords

Interlocutory order; Maintainability of revision; Direction to register F.I.R.; Proposed accused; Bar of revision.

Case Arising From

Order dated 30.10.2023 passed by the Additional Chief Judicial Magistrate, Hathras in Case No. 416/12 of 2023 (Manju v. Nahni and others), whereby application under Section 156(3) Cr.P.C. was allowed directing registration of F.I.R. and investigation.

Appearance for Parties

For the Revisionist(s): Sri Rajesh Kumar Bind
For the Opposite Party(s): Learned G.A.

(Delivered by Hon'ble Chawan Prakash, J.)

1. List revised.

2. None present on behalf of revisionists. However, learned AGA is present.

3. The instant revision has been filed for setting aside the impugned order dated 03.11.2023 passed by learned Additional Chief Judicial Magistrate, Hathras in Case No. 416/12 of 2023 (Manju Vs. Nahni and others), whereby learned Magistrate issuing a direction under Section 156(3) Cr.P.C. to the police to register an FIR and to investigate the same.

4. Brief facts of the case are that opposite party no. 2 moved an application under Section 156(3) Code of Criminal Procedure (Cr.P.C.) before the A.C.J.M., Hathras seeking registration of FIR against the revisionists. Learned Additional Chief Judicial Magistrate, vide order dated 30.10.2023 allowed the said application and directed the police to register an FIR and to investigate the same. Feeling aggrieved the present revision has been filed.

5. Learned AGA submits that the present criminal revision is not maintainable against the impugned order passed by learned Magistrate Hathras, under Section 156(3) Cr.P.C. in which the learned Magistrate allowed the application and direct the police to register the FIR. To support his contention, he has relied upon the judgment of the Full Bench of this Court in the case of **Father Thomas Vs. State of U.P. and Another** passed in Crl.

Revision No.1640 of 2001 vide order dated 22.12.2010.

6. In the present case, the opposite party no. 2 filed an application under Section 156(3) Cr.P.C. for issuance of a direction to the police to register an FIR. The learned Magistrate allowed the application and direct the police to register an FIR. The proposed accused/revisionists have filed the present criminal revision challenging the said impugned order.

7. The question as to whether the order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued was subject matter of consideration before the Full Bench in the case of **Father Thomas (Supra)** wherein the following questions had been referred.

"A. Whether the order of the Magistrate made in exercise of powers under Section 156(3) Code of Criminal Procedure directing the police to register and investigate is open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued?

B. Whether an order made under Section 156(3) Code of Criminal Procedure is an interlocutory order and remedy of revision against such order is barred under Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973?

C. Whether the view expressed by a Division Bench of this Court in the case of *Ajay Malviya v. State of U.P and Ors.* reported in 2000(41) ACC 435 that as

an order made under Section 156(3) of the Code of Criminal Procedure is amenable to revision, no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is correct?"

8. The Full Bench after considering the matter at length expressed its opinion on the three questions which had been referred to in the following manner :-

"A. The order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.

B. An order made under Section 156 (3) Cr.P.C is an interlocutory order and remedy of revision against such order is barred under sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973.

C. The view expressed by a Division Bench of this Court in the case of *Ajay Malviya Vs. State of U.P and others* reported in 2000(41) ACC 435 that as an order made under Section 156 (3) of the Code of Criminal Procedure is amenable to revision, and no writ petition for quashing an F.I.R registered on the basis of the order will be maintainable, is not correct."

9. In view of the aforesaid opinion expressed by the Full Bench, an order of the Magistrate made in exercise of powers under Section 156 (3) Cr.P.C directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued. It has been further held that an order made under Section 156 (3) Cr.P.C. directing a police

officer to investigate a cognizable case is an interlocutory order and the remedy of revision against such order is barred under Section 397 (2) Cr.P.C.

10. Since no criminal revision lies against an order passed by the Magistrate in exercise of powers under Section 156(3) Cr.P.C. directing the police to register an FIR, the present revision, filed by the proposed accused/revisionists, is not maintainable.

11. Accordingly, the present criminal revision stands **dismissed**

(2025) 12 ILRA 1074
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.12.2025

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Revision No. 6594 of 2025

Sanjay Singh & Ors. ...Revisionists
Versus
State of U.P. & Ors. ...Opposite Parties

Issue for Consideration

(i) Whether the present criminal revision against the order dated 17.09.2025 was maintainable when the revisionists had already filed Criminal Revision No. 132 of 2025 before the District and Sessions Judge, Kannauj against the same order; and

(ii) Whether Criminal Revision No. 132 of 2025, after having been admitted and registered, could be dismissed as "not pressed" without being decided on merits.

Headnotes

Criminal Procedure — Section 397(3) Cr.P.C. / Section 438(3) B.N.S.S. — Second revision — Concealment of material facts — Abuse of process — Dismissal with cost

— Dismissal of admitted revision as not pressed — Not sustainable — Restoration.

Held:

The revisionists had filed Criminal Revision No. 132 of 2025 before the learned District and Sessions Judge, Kannauj on 24.09.2025 against the impugned order dated 17.09.2025. The said revision was admitted and registered, notice was issued and date fixed. Thereafter, the present criminal revision was prepared on 27.09.2025 and filed before the High Court on 01.10.2025 without disclosing the pendency of the earlier revision. [Paras 17–21]

In the affidavit filed in support of the present revision, the revisionists stated that no other criminal revision had been filed, whereas Criminal Revision No. 132 of 2025 was already pending before the Sessions Court. The certified copy of the impugned order had also been filed before the Sessions Court, despite seeking exemption before the High Court on the ground that it had been misplaced. These facts amounted to concealment of material facts and misuse of process of law. [Paras 18, 21–22]

In view of Section 397(3) Cr.P.C. (corresponding to Section 438(3) B.N.S.S.), once a revision is filed before one forum, a second revision against the same order is barred. Accordingly, the present revision was held not maintainable and was dismissed with cost of Rs. 20,000/-, to be deposited with the High Court Legal Services Committee. [Paras 16, 22]

As regards the order dated 07.11.2025 passed by the learned Additional Sessions Judge, Court No. 1, Kannauj dismissing Criminal Revision No. 132 of 2025 as "not pressed", it was held that once a criminal revision has been admitted and registered, there is no procedure for dismissing it in default. Even if the revisionist is absent, the revision must be decided on merits. [Para 23]

Relying on the judgment of the Hon'ble Supreme Court in *Santosh v. State of U.P.*, it was held that dismissal of the admitted revision as not pressed was not sustainable in law. The order dated 07.11.2025 was set aside and Criminal Revision No. 132 of 2025 was restored to its original number with direction to the

revisionists to appear before the concerned court. [Para 23]

The present criminal revision was dismissed with costs; however, the earlier revision before the Sessions Court was restored for decision on merits. [Paras 22–23] (E-14)

Case Law Cited

Santosh v. State of U.P., (2010) 3 SCC (Criminal) 307 — relied on.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Second revision; Maintainability; Concealment of material facts; Abuse of process; Dismissal with cost; Restoration of revision; Decision on merits.

Case Arising From

Order dated 17.09.2025 passed by the Sub-Divisional Magistrate, Tehsil Chhibramau, District Kannauj in Computerized Case No. T-2025034000207389 (Shri Thakur Ji Maharaj Virajman Mandir Village Hathin, Pargana and Tehsil Chhibramau, District Kannauj v. Sanjay Singh and others), under Section 164 B.N.S.S., Police Station Chhibramau, District Kannauj.

Appearance for Parties

For the Revisionists: Sri Brijesh Pratap Mishra
For Opposite Party No. 3: Sri Ashutosh Singh
For Opposite Party Nos. 1 & 2: Learned A.G.A.

(Delivered by Hon'ble Abdul Shahid, J.)

1. Heard Sri B.P. Mishra, learned counsel for the revisionists, Sri Ashutosh Singh, learned counsel for the opposite party no. 3 and learned A.G.A. for the opposite party nos. 1 and 2.

2. The present criminal revision has been filed against the impugned order dated 17.09.2025 passed by learned Sub Divisional Magistrate, Tehsil Chhibramau, District Kannauj in Computerized Case No. T-

2025034000207389 (Shri Thakur Ji Maharaj Virajman Mandir Village Hathin, Pargana and Tehsil Chhibramau, District Kannauj Versus Sanjay Singh and others), under section 164 B.N.S.S., Police Station Chhibramau, Tehsil Chhibramau, District Kannauj.

3. Counter affidavit and rejoinder affidavit have been exchanged.

4. The brief facts of the case are as follows:

5. During the consolidation proceedings, on the basis of a compromise, the Assistant Consolidation Officer, Fatehgarh, District Kannauj, passed an order dated 18.08.1994, whereby Chak No. 82 and Chak No. 342 were allotted in the name of Late Baba Mahesh Das Chela in place of Baba Sukhram Das Chela Ram Das Vairagi as successor. The disputed Gata No. 226 (area about 0.259 hectare), Gata No. 288 (area about 0.77 hectare), Gata No. 251 (area about 0.3970 hectare), and Gata No. 294 (area about 0.77 hectare), situated at Village Natha Nagla, Mauja Bhaulpur, Pargana and Tehsil Chhibramau, District Kannauj, and Gata No. 1316 (area about 0.67 hectare), Gata No. 1317 (area about 2.17 hectare), Gata No. 1318 (area about 2.06 hectare), and Gata No. 1019 (area about 1.76 hectare), total area about 6.65 hectares, situated at Hathin Mauja Bhaulpur, Pargana and Tehsil Chhibramau, Police Station Chhibramau, District Kannauj, belong to Sri Thakur Ji Maharaj Virajman Mandir. In this regard, the Revenue Inspector prepared the *khatauni fasli* for the years 1427 to 1432 (01 July 2019 to 30 June 2025) for Gram Bhaulpur, Tehsil Chhibramau, District Kannauj.

6. In pursuance of the aforesaid will dated 14.08.2024, the revisionists

constituted a registered trust deed on E-stamp paper, namely, Sri Thakur Ji Maharaj Virajman Mandir (Charitable Trust), of Village Natha Nagla, Mauja Bhaulpur, Post Hathin, Pargana and Tehsil Chhibramau, District Kannauj, on 15.05.2025, and the said trust deed was thereafter registered before the Sub-Registrar, Chhibramau, District Kannauj.

7. Learned counsel for the revisionists submits that on 09.07.2025, opposite party no. 3, namely Himanshu Chauhan, son of Ram Bharose Singh, filed an application under Section 164 B.N.S.S. before the Sub-Divisional Magistrate, Tehsil Chhibramau, District Kannauj, with a prayer that the learned Magistrate appoint a receiver and seize/attach the aforesaid agricultural properties belonging to Sri Thakur Ji Maharaj Virajman Mandir, Village Hathin, Tehsil Chhibramau, District Kannauj.

8. On 26.07.2025, after receiving the said application under Section 164 B.N.S.S., learned Sub-Divisional Magistrate, Tehsil Chhibramau, District Kannauj, called for a report from the concerned Police Station. The concerned Police Station submitted a detailed report on 26.07.2025.

9. The learned Sub-Divisional Magistrate, Chhibramau, District Kannauj, issued notice to the revisionists, and upon receiving the said notice, the revisionists filed a detailed objection/reply before the Sub-Divisional Magistrate, Chhibramau, District Kannauj, on 03.09.2025.

10. It is further submitted by learned counsel for the revisionists that the true fact is that paddy (rice) crops were standing on the aforesaid agricultural land, cultivated in the capacity of *batidar*, as allotted by Baba

Mahesh Das @ Mahesh Chandra during his lifetime.

11. In pursuance of the order dated 17.09.2025, the local police of Police Station Chhibramau and the Tehsildar, Tehsil Chhibramau, have been attempting to dispossess the *bataidars* from the disputed agricultural land and have also illegally attached/occupied the standing rice crops on the said agricultural plots. Hence, the present criminal revision has been filed before this Court.

12. The revisionists filed this revision before this Court on 01.10.2025 along with an urgency application, which was received by the State on 01.10.2025. The certified copy of the order dated 17.09.2025 had been misplaced, and an exemption was sought with an undertaking that the certified copy would be submitted if required by the Court. On the said urgency application, which was presented on 01.10.2025, the matter was placed before the Hon'ble the Chief Justice, who was pleased to consider the urgency and ordered that the matter be listed before the concerned Court on 02.10.2025 at 11:30 A.M.

13. The matter was placed before this Court on 02.10.2025 and an interim order was passed. Paragraph 10 of the interim order dated 02.10.2025 is quoted herein below:

“10. Hence, considering the entire aspect of the matter, it is hereby directed that the crops, if any, standing over the land of the aforesaid mandir shall be protected by all the stakeholders and it should not be cut by any stakeholder on the pretext of the impugned order dated 17.09.2025 so that the crops may be safe and secure.”

14. The revisionists also filed an affidavit dated 27.09.2025 of revisionist no.

3, Omkar Singh, son of Raghuveer Singh, in which it is specifically mentioned in paragraph 2 that this is the first criminal revision filed on behalf of the revisionists under Sections 438/442 B.N.S.S., 2023 before this Court against the order dated 17.09.2025, and that no other revision has been filed or is pending before this Court or at the Lucknow Bench.

15. The opposite party no. 3 filed a short counter affidavit raising a preliminary objection only on the point of maintainability and prayed that this Court be pleased to vacate the interim order dated 02.10.2025 and dismiss the present criminal revision with heavy cost for performing such an illegal act, so that justice may be done; otherwise, the innocent opposite party no. 3 would suffer irreparable loss and injury which cannot be compensated. Opposite party no. 3 has specifically stated in paragraph 5 that the impugned order dated 17.09.2025 passed by the Sub-Divisional Magistrate, Chhibramau, District Kannauj had already been challenged by the present revisionists on 24.09.2025 before the learned District and Sessions Judge, Kannauj by filing Criminal Revision No. 132 of 2025 (Sanjay Singh and others versus State of U.P. and another). Hence, the present criminal revision against the same order is not maintainable before this Court. Opposite party no. 3 has filed a copy of the memo of Criminal Revision No. 132 of 2025 (Sanjay Singh and others versus State of U.P. and another) under Section 438 B.N.S.S., Police Station Chhibramau, District Kannauj, dated 24.09.2025. The certified copy of the memo of Criminal Revision No. 132 of 2025 indicates that it was filed against the impugned order dated 17.09.2025.

16. Learned counsel for the opposite party no. 3 further submitted that the present criminal revision was filed before this Court on 01.10.2025, whereas Criminal Revision No. 132 of 2025 had already been filed before the learned District and Sessions Judge, Kannauj on 24.09.2025. It is submitted by learned counsel for the opposite party no. 3 that the revisionists cannot file a revision before both the Sessions Judge and the High Court at the same time against the same order. Once a revision is filed or decided by one forum, the revisionists are barred from filing another revision before the other forum against the same order, as provided under Section 397(3) Cr.P.C. (corresponding to Section 438(3) B.N.S.S.).

17. The Criminal Revision No. 132 of 2025 (Sanjay Singh and others versus State of U.P. and another) was filed before the learned District and Sessions Judge, Kannauj on 24.09.2025 against the impugned order dated 17.09.2025. As per the documents filed by opposite party no. 3, the said revision was admitted and registered on 24.09.2025, notice was issued, and the next date fixed was 03.11.2025. The revisionists thereafter filed a rejoinder affidavit of Chhangelal, son of Jage Singh. It has been submitted that when the revisionists came to know that the local counsel had already filed a criminal revision against the order dated 17.09.2025, they immediately and in good faith filed an application for withdrawal on 29.09.2025 before the learned District and Sessions Judge, Kannauj. A copy of the withdrawal application dated 29.09.2025 has been filed as Annexure No. RA-1 to the affidavit. The said application dated 29.09.2025, was presented before the learned District and Sessions Judge, Kannauj on 06.10.2025, as is evident from the fact that the learned

District and Sessions Judge passed an order on 06.10.2025 directing that it be put up on the date fixed. As per the usual practice in the court of the District and Sessions Judge, if any application is filed prior to the date fixed, the court orders that it be taken up on the date already fixed. Accordingly, the learned District and Sessions Judge passed the order dated 06.10.2025. Although the application bears two dates, i.e., 29.09.2025 and 06.10.2025, the order dated 06.10.2025 shows that the application was presented on 06.10.2025.

18. It is also pertinent to mention that the present Criminal Revision No. 6594 of 2025, filed before this Court, was prepared on 27.09.2025, and the supporting affidavit sworn before the Oath Commissioner, High Court Allahabad, is also dated 27.09.2025. The revisionists filed an exemption application stating that the certified copy of the impugned order had been misplaced, whereas the certified copy appears to have been filed before the learned District and Sessions Judge, Kannauj in Criminal Revision No. 132 of 2025 on 24.09.2025. The urgency application was allowed by the Hon'ble Chief Justice. In the affidavit dated 27.09.2025 filed before this Court, the revisionists concealed the fact that they had already filed criminal revision before the District and Sessions Judge, Kannauj and falsely stated that no other criminal revision had been filed. Thus, the revisionists used the entire machinery of the High Court as per their own convenience by concealing material facts.

19. The revisionists filed a copy of the order dated 07.11.2025 passed by the Additional Sessions Judge, Court No. 1, Kannauj in Criminal Revision No. 132 of 2025 (Sanjay Singh and others versus State of U.P. and another). The learned

Additional Sessions Judge recorded that when the case was called out, learned counsel for the revisionists, Sri Sarvesh Yadav, was present, but none appeared for the opposite parties. Learned counsel for the revisionists endorsed on the order sheet that he did not wish to press the criminal revision. Hence, the criminal revision was dismissed as not pressed.

20. In reply to paragraph 5 of the counter affidavit of opposite party no. 3, the revisionists, in paragraph 18 of their rejoinder affidavit, stated that the contents of paragraphs 5, 6, 7, 8, and 9 of the counter affidavit are incorrect and therefore denied. It is submitted that when the revisionists came to know that a revision had already been filed by the local counsel before the learned District and Sessions Judge, they filed the withdrawal application on 29.09.2025 without delay, and thereafter, on grounds of urgency, filed the present revision before this Court on 01.10.2025 during Dusshera vacation. Therefore, there was no bad intention to mislead this Court. However, the supporting affidavit in the present criminal revision is dated 27.09.2025, which is prior to 29.09.2025 and 06.10.2025, the dates on which the withdrawal application was filed before the learned District and Sessions Judge, Kannauj.

21. In view of the above facts, reasons and circumstances, it is categorically clear that the revisionists filed Criminal Revision No. 132 of 2025 (Sanjay Singh versus State of U.P. and another) before the learned District and Sessions Judge, Kannauj on 24.09.2025 against the impugned order dated 17.09.2025. When the notices were issued on 24.09.2025 and the next date was fixed as 03.11.2025, the revisionists, on 27.09.2025, prepared and sworn the

affidavit in support of the present criminal revision and filed it before this Court on 01.10.2025, along with an urgency application, falsely seeking exemption for filing the certified copy on the ground that it had been misplaced, whereas the certified copy was filed before the learned District and Sessions Judge, Kannauj on 24.09.2025. Thereafter, the Hon'ble Chief Justice considered the urgency and directed listing of the revision on 02.10.2025, when interim order was passed. Subsequently, on 06.10.2025, the revisionists filed an application before the learned District and Sessions Judge, Kannauj in Criminal Revision No. 132 of 2025 seeking withdrawal. As per practice, no order was passed on the same date because the next date was fixed as 03.11.2025, and the application was ordered to be put up on the date fixed.

22. All these facts and circumstances clearly show that the revisionists filed the present criminal revision before this Court while concealing material facts and misusing the process of law for their own benefit, including seeking exemption from the Hon'ble Chief Justice. Accordingly, due to such concealment and misuse of the legal process, the present revision is liable to be **dismissed**, and it is dismissed with a cost of Rs. 20,000/-. The cost shall be deposited with the High Court Legal Services Committee within 15 days.

23. As far as the order dated 07.11.2025 passed by the learned Additional Sessions Judge, Court No. 1, Kannauj in Criminal Revision No. 132 of 2025 (Sanjay Singh and others versus State of U.P. and another) dismissing the revision as not pressed is concerned, the same is not sustainable in the eyes of law. The said criminal revision was duly

admitted and registered by the learned District and Sessions Judge vide order dated 24.09.2025. The Hon'ble Supreme Court in *Santosh versus State of U.P., (2010) 3 SCC (Criminal) 307* has held that after admission of a criminal revision, there is no procedure for dismissing it in default, and even if the revisionist is absent, the revision cannot be dismissed in default and must be decided on merits. It is undisputed that Criminal Revision No. 132 of 2025 was admitted and registered on 24.09.2025; therefore, it could not be dismissed as not pressed. It must be decided on merits. Accordingly, the order dated 07.11.2025 passed by the learned Additional Sessions Judge, Court No. 1, Kannauj in Criminal Revision No. 132 of 2025 is hereby set aside. Criminal Revision No. 132 of 2025 is restored to its original number. The revisionists are directed to appear before the concerned Court of the Additional Sessions Judge, Court No. 1, Kannauj on 17.12.2025.

24. A copy of this order shall be sent by e-mail to the learned District and Sessions Judge, Kannauj, for compliance.

(2025) 12 ILRA 1079
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.12.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Appeal U/S 37 Of Arbitration & Conciliation Act
 1996 No.- 75 of 2024

**M/S Regenovo Mobile Pvt. Ltd. Lucknow &
 Anr. ...Applicants**

Versus
**M/S Siyogi Enterprises & Ors.
 ...Respondents**

Issue for Consideration

Whether the Sole Arbitrator exceeded jurisdiction by adjudicating and allowing claims relating to work executed beyond the city of Lucknow, when the agreement dated 01.08.2016 confined the engagement of the respondents for advertisement services to the city of Lucknow, and consequently whether the Commercial Court erred in affirming the award under Section 34 of the Arbitration and Conciliation Act, 1996.

Headnotes

Arbitration and Conciliation Act, 1996 — Sections 34 and 37 — Scope of interference — Arbitration clause — Interpretation — Area of operation of agreement — Work beyond agreed territorial scope — Patent illegality — Award set aside.

Held:

The agreement dated 01.08.2016 expressly recorded that the appellants were desirous of engaging the services of an advertising agency for advertisement of their products in the city of Lucknow. The arbitration clause provided that disputes arising out of or in relation to the agreement shall be referred to arbitration. When read together, the arbitration clause was confined to disputes arising from work governed by the agreement, namely advertisement services within the city of Lucknow. [Paras 34–37, 48–50]

The Sole Arbitrator held that the agreement did not debar the respondents from working outside Lucknow and, noticing that payments had been made earlier for work done in other districts, concluded that disputes relating to work done across the State of U.P. were arbitrable. However, there was no material, correspondence, corrigendum or supplementary agreement evidencing expansion or modification of the principal agreement to enlarge the area of operation or scope of the arbitration clause. [Paras 41–43]

In absence of any evidence demonstrating variation, modification or novation of the agreement, the Arbitrator's conclusion that the arbitration clause extended to disputes relating to work beyond Lucknow was based on

presumption and amounted to reading into the contract what was not agreed between the parties. Such exercise was beyond jurisdiction and rendered the award vulnerable. [Paras 43, 51, 53]

The Commercial Court, while exercising jurisdiction under Section 34 of the Act, 1996, failed to notice the distinction between the agreed area of operation and the scope of the arbitration clause, and thereby erred in upholding the award. The error fell foul of the patent illegality test. [Para 52]

The Court examined the possibility of severing claims relating to work done in Lucknow in light of *Gayatri Balasamy v. ISG Novasoft Technologies Limited* but found that the guidelines laid therein were not satisfied. Consequently, the award dated 31.12.2018 and the order dated 06.11.2024 passed by the Commercial Court were set aside in entirety. [Para 54]

It was left open to the parties to have disputes relating to money claims for work done in the city of Lucknow settled through arbitration, and to agitate other claims before the appropriate forum. The appeal was allowed. [Paras 55–56] (E-14)

Case Law Cited

UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 — *relied on*; MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 — *referred to*; K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12 SCC 539 — *referred to*; Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1 — *relied on*; Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 — *referred to*; South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 — *referred to*; Harsha Constructions v. Union of India, (2014) 9 SCC 246 — *relied on*; United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607 — *referred to*; Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd., (2018) 6 SCC 534 — *referred to*; Indian Oil Corpn. Ltd. v. NCC Ltd., (2023) 2 SCC 539 — *referred to*; Emaar

(India) Ltd. v. Tarun Aggarwal Projects LLP, (2023) 13 SCC 661 — *relied on*; **Vidya Drolia v. Durga Trading Corpn.**, (2021) 2 SCC 1 — *referred to*; **Central Organisation for Railway Electrification (CORE)**, 2024 SCC Online SC 3219 — *referred to*; **Pam Development Private Limited v. State of West Bengal**, (2024) 10 SCC 715 — *referred to*; **Gayatri Balasamy v. ISG Novasoft Technologies Limited**, (2025) 7 SCC 1 — *referred to*

List of Acts / Statutes

Arbitration and Conciliation Act, 1996.

List of Keywords

Arbitration clause; Area of operation; Territorial limitation in agreement; Patent illegality; Excess of jurisdiction; Severability of claims.

Case Arising From

Judgment and order dated **06.11.2024** passed by the Commercial Court No.1, Lucknow in Arbitration Case No. 35 of 2019 (arising out of award dated 31.12.2018 passed by the Sole Arbitrator), whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed.

Appearance for Parties

For the Appellants: Shri Sumeet Kaul, Shri Kaif Najmi, Shri Mohammad Rashid

For the Respondents: Shri Gyan Singh Chauhan, Smt. Manju Devi
Shri Amitabh Singh Raikwar, Ms. Archana Kamal

For the State: Learned A.G.A.

(Delivered by Hon'ble Jaspreet Singh, J.)

1. The instant appeal preferred, under Section 37 of the Arbitration and Conciliation Act 1996, by the appellants assails the judgment and order dated 06.11.2024 passed by the Commercial Court No.1, Lucknow in Arbitration Case No.35 of 2019, whereby the petition preferred by the appellants under Section 34 of the Arbitration and Conciliation Act

1996 was dismissed and as a consequence the award passed by the Sole Arbitrator dated 31.12.2018 was affirmed.

2. The controversy involved in the instant appeal is ensconced in a narrow compass. The core contention revolves around the scope of the arbitration clause vis-a-vis the area of operation of the agreement dated 01.08.2016, containing the arbitration clause.

3. In order to resolve the controversy, it will be necessary to take note of certain facts giving rise to the instant appeal.

4. The appellants are a Corporation engaged in the sale and distribution of mobile phones/handsets and accessories under the brand of 'VIVO Mobile'. The respondent no.1, on the other hand, is a partnership firm of which the respondents no.2 and 3 are the partners who are engaged in the business of advertising and providing marketing services.

5. On 01.08.2016, an agreement was entered between the appellants and the respondents and in furtherance of the said agreement, the respondents had agreed to act as an advertising agent for the appellants. The agreement stated that the appellants were the exclusive dealer of 'VIVO Mobile' Handsets and Accessories for the State of Uttar Pradesh and it was desirous to engage the services of an advertising agency for advertising the products in the city of Lucknow. The said agreement also contained an arbitration clause.

6. The agreement between the parties was acted upon and accordingly the appellants' Corporation assigned advertising work to the respondents from

time to time. Work Orders issued by the appellants was executed by the respondents, who in turn raised invoices for the work done and the same was paid by the appellants.

7. Certain disputes arose between the parties and the appellants by means of its email dated 28.03.2017 terminated the agreement dated 01.08.2016. The respondents invoked the arbitration clause and the Indian Council of Arbitration appointed Dr. Dharmesh Sharma as the Sole Arbitrator.

8. On 27.06.2017, a statement of claim was filed by the respondents which contained claims relating to non payment of the invoices for the work done by the respondents not only within the city of Lucknow but also in respect of work done by the respondents in districts other than Lucknow, however, within the State of U.P. The appellants filed their statement of defence before the Sole Arbitrator and inter alia raised a defence, that in so far as the claims raised by the respondents relating to non payment of invoices for the work done in the districts other than Lucknow was concerned, it was beyond the scope of arbitration clause and agreement.

9. It was also alleged that once the agreement dated 01.08.2016 was terminated and the respondents were put to notice then it should have desisted from carrying out any further work. Moreover, any work done by the respondents was beyond the authority and any claim arising there from was not admissible for adjudication nor the appellants could be compelled to honour the same.

10. The Sole Arbitrator after considering the pleadings, evidence and

contentions went on to make its award dated 31.12.2018 and awarded a sum of Rs.4,22,82,216/- towards the pending bills and also awarded a sum of Rs.1,11,36,586/- as interest. The Sole Arbitrator further awarded a sum of Rs.3,14,915 towards the tax deducted at source while making the payments to the respondents but not deposited with the Income Tax Department. A sum of Rs.18,6,275/- was awarded under the head of costs and as such a total amount of Rs.5,55,39,992/- was awarded and it was directed to be paid within a week, failing which, the said amount would attract interest at the rate of 15% per annum from the date of the award till the date of actual payment.

11. This award was assailed by the appellants by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court No.1, Lucknow which was registered as Case No.1357 of 2019. The Commercial Court No.1, Lucknow vide its judgment and order dated 06.11.2024 did not find any error in the award and it dismissed the petition, upholding the award.

12. Being aggrieved, the appellants have approached this Court by means of the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

13. Shri Sumeet Kaul, learned counsel for the appellants alongwith Shri Kaif Najmi and Shri Mohammad Rashid has contended that the judgment and order passed by the Commercial Court No.1, Lucknow dated 06.11.2024 is patently erroneous as it has ignored the relevant clauses of the agreement which had restricted the scope of disputes which could be referred for arbitration as a result the award was made in respect of the subject

matter which was not covered by the arbitration agreement.

14. Learned counsel for the appellants has further urged that both the Sole Arbitrator and the Commercial Court No.1, Lucknow exceeded its jurisdiction in allowing claims of the respondents which did not fall within the four-corners of the arbitration agreement.

15. Elaborating his submission, the learned counsel for the appellants pointed out that the scope of the agreement entered between the parties dated 01.08.2016 was confined to the advertisements and work done within the city of Lucknow. Any dispute arising between the parties relating to unpaid bills if related to the city of Lucknow could at best be adjudicated but both the Sole Arbitrator and the Commercial Court No.1 overstepped its jurisdiction by entering into the disputes which fell beyond the limit of Lucknow and the same was neither consented nor it could be inferred by evidence that at any point of time the appellants agreed to enhance the scope of the arbitration clause to include disputes relating to the work done beyond the district of Lucknow.

16. It was further submitted that the respondents had raised claims relating to unpaid invoices, 67 in number, total amounting to Rs.4,22,82,216/-. However, only bill relating to the work done within the city of Lucknow could have been adjudicated and not in respect of bills relating to the work done in districts other than Lucknow.

17. It was also submitted that after signing of the agreement dated 01.08.2016 there was no corrigendum/supplementary agreement or any office note by which it

could be inferred or deciphered that the parties had extended the scope of the arbitration clause in the agreement dated 01.08.2016 and in absence thereof the Sole Arbitrator as well as the Commercial Court No.1, Lucknow committed a patent illegality of having entered into a domain of disputes which were not arbitrable and were beyond the scope of the arbitration agreement.

18. It was thus urged that the award suffers from patent illegality and perversity and the Commercial Court No.1, Lucknow also committed a grave error in ignoring this aspect and by affirming the award it has given a seal of judicial acceptance to a perverse award and this in itself is contrary to law and public policy, hence the award dated 31.12.2018 and the order passed by the Commercial Court No.1 dated 06.11.2024 deserve to be set aside.

19. Per contra, Shri Gyan Singh Chauhan, learned counsel for the respondents alongwith Smt. Manju Devi submitted that it could not be disputed by the appellant that it did not enter into an agreement with the respondents which contained an arbitration clause. It also cannot be disputed by the appellants that in furtherance of the agreement dated 01.08.2016, the appellants had issued work orders to the respondents which was duly executed and as and when the invoices were raised, the same was paid to the respondents and they related to the work done not only within the city of Lucknow but even relating to the work executed in other districts of the State of U.P.

20. It was also urged that the agreement dated 01.08.2016 envisaged the concept of variation and a specific mention was made and attention was drawn to

clause 7 and 9 of the agreement dated 01.08.2016. It was urged that undisputedly the appellants issued work orders even for the work done beyond the city of Lucknow. Part payments were made to the respondents and the work done by the respondents was also approved. This would indicate that the appellants as well as the respondents clearly understood that the agreement for advertising was not only confined to the city of Lucknow but extended to other districts of U.P. as well.

21. Whenever a work order was issued for any place other than Lucknow, the respondents executed the work and the respondents would raise its invoices which were paid and at no point of time any such dispute or objection was raised by the appellants. It is only when the agreement dated 01.08.2016 was terminated and when the appellants was required to settle the outstanding bills that the appellants with a malafide intent of not honouring the said bills, as an afterthought, created this dispute and refused to pay which forced the respondents to invoke the arbitration clause.

22. It was further urged that even before the Sole Arbitrator no material or evidence was placed which could indicate that the parties had confined their transactions under the agreement dated 01.08.2016 only to the city of Lucknow. On the contrary, both the parties clearly understood that the agreement would operate throughout the State of Uttar Pradesh and it was evidenced from the conduct as the bills raised by the respondents relating to the work done beyond the city of Lucknow were also cleared by the appellants. Now during the arbitral proceedings and to cause financial harm to the respondents, the appellants

raised the objections relating to scope of disputes which could be referred for arbitration, which are not sustainable.

23. Learned counsel for the respondents further urged that Section 28(3) of the Arbitration and Conciliation Act, 1996 mandates adherence to the terms of a contract keeping in mind the principle of 'party autonomy'. It is urged that where both the parties agreed to expand the scope of the arbitration agreement, in such circumstances, the Sole Arbitrator was justified in giving a complete meaning to the contract noticing the conduct of the parties. In the instant case, the parties by their own conduct had varied or modified the terms of the agreement hence, the Arbitrator was bound to take note of it and applying the aforesaid principle, the Arbitrator made his award which cannot said to be bad in the eyes of law or patently erroneous which may require the intervention of the Court either in terms of Section 34 of the Act, 1996 which needless to say is a restricted jurisdiction and moreover the scope of Section 37 of the Act of 1996 is further restricted.

24. It was further urged by the counsel for the respondents that the appellants do not deny their liability to pay bills which are 18 in number relating to the work done in the city of Lucknow. However, in so far as the bills other than that are concerned, it is not disputed by them that the work was not done or that the appellants did not issue the work order for such work or the work done was below par, in such circumstances, where the quantum and the liability to pay is not disputed but on technical ground of territorial jurisdiction, the objections are raised and they cannot be sustained in law. Accordingly, the appeal deserves to be dismissed with costs.

25. The Court has heard the learned counsel for the parties and also perused the material on record.

26. At the outset, it will be relevant to notice the scope of jurisdiction exercised by this Court in terms of Section 37 of the Act of 1996 which has been duly considered and explained by the Apex Court in **UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116**, wherein the apex court observed as under :-

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In *MMTC Ltd. v. Vedanta Ltd.* [*MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or

morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."

17. A similar view, as stated above, has been taken by this Court in *K. Sugumar v. Hindustan Petroleum Corpn. Ltd.* [*K. Sugumar v. Hindustan Petroleum Corpn. Ltd.*, (2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and

conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.* [*Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.”

19. In *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], adverting to the previous decisions of this Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn*

Standard Co. Ltd., (2006) 11 SCC 181] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*, (2012) 5 SCC 306], wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (*Parsa Kente Collieries case* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552], SCC pp. 244-45, para 9)

“9.1. ... It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in *NHAI v. ITD Cementation India Ltd.* [*NHAI v. ITD Cementation India Ltd.*, (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716], SCC para 25 and *SAIL v. Gupta Brother Steel Tubes Ltd.* [*SAIL v.*

Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29.”

(emphasis supplied)

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

“25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

‘24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.’

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

‘25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.”

27. Keeping the aforesaid principles and scope for intervention in mind, it will be appropriate now to consider the relevant clauses of the agreement dated 01.08.2016, on which the respective parties have based their submissions.

28. The agreement dated 01.08.2016, in its introductory covenants defines the purpose and scope of the agreement which is being reproduced hereinafter for ready reference:-

"WHEREAS the company is exclusive dealer in the State of Uttar Pradesh for 'VIVO' mobile handsets and accessories etc. hereinafter referred to as 'the said products' and desirous to engage the services of an advertising agency for the purpose of advertisement of their products in the City of Lucknow.

AND WHEREAS the agency has agreed to act as advertising agents for the company on the terms and conditions hereinafter mentioned."

29. The clauses of the agreement relating to its workability which are relevant for the present controversy are clause 5, 6, 7, 9 and 10 which are being reproduced hereafter under:-

"5.... Quality of the said product should be as per specification mentioned in Annexure-A if quality is not as per standard, company is liable to cancel that order and if occur twice, can cancel this agreement also. Also the size should be accurate and also installation is finely done. If size and installation is not fine, agency have to change it free of cost and will be penalize to same amount of that issued branding thing is not changed, also they

have to change it within three days if they don't want to get penalized.

6. The work must be completed whatever time is told by vendor and it must be satisfactory, after that approval will be given on email, if fail to give installation within time, company have the right to penalize them 1% per day.

7. In special cases if company provide extra work to agency then they can ask for more time and also need approval for that. After approval given agency have to provide the final date of installation, as required.

* * * * *

9.... Whenever the company offers any new product and launches the same in the market for sale, the Agency shall undertake special advertisement campaign for the said new product in consultation with the company.

10. The Agency will have to follow our guidelines while making our product, if they falls, company has to the authority not to accept that product."

30. The language of the arbitration clause in the agreement is also important and the said clause 11 reads as under:-

"11. All disputes between the parties hereto arising out of this Agreement or in relation thereto or regarding the interpretation of this Agreement shall be referred to an arbitrator appointed by the Indian Council of Arbitration and the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall be applicable to such reference."

31. The respondents invoked the arbitration clause and after appointment of the Sole Arbitrator the respondents submitted its statement of claim, a copy of which is on record as Annexure 5 with the paper book. In the said statement of claim, the respondents clearly raised its money claims relating to unpaid invoices which were relatable to the work done in the City of Lucknow and also done in other districts of U.P. Simply put, the claim as indicated in the statement furnished before the Arbitrator was that the respondents in furtherance of the agreement dated 01.08.2016 had worked and provided the necessary services to the appellants. Invoices relating to the work orders were furnished which remained unpaid apart from the fact that the appellants had arbitrarily terminated the agreement and in the given circumstance the appellants were required to pay the outstanding amount for the work done to the respondents.

32. The appellants filed their statement of defence wherein inter alia it had specifically raised a plea that the agreement dated 01.08.2016 was confined to engaging the services of the respondents for advertising in the City of Lucknow. The Sole Arbitrator can only adjudicate the disputes arising from the work allegedly done in the City of Lucknow and all additional claims which relate to the work done outside the City of Lucknow and in other districts cannot be clubbed nor could be referred for arbitration.

33. In the aforesaid backdrop, the Sole Arbitrator in its award considered the plea of limited scope relating to the disputes to be referred for arbitration, in the following words which is being reproduced hereinafter for clarity:-

"....Bare reading the agreement shows that Regenovo is desirous to engage services of an advertising agency for the purpose of advertisement of their products in the city of Lucknow. In the subsequent narration, stipulating terms and conditions of the agreement, it is not mentioned that this agreement applied to work carried out only in the city of Lucknow. This agreement does not bar claimant to work outside Lucknow. On the contrary para 9 of agreement makes it mandatory to undertake special advertisement campaign for the said new products in consultation with the Company, whenever the Company offers a new product and launches the same in market for sale. Further from the records, it is quite evident that respondents have been regularly paying the bills for the assignments, carried out in cities other than Lucknow. During the pendency of agreement, respondents did not raise this issue and in fact respondents have been granting approval of designs at site locations all over the state. Regenovo launched new products and carried out special advertisement campaign in all cities and towns. Thus it appears that respondents plea regarding jurisdiction limited to Lucknow city is an afterthought and is not supported by any documentary evidence and even agreement does not debar claimant from working outside Lucknow once an approval is granted.

Considering facts and circumstances of case, I find no merit and force in this argument and rule that claimant was entitled to work all over the state once an approval is accorded against design at any location. Thus this plea of respondents is rejected and claimant is entitled for payment for work done by him all over the State of U.P...."

34. Having considered the rival submissions and the relevant material available on record including the relevant terms and conditions, the pleadings as well as findings returned by the Sole Arbitrator, this Court finds that as far as the agreement is concerned, it clearly indicated in the introductory covenants that the appellants were the exclusive dealer of 'VIVO Mobiles' in the State of Uttar Pradesh and the respondents were engaged for the purposes of advertising and that too was confined to provide such services in the city of Lucknow.

35. In this context, at the cost of repetition, this Court finds that it will be gainful to notice that the said introductory paragraph and the arbitration clause together and both are being reproduced hereinafter:-

"WHEREAS the company is exclusive dealer in the State of Uttar Pradesh for 'VIVO' mobile handsets and accessories etc. hereinafter referred to as "the said products" and desirous to engage the services of an advertising agency for the purpose of advertisement of their products in the City of Lucknow."

"11. All disputes between the parties hereto arising out of this Agreement or in relation thereto or regarding the interpretation of this Agreement shall be referred to an arbitrator appointed by the Indian Council of Arbitration and the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof shall be applicable to such reference."

36. If these two paragraphs, which admittedly are part of the agreement dated 01.08.2016, are read together it would

indicate that as far as the status of the appellants are concerned, they have been clearly defined to be the dealer of 'VIVO Mobiles' and handsets and accessories for the State of Uttar Pradesh. In the very same paragraph, it has clearly been indicated that the appellant Corporation was desirous to engage the services of an advertising agency for the purposes of advertisement for their products in the city of Lucknow.

37. Apparently, if the parties had agreed for engaging the respondents for advertising services for the entire State of Uttar Pradesh, it could have very easily mentioned it in the agreement itself but it has been conspicuously left out and it has been restricted only to the city of Lucknow. It is in this context that the arbitration clause provides that any dispute arising out of this agreement or in relation thereto shall be referred to arbitration and the Arbitrator was to be appointed by the Indian Council of Arbitration.

38. It will be relevant to examine how an arbitration clause is to be interpreted. Whether it requires strict or liberal interpretation so as to expand the scope of arbitral disputes, even though they may not have been explicitly provided in the clause/agreement, was considered by the Apex Court in **(i) Harsha Constructions v. Union of India**, (2014) 9 SCC 246, **(ii) United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd.**, (2018) 17 SCC 607, **(iii) Oriental Insurance Co. Ltd. v. Narbheram Power and Steel (P) Ltd.**, (2018) 6 SCC 534. The aforesaid judgments were relied upon by the Apex Court in its later judgment in **Indian Oil Corpn. Ltd. v. NCC Ltd.**, (2023) 2 SCC 539 and **Emaar (India) Ltd. v. Tarun Aggarwal Projects LLP**, (2023) 13 SCC 661. To avoid duplicacy, the

relevant paragraphs of Emaar (supra) is being reproduced hereinafter:-

"14. In Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd. [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484] , it is observed and held by this Court that the parties are bound by the clauses enumerated in the policy and the Court does not transplant any equity to the same by rewriting a clause. It is further observed and held that an arbitration clause is required to be strictly construed. Any expression in the clause must unequivocally express the intent of arbitration. It can also lay the postulate in which situations the arbitration clause cannot be given effect to. It is further observed that if a clause stipulates that under certain circumstances there can be no arbitration and they are demonstrably clear then the controversy pertaining to appointment of arbitrator has to be put to rest (paras 10-23).

15. In Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , it is observed and held by this Court that a party cannot claim anything more than what is covered by the terms of the contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and by understanding the nature of contract. It is further observed that thus the contract being a creature of an agreement between two or more parties has to be interpreted giving literal meanings unless there is some ambiguity therein. The contract is to be interpreted giving the

actual meaning to the words contained in the contract and it is not permissible for the Court to make a new contract, however reasonable, if the parties have not made it themselves. It is further observed that the terms of the contract have to be construed strictly without altering the nature of a contract as it may affect the interest of either of the parties adversely (para 23).

16. In Harsha Constructions v. Union of India [Harsha Constructions v. Union of India, (2014) 9 SCC 246 : (2014) 4 SCC (Civ) 803] , it is observed and held by this Court in paras 18 and 19 as under : (SCC p. 251)

"18. Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been ?excepted?. Moreover, when the law specifically makes a provision with regard to formation of a contract in a particular manner, there cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

19. If a non-arbitrable dispute is referred to an arbitrator and even if an issue is framed by the arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the arbitrator. In the instant case, the respondent authorities had raised

an objection relating to the arbitrability of the aforesaid issue before the arbitrator and yet the arbitrator had rendered his decision on the said ?excepted? dispute. In our opinion, the arbitrator could not have decided the said ?excepted? dispute. We, therefore, hold that it was not open to the arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes regarding non-arbitrable disputes is concerned, is bad in law and is hereby quashed.”

* * * * *

19. On the question, who decides on non-arbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd. [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] , United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd. [United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607 : (2019) 2 SCC (Civ) 530] and Narbheram Power & Steel [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484] , it is observed and held in Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] that the question of non-arbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is observed and held that the expression, “existence of arbitration agreement” in Section 11 of the Arbitration

Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.”

39. The concept of arbitration is based on the principle of party autonomy with full leverage given to the parties throughout the arbitral proceedings. This aspect was also noticed by the Apex Court in Central Organisation for Railway Electrification (CORE), 2024 SCC OnLine SC 3219 wherein in para 22 of the Apex Court noticed as under :-

“22. The basis of any arbitration is the freedom of the parties to agree to submit their disputes to an individual or to a panel of individuals whose judgment they are prepared to trust and obey. Party autonomy is fundamental to international commercial arbitration because it allows the parties to design the arbitration proceedings to suit their needs and commercial reality. Party autonomy has been described by this Court as the ?brooding and guiding spirit? [Balco v. Kaiser Aluminium Technical Services Inc., (2016) 4 SCC 126, para 5 : (2016) 2 SCC (Civ) 580] and ?backbone? [Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd., (2017) 2 SCC 228, para 38 : (2017) 1 SCC (Civ) 593] of arbitrations. The principle of minimum judicial interference supplements the autonomy of parties by prohibiting courts from interfering in arbitral proceedings unless mandated by the

law. [Section 5, Arbitration Act. It reads: “5. Extent of judicial intervention.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”] This principle respects the autonomy of the parties to mutually chart the course of the arbitral proceedings.

23. The Arbitration Act has given pre-eminence to party autonomy throughout the arbitral process. The Arbitration Act has used phrases such as “unless otherwise agreed by the parties” [Sections 3, 11(1), 14(2), 15(3), 15(4), 20(3), 21, 23(3), 24(1), 26, 29(1), 31(7)(a), 33(4), Arbitration Act.] , “failing any agreement” [Sections 11(3), 11(5), 13(2), 19(3), 20(2), 22(2), Arbitration Act.] , “the parties are free to agree” [Sections 11(2), 13(1), 19(2), 20(1), 22(1), Arbitration Act.] , “failing such agreement” [Section 34(2)(a)(v), Arbitration Act.] , and “unless the agreement on the appointment procedure provides other means” [Section 11(6), Arbitration Act.] to recognise the autonomy of parties to determine the arbitral proceedings. The use of the above phrases also indicates that an arbitrator is bound by the procedures agreed upon between the parties. [N.S. Nayak & Sons v. State of Goa, (2003) 6 SCC 56, para 14; Sree Kamatchi Amman Constructions v. Railways, (2010) 8 SCC 767, para 19 : (2010) 3 SCC (Civ) 575]"

40. The Apex Court in in Pam Development Private Limited vs State of West Bengal, (2024) 10 SCC 715 had the occasion to consider the effect of excepted/prohibitory clauses in an agreement and in this regard it held as under:-

"12. This submission is persuasive, but the contract clauses speak for themselves. In fact, the High Court did what the arbitrator should have done. Examine what the contract provides. This is not even a matter of interpretation. It is the duty of every Arbitral Tribunal and court alike and without exception, for contract is the foundation of the legal relationship. Having considered the abovereferred clauses in the contract the High Court came to the conclusion that awarding any amount towards idle, machinery, etc. is prohibited under the ?Special Terms and Conditions? of the contract. The arbitrator did not even refer to the contractual provisions and the District Court dismissed the objections under Section 34 with a standard phrase as extracted hereinabove. The High Court exercising jurisdiction under Section 37 did its duty and we are of the opinion that the conclusions of the High Court are correct and cannot be interfered with."

41. Applying the principles to the case at hand, it could not be demonstrated from the material brought on record including the evidence as to how the parties by their own conduct had enlarged the scope of the arbitration agreement to include such disputes which related to work done beyond the city of Lucknow to be encapsulated within the existing arbitration clause.

42. Admittedly, there was no exchange of correspondence or any corrigendum or any additional agreement which was entered between the parties which could indicate that the same terms and conditions including the arbitration clause as provided in the principal agreement relating to the city of Lucknow would be made applicable to the parties in respect of the work done in other districts within the State of Uttar Pradesh.

43. In absence of any material or evidence on record, it cannot be said that the parties by conduct had expanded the scope and had varied or modified the terms of the agreement dated 01.08.2016. On the contrary what is reflected from the record is the fact that after the agreement was terminated and the disputes emerged and the respondents had filed their claim which was denied by the appellants in respect of those claims which were relating to the work done beyond the city of Lucknow. Even for the Arbitrator to have come to a conclusion that the scope of the arbitration clause took within its fold disputes relating to the work done not only within the city of Lucknow but also relating to the work done in other districts of Uttar Pradesh, then it had to be based on some evidence or material but there is no reference to any such evidence. The Sole Arbitrator has given his conclusion and interpreted the clause without discussing the material evidence led by the parties hence the said finding is rendered vulnerable to be examined by the Court.

44. Apparently, in an agreement of this nature which is the subject matter of the instant proceedings, it would reveal that it is open for the parties to cull out their respective rights and obligations by their choice. The parties are necessarily bound by the agreed terms of the contract. In case if any party pleads modification, variation or novation of the contract or any term then the burden is on such a party to prove it.

45. It is always open for the parties to enhance the area of operations within which the parties agree to operate. Arbitration clause is always seen independently to the agreement, of which it is a part. Hence the parties by choice can make the arbitration clause restricted to

certain types or nature of disputes or it can be made vide and open enough to encapsulate all possible types of disputes.

46. However, unless and until there is a clear indication supported by evidence that the principle agreement was modified to enhance the scope of applicability of arbitration clause to apply to such enhanced area of operation or all type of disputes relating to all districts to be made arbitral, till then it cannot be presumed that merely because work has been done under the agreement in an area beyond the agreed area of operation then the arbitration clause itself would also stand extended to such disputes arising beyond the agreed terms of arbitration clause as provided in the agreement.

47. The instant case is not one where there is any dispute of territorial jurisdiction as understood in the classic sense relatable to the courts or adjudicating authorities. The issue involved rather is regarding the area of operation of an agreement and the scope of applicability of the Arbitration clause. In law, Arbitration clause is treated as a separate independent clause altogether and its validity is not depended on terms of the principle agreement wherein it is incorporated.

48. In the instant case, it would reveal that the arbitration clause relates to all sorts of disputes which may occur between the parties arising out of the agreement dated 01.08.2016 but restricted to such disputes which relate to the work done in the city of Lucknow.

49. The Arbitrator while giving his finding that the appellants had not raised this issue earlier rather the appellants had granted approval of the design, site location

all over the State especially noticing that the appellants had launched new products in all the cities and towns and also carried out special advertisement campaign, hence the Arbitrator treated the plea raised by the appellants relating to limited applicability of Arbitration clause in arbitral proceedings as an afterthought and that the said plea was not supported by any documentary evidence and moreover the agreement did not debar the respondents from working outside the city of Lucknow, apparently, the said reasoning may not be sound and cogent for the reason that clause 9, which has already been reproduced in the earlier part of this judgment, would indicate that special advertisement campaign were covered by the agreement. However, the underlying principle being that the arbitration clause would relate to such disputes arising out of the agreement relating to the city of Lucknow and only such disputes could be referred for Arbitration.

50. Thus, such disputes could be referred to Arbitration, as per the clause 11 of the agreement dated 01.08.2016, which passed the twin conditions:

(i) Dispute must emanate from the work governed and arising out of the agreement;

(ii) Such dispute must be related to the work done within the city of Lucknow.

51. In light of the aforesaid discussion the reasoning and the finding given by the Arbitrator that there was no bar to work outside the district of Lucknow and once the approval was granted by the appellants, it would have the impact of expanding the scope of the area of operation including

enhancing the scope of disputes to be referred for arbitration is not just and proper.

52. Needless to say that even the Commercial Court No.1, Lucknow while dealing with the application under Section 34 of the Act, 1996 did not notice the aforesaid distinction regarding the area of operation and the Arbitration clause. This apparently is an error which vitiates the order passed by the Commercial Court No.1, Lucknow while exercising powers under Section 34 of the Act, 1996 and falls foul of the patent illegality test.

53. The Sole Arbitrator by returning a finding which is not based on any evidence and material on record and merely is based on presumption coupled with the fact that it has the effect of modifying the terms of the agreement and also amounts to reading something in the clause, which the parties conspicuously left out from being incorporated and this exercise apparently is beyond the jurisdiction of the Arbitrator and thus vitiates the award.

54. This Court had also made an attempt to examine as to whether the claims relating to the work done in Lucknow could be severed in light of the principles laid down by the Apex Court in **Gayatri Balasamy v. ISG Novasoft Technologies Limited (2025) 7 SCC 1**. However, upon perusal of the statement of claim, the evidence and the award, this Court find that the guidelines as laid in **Gayatri Balasamy (supra)** are not met, hence this Court is constrained to set aside the award as a whole.

55. In view of the aforesaid discussions, this Court finds that the order passed by the Commercial Court No.1

dated 06.11.2024 and the award passed by the Sole Arbitrator dated 31.12.2018 cannot be sustained and is accordingly set aside. It will be open for the parties to get the disputes settled relating to the money claims for the work done in the city of Lucknow and arising out of the contract dated 01.08.2016 through arbitration and in so far as other money claims relating to the work done in other districts of Uttar Pradesh except Lucknow are concerned, they can be agitated before an appropriate forum, which needless to say shall be decided in accordance with law, on its own merits.

56. Accordingly, the appeal is allowed in the aforesaid terms. There shall be no order as to costs.

(2025) 12 ILRA 1096
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.12.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Appeal Under Section 37 of Arbitration And
 Conciliation Act 1996 No. 289 of 2025

Banaras Hindu University, Varanasi
Through its Registrar ...Appellant
Versus
M/s Umang Cure Pvt. Ltd. & Ors.
...Respondents

Issue for Consideration

- (i) Whether the arbitration clause contained in the license deed survived after expiry of the license period so as to maintain proceedings under Section 9 of the Arbitration and Conciliation Act, 1996; and
- (ii) Whether the Commercial Court was justified in granting interim protection under Section 9 of the Act of 1996 restraining eviction and coercive action without recording findings on prima facie

case, balance of convenience and irreparable injury.

Headnotes

Arbitration and Conciliation Act, 1996 — Sections 9 and 37 — Survival of arbitration clause — Expiry of license deed — Interim protection — Parameters for grant of injunction — Order lacking findings — Remand.

Held:

Merely because the term of the license deed had expired, the arbitration clause contained therein did not perish. Where the respondent continued in possession and the appellants continued to accept license fee, the arbitration clause survived for resolution of disputes arising out of or in connection with the license deed. The plea that the arbitration clause ceased to exist on expiry of the license was rejected. [Paras 19–25]

The Commercial Court, while allowing the application under Section 9 of the Act of 1996, failed to record any finding on the essential requirements for grant of interim relief, namely existence of a prima facie case, balance of convenience and irreparable injury. The order, though running into several paragraphs, did not deal with the settled parameters governing grant of injunction. [Paras 27–28]

Despite noticing that the respondent was willing to enhance the license fee prospectively and had objection only to retrospective enhancement, no direction was issued in that regard and a blanket order restraining eviction and coercive measures was passed. The manner in which interim protection was granted could not be countenanced. [Paras 28–29]

The order dated 12.06.2025 passed by the Commercial Court was set aside and the matter was remanded for fresh consideration of the application under Section 9 of the Act of 1996 in accordance with law and in light of the observations made. [Paras 30–31]

Till fresh decision, status quo as existing on the date of the appellate order was directed to be maintained. [Para 31] (E-14)

Case Law Cited

Anoop Maheshwari v. Thomas T. Kurian, 2024 SCC OnLine All 8893 — referred to; Union of India v. Kishori Lal Gupta, AIR 1959 SC 1362 — referred to; Bharat Petroleum Corporation Ltd. v. Great Eastern Shipping Co. Ltd., (2008) 1 SCC 503 — relied on; Branch Manager, MAGMA Leasing and Finance Limited v. Potluri Madhavilata, (2009) 10 SCC 103 — relied on; Raymond Limited v. Miltex Apparels and others, 2025 SCC OnLine Bom 333 — referred to.

List of Acts / Statutes

Arbitration and Conciliation Act, 1996

List of Keywords

Survival of arbitration clause; Expiry of license deed; Interim injunction; Prima facie case; Balance of convenience; Irreparable injury; Remand; Status quo.

Case Arising From

Order dated 12.06.2025 passed by the Commercial Court, Varanasi in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996.

Appearance for Parties

For the Appellant(s): Rahul Agarwal, Reema Pandey, Ishan Mehta

For the Respondent(s): Manish Goyal, Senior Advocate, Syed Fahim Ahmed

(Delivered by Hon'ble Arun Bhansali, C.J.)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (□the Act of 1996□) is directed against order dated 12.06.2025 passed by Commercial Court, Varanasi, whereby application filed by respondent under Section 9 of the Act of 1996 has been allowed and the appellants have been restrained not to evict the respondent from the property in dispute (indicated in the license deed) and not to take any coercive measures.

2. The appellants-University manages and operates Sir Sunderlal Hospital within its campus. On 24.09.2013, the appellants entered into a license deed with the respondent for operating a 24-hour pharmacy within the hospital premises, the arrangement was subsequently renewed in the years 2014, 2015 and on 24.09.2016. By the last renewal, the respondent was granted a five year license to operate the chemist shop with certain conditions regarding continuation and termination. It is indicated that the Hospital Management Committee of the appellants in its meeting dated 09.02.2022 decided against granting any further extension to the respondent and resolved to initiate new tender process for 24-hour pharmacy. The resolution was approved by the Vice Chancellor of the University. Though the term of the license expired on 23.09.2021, the appellants allowed the respondent to continue for a further period of three months upto 23.12.2021. Further extensions were granted and by an order dated 20.01.2023, the period from 23.09.2021 to 03.01.2023 was treated as deemed to have been extended prior to which on 03.01.2023, an extension for a period of three months was granted.

3. Besides the 24-hours pharmacy within the hospital premises, additionally on 04.07.2022, a separate license deed with the respondent was executed for operating two new 24-hour pharmacies at the Trauma Centre Hospital and Hospital OT Complex under IMS system. The license was for a period of three years subject to periodic review.

4. The appellants after 31.03.2023 offered the respondent a fresh license deed for operating pharmacies at various locations within the hospital. The revised

agreement containing terms and fees for license was forwarded on 11.10.2023 fixing license fee at Rs.1916.66 per sq. ft. It is claimed that the respondent did not execute the fresh license deed and persisted in paying the license fee as per expired license deed. The appellants issued an eviction notice dated 21.11.2023 to vacate the premises within 30 days and clear all the dues failing which legal steps were threatened. It is claimed that despite the legal notices were issued through counsel for the University dated 16.01.2025 and 17.02.2025, the respondent refused to vacate and continued to run the shop illegally.

5. Apparently, to enforce eviction/bring the respondent to terms, the appellants initiated steps for electricity disconnection and attempted to repossess the premises, which was objected by the respondent.

6. Aggrieved of the attempts made by the appellants, the respondent filed application under Section 9 of the Act of 1996 before the Commercial Court, Varanasi seeking interim protection in respect of the shop premises. An ex-parte injunction dated 20.02.2025 was passed restraining the appellants from taking any coercive action. Reply to the application under Section 9 of the Act of 1996 was filed inter alia claiming that the respondent has no subsisting right to remain in the possession of the premises.

7. After hearing the parties, the Commercial Court vide its order dated 12.06.2025 passed an order as noticed hereinbefore. Feeling aggrieved, the present appeal has been filed.

8. Learned counsel for the appellants made submissions that the Commercial Court fell in error in granting protection under Section 9 though the license deed between the parties had expired on 31.03.2023 and no valid or subsisting agreement existed on the date of filing of the application. Further submissions were made that the Commercial Court fell in error in not recording any finding on the essential prerequisites for grant of interim relief, i.e. prima facie case, irreparable injury and balance of convenience, which vitiates the order.

9. Learned counsel emphasized that once the term of license deed and its extension had expired on 31.03.2023, the arbitration clause provided in the license deed dated 24.09.2016 perished with the expiry of the term of license and the respondent could not have invoked the jurisdiction of the Commercial Court under Section 9 of the Act of 1996 and on that count alone, the order impugned deserves to be quashed and set aside. On the said aspect, reliance was placed on **Anoop Maheshwari vs. Thomas T. Kurian : 2024 SCC OnLine All 8893**.

10. Further submissions were made that though the Commercial Court noticed the fact/submission that the respondent was willing to increase the license fee with effect from 11.10.2023 and had only objection qua the retrospective enhancement with effect from 01.04.2023, however a blanket interim order has been granted against eviction and any coercive process, which is ex-facie illegal and contrary to the indications made in the order impugned. The respondent has been given a nature of protection, to which he is not at all entitled.

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11. Various submissions were made seeking to justify to the enhanced rent and the fact that the respondent was seeking to be unreasonable, so as to refuse the enhancement and was taking advantage of the nature of order passed by the Commercial Court and on that count, it is prayed that the order be set aside.

12. Counsel for the respondent made submissions seeking to contest the allegations made. Submissions were made that the respondent has been regularly making payment of the license fee in terms of the agreement and nothing is due to the respondent. Submissions were made that the plea raised pertaining to the arbitration clause contained in the license deed perishing with the purported expiry of its term, has no substance inasmuch as the respondent has been continuing in possession of the license premises and is regularly paying the license fee, which has been accepted by the appellants. Further submissions have been made that irrespective of the expiry of the license and the fact that the respondent was ready and willing to execute a fresh license deed, the action of the appellants being highhanded in seeking to disconnect the electricity and forcefully dispossessing the respondent, the respondent has no option but to invoke the jurisdiction of the Commercial Court.

13. Submissions have been made that under no provisions of law, respondent can forcefully dispossess the respondent from the license premises. They are required to only employ legitimate means and therefore, the grant of injunction by the Commercial Court cannot be faulted.

14. Qua the enhanced license fee, submissions were sought to be made that the enhancement cannot be unilateral and

the respondent is willing to negotiate with the appellant for a reasonable enhancement and, therefore, the order passed by the Commercial Court cannot be faulted. Reliance was placed in **Branch Manager, MAGMA Leasing and Finance Limited and another vs. Potluri Madhavilata and another : (2009) 10 SCC 103; Bharat Petroleum Corporation Ltd. vs. Great Eastern Shipping Co. Ltd. : (2008) 1 SCC 503 and Raymond Limited vs. Miltex Apparels and others : 2025 SCC OnLine Bom 333.**

15. We have considered the submissions made by counsel for the parties and have perused the material available on record.

16. The principal submission made by counsel for the appellants, which was neither raised before the Commercial Court and nor in the present appeal, centers around the maintainability of the proceedings under Section 9 of the Act, once the period of license is over wherein the arbitration clause is contained. The Arbitration Clause reads as under:

“56) All questions, disputes and differences arising under and out of, or in connection with the License Deed, shall be referred to the sole arbitration by an arbitrator appointed under the provisions of the Arbitration and Conciliation Act, 1996 by the Vice-Chancellor, BHU whose decision shall be final and binding, on both the parties. The venue for the arbitration proceedings shall be Varanasi and courts at Varanasi shall have exclusive jurisdiction. All the arbitration proceedings shall be carried out in English language.”

17. The plea which has been raised, is apparently based on the judgement in

Anoop Maheshwari (supra) wherein a Single Judge of this Court, referring to judgement in **Union of India vs. Kishori Lal Gupta** : AIR 1959 SC 1362, came to the conclusion that existence of a contract is necessary for invocation of arbitration clause prescribed under the agreement as the clause would perish with the contract and as the contract therein was only for a period of 11 months, the moment the contract perished, the lease ended and the condition under lease also perishes with such contract, suit would not be barred under Section 8 of the Act of 1996 and therefore suit for eviction would lie.

18. Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation Ltd.** (supra) wherein the agreement called "Time Charter Party", was for a period of two years from 22.9.1996 to 30.6.1997 and from 1.7.1997 to 30.6.1998, which period was extended till 31.8.1998, however, the vessel continued to be chartered by BPCL till 31.8.1999, when payment for the period 1.9.1998 to 31.8.1999 was not made, based on the arbitration clause, an arbitral tribunal was constituted wherein issue was raised pertaining to the jurisdiction of the Tribunal to adjudicate dispute for the period September, 1998 to August 1999. In those circumstances, the Hon'ble Supreme Court indicated the following issue:

"17. Thus, the short question for determination is whether on the expiry of the extended period of charter hire on 31-8-1998, charter party dated 6-5-1997 came to an end and the arbitration agreement between the parties perished with it?"

19. The Hon'ble Court further observed as under:

"19. It is, no doubt, true that the general rule is that an offer is not accepted

by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance-an agreement *sub silentio*. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.

20. In our view, the principle of *sub silentio* is clearly attracted in the present case. As noted above, after the extended period of charter party dated 6-5-1997 had come to an end on 31-8-1998 and the bids received pursuant to fresh invitation were pending finalisation, vide their letter dated 12-10-1998, the respondent had informed the appellant that they were agreeable to apply new rates for use of the vessel from 1-7-1998 provided all the nine vessels are used. However, on 31-10-1998, the appellant faxed IOC's message informing them of the extension of the existing coastal tanker fleet for the month of October 1998 at reduced rates viz. 80% of the charter party rates prevailing till 30-8-1998. On receipt of the said letter, the respondent vide their letter dated 5-11-1998 protested against the revision of the rates for the vessel not being considered under the new bid and stated in unequivocal terms that it was not possible for them to accept the proposal of the Oil Coordination Committee, communicated to them vide letter dated 12-10-1998. Yet again while responding to the appellant's fax dated 31-12-1998, whereby the respondent was required to sign a provisional charter party by 4-1-1999, vide their letter dated 4-1-1999, the respondent, pointed out to the appellant that usual practice is that pending finalisation of the new charter, the existing terms and conditions of the charter party

continue to apply and, therefore, they were willing to sign the agreement as contemplated by the appellant based on the existing terms and conditions. It was suggested that an agreement may be signed between them for the period from 1-9-1998 until the matter was finally decided by the appellant under the tender, on the existing terms and conditions with the charter hire being provisionally paid on ad hoc basis at 90% of the rate which was prevailing under the existing charter party. As noted hereinabove, there was no response by the appellant to the respondent's letter dated 4-1-1999 though it appears that vide their letter of even date, the appellant did suggest to the respondent that as a token of formal agreement the said letter may be jointly signed by the charterers and the vessel owners. Admittedly, no such agreement was signed between the parties. Indubitably, there was no further exchange of correspondence between the parties during the year. Nevertheless, the appellant continued to use the vessel on hire with them under the time charter dated 6-5-1997. The conduct of the parties, as evidenced in the said correspondence and, in particular the appellant's silence on the respondent's letter dated 5-11.1998 and 4-1-1999, coupled with the fact that they continued to use the vessel, manifestly goes to show that except for the charter rate, there was no other dispute between the parties. They accepted the stand of the respondent sub silentio and thus, continued to bind themselves by other terms and conditions contained in the charter party dated 6-5-1997, which obviously included the arbitration clause."

□23. We are, therefore, of the opinion that though performance of the charter party agreement dated 6-5-1997 may have come to an end on 31-8-1998 but

it was still in existence for some purposes viz. the effect of vessel's non-redelivery as per the prescribed mechanism and its continued use beyond the stipulated time and, thus, the arbitration clause in the said charter party operated in respect of these and other allied purposes. Therefore, the factual scenario in the instant case leads to an inescapable conclusion that notwithstanding the expiry of the period fixed in the time charter party dated 6-5-1997, the said charter party did not get extinguished, inter alia, for the purpose of determination of the disputes arising thereunder and the arbitration clause contained therein could be invoked by the respondent.

24. In view of the foregoing discussion, we do not find any infirmity in the view taken by the High Court that the charter party dated 6-5-1997 had not come to an end by efflux of time and it got extended by the conduct of the parties, warranting interference."

(emphasis supplied)

20. A perusal of the above determination made by Hon^{ble} Supreme Court reveals that though the agreement may have come to an end on expiry of its term, the arbitration clause operated and for the purpose of determination of the disputes, the arbitration clause could be invoked and that the agreement had not come to an end by efflux time and the same got extended on account of conduct of the parties.

21. The present circumstances, as noticed hereinbefore, are quite similar wherein despite the expiry of the term in the year 2021, the same was extended from time to time till 31.03.2023 and thereafter

also, the appellants had continued to receive the license fee as paid by the respondent, which is also a conscious decision inasmuch the amount has not been directly deposited in the accounts of the appellants rather cheques/drafts were sent which had been deposited by the appellants in its Bank accounts.

22. In the case of **Branch Manager, MAGMA Leasing and Finance Limited** (supra), after considering the judgement in the case of **Kishori Lal Gupta** (supra) also, in a case where the agreement was terminated due to breach, the Hon'ble Supreme Court came to the following conclusion:

“14. The statement of law expounded by Viscount Simon, L.C. in *Heyman* as noticed above, in our view, equally applies to the situation where the contract is terminated by one party on account of the breach committed by the other particularly in a case where the clause is framed in wide and general terms. Merely because the contract has come to an end by its termination due to breach, the arbitration clause does not get perished nor is rendered inoperative; rather it survives for resolution of disputes arising in respect of or with regard to or under the contract. This is in line with the earlier decisions of this Court, particularly as laid down in *Kishorilal Gupta*.

15. In the instant case, Clause 22 of the hire-purchase agreement that provides for arbitration has been couched in the widest possible terms as can well be imagined. It embraces all the disputes, differences, claims and questions between the parties arising out of the said agreement or in any way relating thereto. The hire-

purchase agreement having been admittedly entered into between the parties and the disputes and differences have since arisen between them, we hold, as it must be, that the arbitration Clause 22 survives for the purpose of their resolution although the contract has come to an end on account of its termination.”

(emphasis supplied)

23. The Bombay High Court in the case of **Raymond Limited** (supra), relied on judgement in the case of **Bharat Petroleum Corporation Ltd.** (supra) and came to the conclusion that all terms in the agreement would stand extended *sub silentio* and by necessary implication including the arbitration clause.

24. Learned Single Judge in the case of **Anoop Maheshwari** (supra) has principally relied on the determination made in the case of **Kishori Lal Gupta** (supra) and did not take into consideration the law which has developed subsequent to the said judgment, as discussed hereinbefore and as such the said judgement does not lay down good law.

25. In view of the law as laid down by Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation Ltd.** (supra) and as discussed hereinbefore, the plea sought to be raised for the first time before this Court regarding non availability of the arbitration clause, apparently has no substance.

26. Coming to the merits of the order passed by the Commercial Court, a perusal of the order impugned dated 12.6.2025 reveals that though the Tribunal has delivered a judgement running into 94 paras, the determination is indicated in 4

paras only, which is followed by the order, which reads as under:

“91. उभय पक्षों के विद्वान अधिवक्तागण को सुनने एवं पत्रावली पर उपलब्ध समस्त अभिलेखों, साक्ष्यों व माननीय न्यायालय के निर्णयज, विधियों के अवलोकन व परिशीलन से यह स्पष्ट होता है कि आवेदक व विपक्षी के मध्य जो एग्रीमेन्ट/ लाईसेन्स डीड सितम्बर 2013 व 24.09.2016 को निष्पादित की गयी थी, वह दिनांक 10.10.2023 तक प्रभावी रहा है। इस तथ्य के सम्बन्ध में पक्षकारों के मध्य कोई विवाद नहीं है। दिनांक 11.10.2023 को विपक्षी की तरफ से unilateral एग्रीमेन्ट हस्ताक्षरित दिनांक 01.04.2023 से 31.03.2024 तक की अवधि के लिए प्रेषित किया गया था। उक्त एग्रीमेन्ट में दिनांक 01.04.2023 से नये दर मु0-8854970+GST से किराये की मांग की गयी थी। जबकि दिनांक 10.10.2023 तक का किराया पूर्ण रूप से अदा किया जा चुका था। उक्त किराया करीब-करीब दो गुना कर दिया गया है। आवेदक एग्रीमेन्ट हस्ताक्षरित करने की तिथि 11.10.2023 से किराया बढ़ाने के लिए तैयार था किन्तु पिछली तिथि 01.04.2023 से जो किराया जमा कर दिया गया था उसके सम्बन्ध में उसे आपत्ति थी।

92. यदि आवेदक के द्वारा आपत्ति की जा रही थी तो निश्चित रूप से मामला आर्बिट्रेशन का बनता है। विपक्षी को आर्बिट्रेशन के माध्यम से इस मामले को निस्तारित कराना चाहिए था किन्तु उसके द्वारा ऐसा नहीं करके बिजली, पानी काटने जैसी उत्पीड़नात्मक प्रक्रिया अमल में लाई गयी जिसे कदापि विधि सम्मत नहीं कहा जा सकता है।

93. यहां पर यह भी उल्लेखनीय है कि एग्रीमेन्ट लाईसेन्स डीड तो रजिस्टार BHU निष्पादित करते हैं किन्तु नोटिस आदि देने का कार्य या शपथ-पत्र आदि देने का कार्य असिस्टेंट रजिस्टार या मेडिकल सुपरिटेन्डेन्ट के स्तर से किया जाता है। इस प्रकार से स्पष्ट होता है कि वास्तविक तथ्यों से अपने को बचाने के लिए रजिस्टार BHU द्वारा इस प्रकार की कार्यवाही अमल में लाई जा रही हैं। रजिस्टार BHU को स्वयं शपथ-पत्र देकर इस बात को स्पष्ट करना

चाहिए था कि क्यों किराया पिछले 6 माह की तिथि से बढ़ाया जा रहा है किन्तु विपक्षीगण द्वारा कोई स्पष्टीकरण कहीं भी पत्रावली में प्रस्तुत नहीं किया गया है। एनेक्चर 4 कागज संख्या 17ग/48 पत्रावली पर उपलब्ध है, जिसके अवलोकन से स्पष्ट होता है कि रजिस्टार द्वारा एग्रीमेन्ट/एकपक्षीय हस्ताक्षरित करते हुए आवेदक को प्रेषित कर दिया गया है। इसमें यह भी अंकित है कि नया किराया मु0 88,54,970/- रुपये मय GST होगा। जबकि कोई अनुबन्ध-पत्र या लाईसेन्स डीड दोनों पक्षों की उपस्थिति में ही निष्पादित होनी चाहिए थी। यह स्थिति विपक्षीगण की गैरकानूनी, मनमानापन एवं उत्पीड़नात्मक प्रक्रिया को दर्शित करता है।

94. इस प्रकार से स्पष्ट होता है कि जो प्रार्थना-पत्र आवेदक द्वारा प्रस्तुत किया गया है, उसमें बल प्रतीत होता है। अतः प्रार्थना-पत्र 4क स्वीकार किये जाने योग्य है।

आदेश

आवेदक द्वारा प्रस्तुत Arbitration Misc. Case Noⁿ 14/2025 प्रार्थना-पत्र कागज संख्या 4क अन्तर्गत धारा 9 माध्यस्थम् वं सुलह अधिनियम 1996-स्वीकार किया जाता है।

विपक्षीगण को निषेधित किया जाता है कि माध्यस्थम् अधिकरण के गठन एवं आवेदक की तरफ से उक्त अधिकरण के समक्ष प्रस्तुत प्रार्थना-पत्र के निस्तारण तक आवेदक को प्रश्नगत सम्पत्ति [लाईसेन्स डीड में अंकित] से न तो बेदखल करेंगे और न ही किसी प्रकार की उत्पीड़नात्मक कार्यवाही अमल में लायेंगे।

(emphasis supplied)

27. A perusal of the above judgement would reveal that the fundamental requirements of granting an injunction under Section 9 of the Act of 1996 wherein existence of a prima facie case, balance of convenience and irreparable injury was required to be determined by the Commercial Court, not a

word has been indicated on the said aspects of the matter.

28. The most outstanding feature rather the deficiency of the judgement impugned is that though at the end of para 91 (underlined hereinbefore), it was observed by the Commercial Court that the respondent was prepared to enhance the rent from 11.10.2023 and had only objection qua the retrospective enhancement, no order has been passed for paying the enhanced license fee, which as noticed, was volunteered/offered to be paid with effect from 11.10.2023 and a blanket order has been granted not to evict the respondent and further not to take any coercive measures. The manner in which the order has been passed, cannot be countenanced/approved.

29. None of the settled parameters have been complied with / adhered to and to top it all despite noticing the concession/offer/volunteering enhanced payment, no direction in this regard has been issued which is wholly unjustified.

30. Consequently, the appeal is partly allowed. The order dated 12.6.2025 passed by the Tribunal is set aside. The matter is remanded back to the Commercial Court to hear and decide the application afresh, keeping in view the observations made hereinbefore, complying with the requirements for passing an order under Section 9 of the Act of 1996 as well as keeping in view the offer made by the respondent, which aspect has not been disputed by the respondent.

31. However, till such time that a fresh order is passed by the Commercial Court, status quo as it exists on the date of passing of this order, shall be maintained.

The parties shall appear before the Commercial Court on 5.1.2026 and the Commercial Court is directed to pass a fresh order after hearing the parties before 31.01.2026.

(2025) 12 ILRA 1104

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.12.2025

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 1276 of 2023

&

First Appeal No. 1274 of 2023

Rakesh Srivastava & Ors. ...Appellants

Versus

Smt. Sudha Srivastava (Since Dead) & Ors.

...Respondents

Issue for Consideration

Whether Parmanand Lal Srivastava (testator) had validly revoked his registered Will dated 20.09.1996 by executing a subsequent unregistered Will dated 25.05.2002 in favour of the appellants, and whether the subsequent Will stood proved in accordance with law free from suspicious circumstances?

Headnotes

Indian Succession Act, 1925 — Ss. 59, 63 — Evidence Act, 1872 — Ss. 67, 68 — Probate — Proof of Will — Suspicious circumstances — Revocation of earlier registered Will — Subsequent unregistered Will — Burden on propounder — Judicial conscience — Active participation of beneficiary — Non-disclosure in mutation proceedings — Contradictions regarding place of execution — Attesting witness unreliable — Effect — Subsequent Will held not proved — Earlier registered Will upheld.

Held:

The earlier registered Will dated 20.09.1996 executed by the testator in favour of his

surviving daughter and sons of deceased daughter was not in dispute. The controversy centered around the alleged revocation thereof by an unregistered Will dated 25.05.2002.

The Court reiterated that where execution of a Will is surrounded by suspicious circumstances, the onus lies heavily on the propounder to remove such suspicion by cogent and satisfactory evidence, and mere proof of signature and attestation is insufficient. [Paras 49–53]

The following suspicious circumstances were found to be proven on record:

(i) **Ill health and advanced age of testator** — At the time of alleged execution of the Will dated 25.05.2002, the testator was about 80 years old, ill and unable to walk; evidence disclosed he was bedridden and under treatment. The propounder's version that the testator himself typed the Will was found improbable. [Paras 57–59]

(ii) **Contradictions regarding place of execution** — The propounder (DW-1) gave contradictory versions, at one stage stating that the Will was prepared at Civil Court and at another that it was typed at the residence of the testator. The attesting witness (DW-2) deposed that it was prepared at Durgakund residence. The inconsistency rendered the execution highly doubtful. [Paras 60–61]

(iii) **Active participation of beneficiary** — The propounder admitted that he brought the attesting witnesses and participated in the preparation of the Will, constituting a suspicious circumstance requiring strict scrutiny. [Para 62]

(iv) **Non-disclosure in mutation proceedings** — Immediately after the death of the testator, the propounder moved a mutation application claiming succession on the basis of inheritance and not on the basis of the alleged Will dated 25.05.2002. The application was drafted by the same Advocate who allegedly drafted the Will. The absence of any reference to the Will in mutation proceedings led to the inference that the Will was not in existence at that time. [Paras 63–65, 71]

(v) **Attesting witness unreliable** — The attesting witness (DW-2) admitted that his affidavit was prepared by the propounder and that he had not read it. He also admitted that his wife had received land from the propounder. His testimony did not inspire confidence. [Paras 66–68]

(vi) **Unconvincing reason for revocation** — The explanation in the subsequent Will that fraud had been played upon the testator in execution of the earlier Will was not supported by convincing evidence and appeared improbable in the facts proved. [Paras 69–70]

Held, the cumulative effect of the above circumstances created grave suspicion surrounding the alleged Will dated 25.05.2002. The propounder failed to dispel such suspicion. Judicial conscience not satisfied as to its genuineness. The trial court rightly rejected probate of the Will dated 25.05.2002 and granted probate of the registered Will dated 20.09.1996. Appeals dismissed. [Paras 71–75] (E-14)

Case Law Cited

H. Venkatachala Iyengar v. B.N. Thimmajamma & Others, 1958 SCC OnLine SC 31 — Relied upon; Shashi Kumar Banerjee v. Subodh Kumar Banerjee, 1963 SCC OnLine SC 114 — Relied upon; Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 — Relied upon; A. Kamala Bai (D) through LRs v. B. Kanna Rao (D) through LRs, Civil Appeal No. 136 of 2013 — Relied upon; Pramila Tiwari v. Anil Kumar Mishra and others, Testamentary Suit No. 6 of 2012, decided on 15.10.2020 ; Kavita Kanwar v. Mrs. Pamela Mehta and others, AIR 2020 SC 2614 ; Sunita Upadhyay v. State of U.P., 2023 (159) RD 712 (All)

List of Acts / Statutes

Indian Succession Act, 1925; Indian Evidence Act, 1872; U.P. Land Revenue Act; Hindu Succession Act, 1956.

List of Keywords

Will; Probate; Revocation of Will; Suspicious circumstances; Proof of Will; Burden of proof; Attesting witness; Mutation proceedings; Active participation of beneficiary; Judicial conscience;

Registered Will; Unregistered Will; Contradictory evidence; Testamentary capacity.

Case Arising From

Common judgment and order dated 18.10.2023 passed by the Additional District and Sessions Judge, Court No. 1, Varanasi in Probate Case No. 26 of 2007 and Probate Case No. 27 of 2007.

Appearance for Parties

For Appellants: Narendra Mohan; Siya Ram Verma.

For Respondents: Alok Kumar Mishra; Anil Kumar Aditya; Jainendra Kumar Sharma; Mayank Krishna S. Chandel; Rahul Saxena; Shyam Singh Somvanshi; Vinod Kumar Chandel; Vivek Singh Chandel.

(Delivered by Hon'ble Sandeep Jain, J.)

1. First Appeal no. 1274 of 2023 has been filed by the Rakesh Srivastava and others under Section 299 of the Indian Succession Act, 1925 against the impugned judgment and order dated 18.10.2023 passed by the court of Additional District and Sessions Judge Court No.1 Varanasi in Probate Case No. 26 of 2007 Rakesh Srivastava and others vs. Smt. Sudha Srivastava and others, whereby application seeking probate regarding alleged Will dated 25.5.2002 executed by Parmanand Lal Srivastava(testator) has been rejected.

2. First Appeal no. 1276 of 2023 has been filed by Rakesh Srivastava and others against impugned judgment and order dated 18.10.2023 passed by the court of Additional District Judge Court no.1 Varanasi in Probate Case No. 27 of 2007 Smt. Sudha Srivastava and others vs. Krishna Kumar Srivastava and others, whereby application seeking probate regarding registered Will executed by Parmanand Lal Srivastava(testator) on 20.9.1996 has been granted.

3. Probate case No. 26 of 2007 and 27 of 2007 were heard together by the lower court and decided by the common impugned judgment and order dated 18.10.2023.

4. Since First Appeal no.1274 of 2023 and 1276 of 2023 arise from the same judgment and order as such, both the appeals were heard together and are being decided by this common judgment.

Facts of Probate Case No.

27 of 2007

5. This case was filed by the plaintiff Smt. Sudha Srivastava against the defendants Krishna Kumar Srivastava and others for seeking Probate regarding registered Will executed on 20.9.1996 by her father Parmanand Lal Srivastava(testator), who died on 22.11.2002. It was averred by the plaintiff that the testator had acquired the residential house no. B.26/116-A situated in Nawabganj, Bhelupura, Varanasi from his paternal aunt Smt. Gujarati Devi and the remaining immovable property was agricultural land acquired from the ancestors, which was in the sole name of the testator and the other properties were in joint ownership. It was further averred that the testator was having Savings bank account no.1893 in State Bank of India, Branch BHU, Varanasi which was the self acquired property of testator. It was further submitted that the testator had willingly executed his last Will in favour of the plaintiff through which half property has devolved on her. It was further averred that the testator has died on 22.11.2002 in his above residential house. It was prayed that the Probate be granted in her favour on the basis of the above registered Will executed by the testator.

6. The defendant Rakesh Srivastava opposed the Probate application on the ground that the testator had executed in his lifetime a Will on 25.5.2002 in presence of witnesses Vinod Kumar Singh and Lalji, in favour of Krishna Kumar, Awdesh Kumar, Madan Kumar, Manoj Kumar, Santosh Kumar and Rakesh Lal, in which it was made clear that after the death of testator his immovable property would devolve on Krishna Kumar and others whereas, the movable property would devolve on Sudha Srivastava and sons of Radha Srivastava. It was further averred that the testator died on 22.11.2002, as such, his Will dated 25.5.2002 has become effective, which was also the last Will of the testator, due to which the earlier Will of the testator dated 20.9.1996 has become ineffective and on the basis of the earlier Will of the testator, no probate can be granted. It was further submitted that the Probate application of Smt. Sudha Srivastava has become infructuous. It was further submitted that the Will deed dated 25.5.2002 has been executed by the testator correctly, which has been signed on each page by the testator, on which the photograph of testator is also affixed, which has been executed by the testator willingly. With these submissions it was prayed that the Probate application moved by Smt. Sudha Srivastava be rejected.

7. The registered Will dated 20.09.1996 of the Parmanand Lal Srivastava (testator) reads as under:-

"मैं कि परमानन्द लाल श्रीवास्तव वल्द मरहूम विश्वनाथ प्रसाद श्रीवास्तव, साकिन मकान नम्बरी बी० 26/116ए वाका मोहल्ला नबाबगंज, हल्का भेलूपुर, शहर वाराणसी का हूँ

चूँ मिनमुकिर की मौजूदा उम्र तख्मीनन 75 साल की हैं जईफी के आलम में मिनमुकिर की सेहत काफी खराब हो गई हैं व

जिस्मानी हालात ठीक नहीं हैं। मिनमुकिर अक्सर बीमार रहता हैं, जिसके सबब से मिनमुकिर को अपनी जिन्दगी नापायदार का कोई भरोसा नहीं रह गया है न जाने किस लमहा किस ठौर व किस तौर पर पाक रूह कालिब अन्सरी से परवाज कर जावे मिनमुकिर को मौरूसी जायदाद के अलावा किता दो मंजिला मकान नम्बरी बी० 26/116ए, नबाबगंज शहर वाराणसी वजरिये वसीयतनामा मोरखा 18-5-87 को नविस्ता मु० गुजराती देवी बेवा कमला प्रसाद श्रीवास्तव जिसका इन्दराज दफ्तर सब रजिस्ट्रार वाराणसी के बही नं० 3 जिल्द 1015 सफात 53/57 दस्तावेज नं० 369 पर बतारीख 25-5-87 ई० को दर्ज रजिस्टर हैं जिसका नफाज वाद वफात मु० गुजराती देवी हुआ बतौर वसी हासिल हुआ व मिनमुकिर वाद वफात मु० गुजराती देवी मिलिकियत मकान मजकूर पर बतौर तनहा मालिक काबिज दखिल हुआ व चला आता हूँ व मिनमुकिर का नाम वाराणसी नगर निगम के रिकार्ड डिमाण्ड रजिस्टर में बतौर तनहा मालिक दर्ज रजिस्टर चला आता है। हर शख्स को वाजिब व लाजिम हैं कि अपने हयात में अपनी तमामी मनकूला व गैर मनकूला जायदाद का मुकम्मल इन्तजाम कर देवे ताकि वाद उसके वफात दरम्यान वारिसान बाबत मिलिकियत कोई निजान रह जाये। मिनमुकिर को महज दो दुखतरान के अलावा कोई पेसरान नहीं है दोनों दुखतरान की शादी अरसा कवल हो चुकी है, जिसमें से बड़ी दुखतर श्रीमती राधा देवी फौत कर चुकी हैं मौजूदा वक्त में मु० राधा देवी के पेसरान कृष्ण कुमार श्रीवास्तव, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी व मिनमुकिर की छोटी दुखतर श्रीमती सुधा श्रीवास्तव जौजा श्री मदन मोहन मेरे साथ रह कर हर समय मेरी खिदमत गुजारी व फरमावरदारी में मुस्तैद रहते हैं और उनकी खिदमत व फरमावरदारी से मिनमुकिर खुश हूँ। मिनमुकिर की दिली ख्वाहिश है कि मकान मजकूर अपने तीनों नाती कृष्ण कुमार, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषि पेसरान सुरेश्वरी प्रसाद साकिनान हाल मुकाम बी० 26/116ए, वाका मोहल्ला नबाबगंज, हल्का भेलूपुर शहर वाराणसी व श्रीमती सुधा श्रीवास्तव पत्नी मदन मोहन श्रीवास्तव साकिन मकान नम्बरी सी० 7/59ए-1ए वाका मोहल्ला सेनपुरा हल्का चेतगंज शहर वाराणसी हाल मुकाम बी० 26/116ए, नबाबगंज भेलूपुर, वाराणसी को वसीयत कर दूँ। पस मिनमुकिर बदुरुस्ती होशो, हवाश व बहालत सेहत, जात व सवाते अकल विला किसी नाजायज और दबाव व जब्र इकराह बखुशी व रजामन्दी खुद वसीयतनामा हाजा तहरीर करके कृष्ण कुमार, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी, पेसरान सुरेश्वरी प्रसाद व श्रीमती सुधा श्रीवास्तव जौजा श्री मदन मोहन साकिनान मुन्दर्ज सदर को हस्ब शरायत जैल अपनी वसी मुकरर करके हुक्म देता हूँ:-

I:- यह कि जब तक मिनमुकिर जिन्दा रहेगा मकान मजकूर व इसके अलावा जुमला मनकूला व गैर मनकूला जायदाद

का खुद मालिक हैं व रहेगा। वाद वफात मिनमुकिर दुखतर मिनमुकिर श्रीमती सुधा श्रीवास्तव जौजा श्री मदन मोहन, मकान मजकूर के शर्की (पूर्वी) जुज हिस्से जो नक्शा मुन्सलिका वसीका हाजा में सुख तिरछी लकीरों से जाहिर किया गया है की मालिक होंगी। तथा गरबी (पश्चिमी) जुज हिस्से को नक्शा मुन्सलिका वसीका हाजा में सब्ज तिरछी लकीरों से जाहिर किया गया है के मुस्तर्का मालिकान कृष्ण कुमार, योगेश उर्फ गोली व सोमेश उर्फ ऋषी पसरान श्री सुरेश्वरी प्रसाद श्रीवास्तव होंगे।

2:- यह कि वाद वफात मिनमुकिर वसीयान मजकूर मिनमुकिर की बकिया मनकूला व गैर मनकूला जायदाद व बकाया पेंशन व स्टेट बैंक आफ इण्डिया शाखा सेन्ट्रल आफिस बी०एच०यू० बचत खाता सं० 1893 व बैंक आफ बड़ौदा शाखा गुरुधाम कालोनी दुर्गाकुण्ड रोड में जमा फिक्स डिपॉजिट में मुताबिक हिस्सा शरायत मुतजिकरा सदर निस्फ निस्फ हिस्से के मालिक होंगे यानी श्रीमती सुधा श्रीवास्तव दुखतर मिनमुकिर निस्फ हिस्सा की तनहा व बकिया निस्फ हिस्सा के मुस्तर्का मालिक कृष्ण कुमार श्रीवास्तव व योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी होंगे।

3:- यह कि मेरे वसीयान कृष्ण कुमार, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी को वाजिम व लाजिम होगा कि वाद वफात मिनमुकिर हिन्दू धर्म व बिरादरी के रिति रिवाज के अनुसार मेरा दाह संस्कार, क्रिया, कर्म, श्राद्ध, पिण्डदान कर व करवा देवे।

4:- यह कि वसीयान मजकूर को हक हासिल होगा कि वे मकान मजकूर में मुताबिक नक्शा मुन्सलिका वसीयतनामा हाजा अपने-अपने हिस्से को बजरिये तकसीमी दीवार अलहदा व जुदागाना कर व करवा कर अपने-अपने हिस्से को जिस तरीक पर चाहें इस्तेमान में लावें व बएखतराज नाम मिनमुकिर कागजात सरकारी व वाराणसी नगर निगम में अपना-अपना नाम दर्ज रजिस्टर करवा कर अपने-अपने हिस्से के मुताबिक भवन कर, जलकर, वगैरह, अदा करके रसीद अपने नाम से हासिल करें।

5:- यह कि वसीयतनामा हाजा मिनमुकिर का पहला व अन्तिम वसीयतनामा है। अलावा इसके अगर कोई शख्स, दीगर वसीयतनामा जाहिर व पेश करे तो बमुकाबले वसीका हाजा वातिल व नाजायज मुतसव्वर होगा।

इस वास्ते मिनमुकिर ने यह कलमा बतौर वसीयतनामा बहक श्रीमती सुधा श्रीवास्तव पत्नी मदन मोहन व कृष्ण

कुमार, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी तहरीर करके पढ़ व पढ़वा व सुन समझ कर असरात वसीका हाजा से मुतमइन व बखूबी वाकिफ होकर रुबरू सब रजिस्ट्रार वाराणसी बगवाहान हासिया वसीका हाजा बदुरस्ती होशो हवाश, बहालत सेहत जात व सवाते अकल बिला किसी नाजायज जोर दबाव, जन्न एकराह बखूशी व रजामन्दी खुद अपनी दस्तखत बना देता हूँ ताकि सनद रहे व वक्त पर काम आवे।

मसविदाकर्ता:- (मिथिलेश कुँवर खेरे एडवोकेट, कलेक्टरी कचहरी, वाराणसी।)

टाईपकर्ता:- (हरिहर नाथ पाण्डेय) कलेक्टरी, कचहरी वाराणसी।

तहरीर दिनांक:- 20-9-96 ई०"

8. On the basis of the pleadings of the parties the following issues were framed by the trial court:-

(i) Whether Parmanand Lal Srivastava had executed on 20.9.1996 a registered Will in favour of plaintiff and defendant no.1 to 3?

(ii) Whether after the death of Parmanand Lal Srivastava, the plaintiff and defendant no. 1 to 3 are in possession of the disputed property, on the basis of Will? If so, effect?

(iii) Whether Parmanand Lal Srivastava had executed a Will on 25.5.2002, by revoking his previous Will dated 20.9.1996, in favour of defendant No. 4 to 9, due to which his earlier Will dated 20.9.1996 has become infructuous?

(iv) Whether the defendants No. 4 to 9 have fabricated Will dated 25.5.2002?

(v) To what relief, if any, the plaintiff is entitled?

Facts of Probate Case No.**26 of 2007**

9. This case was filed by the plaintiff Rakesh Srivastava and others under Section 276 of the Indian Succession Act, 1925 seeking Probate of alleged Will executed by Parmanand Lal Srivastava (testator) on 25.5.2002, who died on 22.11.2002 in Varanasi. It was alleged by the plaintiffs that the testator acquired house No. B.26/116-A situated in Nawabganj, Bhelupura, Varanasi from his paternal aunt Smt. Gujarati Devi wife of late Kamla Prasad and the remaining immovable property, which was agricultural land and orchards, was ancestral property regarding which the testator had willingly executed his last Will in favour of the plaintiffs, who died testate on 22.11.2002 in his residential house No. 26/116-A, Nawabganj, Bhelupura, Varanasi. It was prayed that the plaintiffs be granted probate regarding the above Will executed by the testator on 25.5.2002.

10. The defendants opposed the plaintiffs Probate application by submitting their objections. The defendants averred that the testator had only 2 daughters namely Smt. Sudha Srivastava and Smt. Radha Srivastava, who had no male issue. Smt. Radha Srivastava died during the lifetime of the testator, leaving behind her husband and three sons, who are defendants No. 2 to 4 in the probate petition. It was further averred that the testator was in service as section officer in estate office at B.H.U., Varanasi, who was the sole recorded owner in possession of house no. B.26/116-A, Nawabganj, Bhelupura, Varanasi, which was acquired by him after the death of his issueless aunt Smt. Gujarati Devi through her registered Will deed executed during her lifetime in the sole

name of the testator, wherein he lived as sole owner in possession till his death.

11. It was further averred that the testator has already bequeathed his entire movable and immovable properties in sound state of mind without any coercion, pressure or undue influence, through his registered Will deed dated 20.9.1996 executed in favour of Smt. Sudha Srivastava and defendants No. 2 to 4 and accordingly, during his lifetime he also erected partition wall separating the house in two portions giving actual physical possession of the eastern portion to Smt. Sudha Srivastava and western portion to defendant No. 2 to 4. It was further averred that the testator never revoked his Will dated 20.9.1996 as such, no question arises of executing the alleged Will deed dated 25.5.2002.

12. It was further averred that two years before his death, the testator sustained fracture of his iliac bone resulting in his confinement to bed and since thereafter, he was under care of the defendants who since long back were living with him and were looking after him and managing his treatment but unfortunately he could not recover till his last breath. It was further submitted that after the death of testator, his registered Will deed dated 20.9.1996 was acted upon and Smt. Sudha Srivastava became the absolute owner of eastern portion and the defendants No. 2 to 4 became joint owners of the western portion of the house no. B.26/116-A mentioned above and they also acquired equal shares in his movable as well as other immovable properties and agricultural lands. It was further submitted that on the basis of Will dated 20.9.1996 Smt. Sudha Srivastava applied for mutation in revenue records and the names of defendants were mutated vide order dated 9.4.2003 passed

in mutation Case No. 540 of 2003. It was further submitted that after information of mutation of defendants in revenue records, the plaintiffs managed to set aside the above referred mutation order dated 9.4.2003 and presently Case No. 540 of 2003 Sudha vs. Krishna Kumar and No. 332 of 2002 Krishna Kumar vs. State are pending before the Naib-Tehsildar, Kaswar Raja, Varanasi between the parties.

13. It was further averred that neither the plaintiff Rakesh Srivastava nor so-called attesting witnesses ever came to the residence of the testator or the defendants and the testator never executed and signed the alleged Will deed dated 25.5.2002 revoking his previous registered Will deed. It was specifically averred that the alleged Will deed dated 25.5.2002 is a forged document which has been fabricated after the death of testator and after knowledge of the mutation of the defendants in the revenue records in order to grab the properties of the defendants by hook or crook. It was submitted that the probate petition was not maintainable and was liable to be dismissed.

14. The unregistered Will dated 25.05.2002 allegedly executed by Parmanand Lal Srivastava(testator) reads as under:-

"मैं कि परमानन्द लाल श्रीवास्तव पुत्र स्वर्गीय विश्वनाथ प्रसाद श्रीवास्तव मूल निवासी गंगापुर टाउन एरिया (सूई चक) परगना कसवार राजा जिला वाराणसी वर्तमान निवासी मकान नम्बर बी० 26/116ए नवावगंज शहर वाराणसी का हूँ

विदित हो कि मिनमुकिर की अवस्था इस समय लगभग 83 वर्ष के हो चुकी है इस नश्वर शरीर का कोई ठिकाना नहीं है कि कब इसका अन्त हो जायेगा ऐसी स्थिति में हर व्यक्ति का यह कर्तव्य होता है कि अपने जीन काल में अपनी सम्पत्ति की इस प्रकार व्यवस्था कर दे कि उसके मृत्यु के पश्चात् उसके सम्पत्ति को

लेकर उत्तराधिकारियों के बीच कोई विवाद उत्पन्न न हो, मिनमुकिर के खानदान में ग्राम सूईचक, गंगापुर परतापी पट्टी, जमीन कनेरी परगना कसवार राजा जिला वाराणसी में काफी चल व अचल सम्पत्ति मिमुकिर के पूर्वजों के समय की रही है मिनमुकिर के पिता दो भाई कमला प्रसाद व विश्वनाथ प्रसाद थे किन्तु मिनमुकिर के चाचा श्री कमला प्रसाद ने अपने मेहनत व मसक्कत से बमुकाम नवावगंज शहर वाराणसी में मकान नम्बरी बी० 26/116 के भूमि को अज नाम श्रीमती गुजराती देवी अपनी धर्मपत्नी के क्रय करके उसपर मकान पोख्ता निर्माण कराया व स्वतः अपनी पत्नी श्रीमती गुजराती देवी के साथ मकान उपरोक्त में आवाद रहे और मिनमुकिर व मिनमुकिर के भाई स्व० लक्ष्मीलाल बराबर अपने चाचा कमला प्रसाद व चाची गुजराती देवी की सेवा सुश्रुषा देखभाल करते रहे संयोग बश श्री कमला प्रसाद श्रीवास्तव व श्रीमती गुजराती देवी को कोई औलाद पुत्र अथवा पुत्री नहीं थे इसलिए स्व० कमला प्रसाद व श्रीमती गुजराती देवी मिनमुकिर व मिनमुकिर के भाई लक्ष्मी लाल को पुत्रवत् मानते चले आ रहे थे। श्री कमला प्रसाद की मृत्यु के पश्चात् श्रीमती गुजराती देवी हम दोनों भाईयों की ईच्छा व सहमति के आधार पर वसीयतनामा दिनांक 18-5-87 ई० अंकित कर, मकान उपरोक्त को बहक मिनमुकिर व शेष जुमिला चल व अचल सम्पत्ति का वसीयत बहक लक्ष्मीलाल बिरादर हकीकी मिनमुकिर कर दिया किन्तु मिनमुकिर व मिनमुकिर के भाई लक्ष्मीलाल बराबर एक साथ रहकर दोनों जगहों यानी मकान उपरोक्त व अन्य सभी चल व अचल सम्पत्ति की देखभाल उपयोग व उपभोग करते चले आ रहे थे व बाद वफात श्री लक्ष्मीलाल उनके पुत्राण भी वही आचरण व व्यवहार करते रहे। दुर्भाग्यवश मिमुकिर को भी कोई पुत्र नहीं है केवल दो पुत्रियां राधा देवी व सुधा देवी थी श्रीमती राधा देवी की मृत्यु 10 वर्ष पूर्व हो गयी जिसके तीन पुत्राण कृष्ण कुमार, योगेश कुमार उर्फ गोली व सोमेश कुमार उर्फ ऋषी है मिनमुकिर की ईच्छा थी कि मिनमुकिर के पास जो कुछ अचल सम्पत्ति यानी मकान नम्बरी बी० 26/116ए नवावगंज शहर वाराणसी वआराजियात वागात मकानात आदि वाका मौजा सूईचक, गंगापुर परतापीपट्टी, जमीन कनेरी व बैरवन में मौजूद है वह सभी पैतृक सम्पत्ति मिनमुकिर की है वह खानदान मिनमुकिर में ही रह जाय व मिनमुकिर के पास जो भी जर नकद स्टेट बैंक आफ इण्डिया शाखा सेन्ट्रल आफिस बी०एच०यू० व बचत खाता संख्या 1893 बैंक आफ बड़ौदा शाखा गुरुधाम कालोनी दुर्गाकुण्ड रोड व रकम पेंशन आदि का था उसे अपने पुत्रियों व नातियों को देकर उन्हें संतुष्ट कर दिया है किन्तु मिनमुकिर ने जो वसीयतनामा दिनांक 20-9-96 को अंकित किया है उसमें मिनमुकिर को धोखे में रखकर पैत्रिक सम्पत्ति के बाबत भी मिनमुकिर की पुत्री एवं नातियों के वसीयतनामा अंकित करा लिया है जिसका ज्ञान मिनमुकिर को पूर्व में नहीं था और अब मिनमुकिर को यह जानकारी हो गयी है कि मिनमुकिर की पैत्रिक सम्पत्ति के बाबत भी वसीयतनामा दिनांक 20-9-1996 ई० अंकित करा लिया है

अतः मिनमुकिर वसीयतनामा दिनांक 20-9-98 ई० को मंसूख करते हुए यह नया वसीयतनामा बाबत मकान नम्बरी बी० 26/116ए नवावगंज शहर वाराणसी व अन्य अचल सम्पत्ति का उत्तराधिकारी अपने भतीजगान कृष्ण कुमार, अवधेश कुमार, मदन कुमार, मनोज कुमार, संतोष कुमार व राकेश लाल पुत्रगण स्व० लक्ष्मीलाल निवासीगण टाउन एरिया गंगापुर परगना कसवार राजा जिला वाराणसी को घोषित करते हुए यह वसीयतनामा अंकित कर पाबन्द शरायत जैल का होता व करता हूँ:-----

1- यह कि जब तक मिनमुकिर जीवित रहेगा अपने सम्पूर्ण चल व अचल सम्पत्ति का तनहा मालिक रहेगा व मिनमुकिर की मृत्यु के पश्चात् मिनमुकिर के सम्पूर्ण अचल सम्पत्ति के मालिक मिनमुकिर के भतीजगान पेसरान लक्ष्मीलाल होंगे और मिनमुकिर की मृत्यु के पश्चात् मिनमुकिर के पास जो कुछ जर नकद व जेवरात यानी हर प्रकार के चल सम्पत्ति के मालिकान मेरी पुत्री सुधा देबी व राधा देबी के पुत्रगण होंगे।

2- यह कि वसीयान भतीजगान मिनमुकिर को अधिकार होगा कि सम्पूर्ण अचल सम्पत्ति वसी मकान व आराजियात पर से मिनमुकिर का नाम निरस्त कराकर अपना नाम दर्ज कराकर जो कुछ टैक्स व लगान आदि देय हो अदा करके रसीद अपने नाम हासिल करते रहे इसमें मिनमुकिर व वारिसान व कायम मुकामान मिनमुकिर अथवा किसी अन्य व्यक्ति को किसी प्रकार की कोई आपत्ति का अधिकार नहीं होगा।

3- यह कि वसीयान कृष्ण कुमार वगैरह भतीजगान मिनमुकिर को लाजिम होगा कि मिनमुकिर की मृत्यु के पश्चात् मिनमुकिर की चिता को मेरे किसी नाती द्वारा मुखानि कराकर सम्पूर्ण क्रिया कर्म आदि मुताबिक हिन्दू धर्मशास्त्र के अनुसार वमुकाम गंगापुर में करा देंगे और यह भी खयाल रखे कि मेरे दाह संस्कार क्रिया कर्म में मेरी पुत्री अथवा नातियों का एक पैसा भी व्यय न हो अथवा मेरी मृत आत्मा को आघात लगेगा।

4- यह कि कृष्ण कुमार आदि भतीजगान मिनमुकिर को बाध्यता होगी कि मेरी पुत्री व नातियों को यह आभास न होने दे कि मेरा ननिहाल व नैहर समाप्त हो गया है।

5- यह कि मिनमुकिर ने कुल मजमून वसीका हाजा को बखूबी सुन व समझकर पढ़ व पढ़वाकर यह चन्द कलमा बतरीक अंति वसीयतनामा के अंकित कर दिया कि वक्त पर काम आवे व प्रमाण रहे।

तहरीर तारीख:- 25-5-2002 ई०।

मसविदा कर्ता:-मंशा राम मिश्रा, सिविल कोर्ट वाराणसी।

टाइपकर्ता:- शीतला प्रसाद पाण्डेय, सिविल कोर्ट वाराणसी।"

15. On the basis of the pleadings of the parties, the trial court framed the following issues:-

(i)Whether Parmanand Lal Srivastava had executed a Will on 25.5.2002 in favour of the plaintiffs?

(ii)Whether the plaintiffs had fabricated the Will dated 25.5.2002?

(iii)To what relief the plaintiffs are entitled, if any?

16. By order dated 2.9.2005, passed by the lower court, both the above Probate cases were consolidated and **Probate Case No. 27 of 2007 was made leading case for evidence purposes, in which entire evidence was recorded.**

17. In documentary evidence, both the parties filed the original Will's, certified copies of the documents submitted by them for mutation before the revenue court, the certified copies of the orders passed on mutation applications by the revenue courts, certified copies of oral evidence of the parties in mutation proceedings, the reports of the handwriting experts, etc.

18. On behalf of the plaintiffs in Probate Case No. 27 of 2007, the following witnesses were examined:-

(1)Smt.Sudha Srivastava, as PW-1(Plaintiff, propounder of Will dated 20.9.1996)

(2) Sukhu Prasad, as PW-2 (attesting witness of Will dated 20.9.1996)

(3) Mithilesh Kunwar Khare, as PW-3 (Advocate preparing the Will dated 20.9.1996)

(4) Sayed Irteja Hussain, as PW-4 (handwriting expert on behalf of the plaintiff)

19. On behalf of the defendants in Probate Case No. 27 of 2007, the following witnesses were examined:

(1) Rakesh Srivastava, as DW-1 (defendant, propounder of Will dated 25.05.2002)

(2) Lalji, as DW-2 (attesting witness of Will dated 25.5.2002)

(3) Ramnarayan, as DW-3

(4) Vikas Srivastava, as DW-4 (handwriting expert on behalf of defendant)

20. The trial court after perusing the documentary and oral evidence adduced by the parties and the relevant case law, has concluded that there were suspicious circumstances surrounding the execution of the subsequent Will dated 25.5.2002 of the testator, which makes the subsequent Will doubtful, particularly since the earlier Will of the testator was registered. The trial court concluded that the subsequent Will dated 25.5.2002 was doubtful and a fabricated document, regarding which no Probate can be granted. Accordingly, the trial court has rejected the Probate Case no.26 of 2007 seeking Probate of Will dated 25.5.2002 and has allowed the Probate Case no.27 of 2007 seeking

Probate of registered Will dated 20.9.1996, by impugned judgment and order dated 18.10.2023, aggrieved against which, the instant appeals have been filed by the propounder of subsequent Will dated 25.5.2002.

21. In this judgment, the parties are being addressed according to their status in Probate Case No.27 of 2007, which was the leading case, in which Smt.Sudha Srivastava was the plaintiff and Rakesh Lal Srivastava and others were defendants.

22. Learned counsel for the defendant appellants submitted that the testator had earlier executed a registered Will on 20.9.1996 in favour of her two daughters, which was later on revoked by executing subsequent Will dated 25.5.2002 in favour of the defendant appellants, which was duly proved by examining attesting witness of the Will, as such, there was no occasion for the lower court to doubt its execution. It was further submitted that since the testator was bedridden and disabled, he was not in a position to go to the subregistrar office for getting the Will registered, as such, the subsequent Will was not registered, but only on the ground that the subsequent Will was not registered, it cannot be held to be a fabricated document. Learned counsel submitted that a Will is required to be proved in accordance with law, whether it is registered or not and merely on the ground that it is registered, its genuinity cannot be presumed. It was further submitted that the testator after second thought, had revoked the earlier Will, which was executed in favour of the plaintiff, and the reason for revoking it, was also mentioned in the subsequent Will, as such, there was no suspicious circumstance surrounding the execution of the subsequent Will. Learned Counsel in

support of his submissions relied upon the case law of ***Testamentary Suit no.6 of 2012 decided by this Court on 15.10.2020, Pramila Tiwari vs. Anil Kumar Mishra and others Neutral Citation 2024AHC 85067-DB and Kavita Kanwar vs. Mrs. Pamela Mehta and others AIR 2020 SC 2614.***

23. Per contra, learned counsel for the plaintiff respondent submitted that the defendants, who were the propounder of the subsequent Will dated 25.5.2002 had actively participated in its preparation and execution, who were also in its possession, but while applying for mutation before the revenue court, the subsequent Will was never disclosed. Learned counsel submitted that there was serious contradiction in the testimony of the witnesses regarding the place and the manner, where/in which the subsequent Will was prepared, who participated in its preparation, which makes the surrounding circumstances, suspicious. Learned counsel submitted that the Advocate preparing the subsequent Will also moved the mutation application on behalf of the appellants before the revenue court but in that application it was not mentioned that the testator had executed the alleged Will dated 25.5.2002 and on the basis of this Will, they are claiming ownership of the disputed property. In that mutation application, ownership was claimed through inheritance. Learned counsel submitted that only after the plaintiff respondent moved the mutation application by claiming ownership of the disputed property on the basis of earlier Will dated 20.9.1996, of the testator bequeathing his property in favour of the respondent, only then the Will dated 25.5.2002 was subsequently, fraudulently fabricated by the appellants. Learned counsel submitted that the appellants could

not dispel the cloud of suspicion surrounding the subsequent Will dated 25.5.2002 as such, the lower court has rightly disbelieved the subsequent Will and has rightly allowed the plaintiffs Probate application. Learned Counsel in support of his submissions relied upon the case law ***Sunita Upadhyay vs. State of U.P. 2023(159)RD 712(All)***

24. I have heard the learned counsel of both the sides, perused the record of the lower court and the case law submitted by them.

25. On the basis of the pleadings, evidence on record and the submissions of the learned counsel of the parties the following issue arises for determination in this appeal:-

Whether Parmanand Lal Srivastava (testator) had executed subsequent Will on 25.5.2002 in favour of the defendant appellants, by which earlier executed and registered Will dated 20.9.1996 in favour of the plaintiff respondents, was revoked ?

Oral evidence of plaintiffs before the lower court

(Propounder of Will dated 20.9.1996)

26. Sudha Srivastava PW-1, the propounder of first Will of testator dated 20.9.1996, deposed in her examination in chief that her father Parmanand Lal Srivastava (testator) retired from the post of office superintendent in the Estate Department of BHU, Varanasi, was the owner of the residential house No. B.26/116-A situated in Nawabganj, Bhelupura, Varanasi, who became the owner of it on the basis of

registered Will, who resided in it. She and Smt. Radha Srivastava were the only daughters /children of her father. Her sister Smt. Radha Srivastava and her mother had died in the lifetime of her father. After retirement, her father had decided to distribute his property in favour of her daughter's children and her, as such he divided the above house by partition wall, of which the eastern portion was given to her and the western portion was given to deceased daughter's children. She deposed that her father willingly, without any coercion, in the presence of Sukhu Prasad and Mithilesh Kunwar Khare, Advocate, had executed a registered Will on 20.9.1996, by which his property in equal shares, was bequeathed to her and her deceased sisters children. This witness has filed the original Will of the testator dated 20.9.1996.

27. She further deposed that two years prior to the death of her father, her father had become disabled due to fracture in the hip bone, who was unable to move and perform his routine work, who was looked after and cared by defendant no.1 to 3. She further deposed that her father died on 22.11.2002 in her above residential house. She further deposed that she and defendant no.1 to 3 have become the owner in possession of the above residential house and they have also applied for mutation in the records of the Nagar Nigam, Varanasi, which was pending. She further deposed that her father never executed any other Will, subsequent to the Will dated 20.9.1996. She further deposed that Rakesh Kumar Srivastava, Vinod Kumar Singh and Lalji neither came to the above house of her father nor her father had executed any Will dated 25.5.2002 in their favour. She further deposed that the alleged Will dated 25.5.2002 is a fraudulent and fabricated

document, which has not been executed by her father, which has been prepared only to illegally deprive her from the properties bequeathed by her father.

28. PW-1 in cross-examination accepted that Rakesh, Krishna Kumar, Awdesh Kumar, Madan Kumar, Manoj Kumar and Santosh Kumar are the sons of her father's real brother. Her father had got property in village Gangapur. After perusing the alleged Will dated 25.5.2002, she accepted that it bears the photo of her father. She denied the signatures of her father on the above Will. She deposed that signatures of her father has been duplicated on it. She deposed that the partition between her father and her father's brother had taken place. She deposed that agricultural land was partitioned but orchards were not partitioned. She further deposed that in the consolidation proceeding her father got one third share. She further deposed that her sister has died whose 6 children are living separately from her. The house situated in Nawabganj was partitioned by her father, she has got eastern half share in it and the western half share belongs to her sister. She accepted that Lakshmi Prasad and her father are real brothers, the agricultural property situated in the village was looked after by Lakshmi Prasad, the residential house situated in Nawabganj was 2 storeyed, Rakesh is the son of Lakshmi Prasad.

29. She further deposed that at the time of execution of the first Will, she was not present, her husband and sisters son were present, the same sons were present who were the beneficiary of the Will, she has no knowledge of the subsequent Will, she only became aware of the subsequent Will after the death of her father, through her husband, she has not filed any case for

the cancellation of the subsequent Will, the Will dated 20.9.1996 was attested by Sukhu Prasad and Mithilesh Kumar, Advocate. Mithilesh Kumar, Advocate is her relative, who is her brother-in-law(devar). She denied the suggestion that her father had executed a Will in favour of Rakesh.

30. Sukhu Prasad PW-2 deposed in his examination in chief that Parmanand Lal was an accountant in BHU, who resided with his paternal aunt Smt. Gujarati Devi, in a house situated in Nawabganj, which was bequeathed to Parmanand Lal by Smt. Gujarati Devi. Parmanand Lal had two daughters Radha and Sudha, he had no sons, Radha has died, Krishna Kumar, Yogesh Kumar alias Goli and Somesh Kumar alias Rishi are the sons of Radha Devi. He deposed that he had good acquaintance and cordial relations with Parmanand Lal. He deposed that in the month of September 1996, Parmanand Lal told him that he intends to bequeath his entire movable and immovable property in favour of his daughter Sudha and daughter Radha's son Krishna Kumar, Yogesh Kumar and Somesh, requested him to witness the Will and took him to the Kutchery.

31. He further deposed that in his presence Parmanand Lal directed Mithilesh Kunwar Khare, Advocate to prepare the Will deed, got typed the Will deed and after it was typed, after reading and understanding it, Parmanand Lal signed it in his presence and also obtained his signature on it. He further deposed that in the Will deed Parmanand Lal bequeathed his entire movable and immovable property namely house, agricultural land, cash and bank balance, the 1/2 share of it was bequeathed to Sudha and 1/2 share to

Krishna Kumar. He further deposed that after executing the Will, Parmanand Lal got it registered on the same day and at the time of registration, Parmanand Lal affixed his signature and thumb impression on it. He further deposed that after the execution of the above Will, Parmanand Lal frequently visited his daughter Sudha in Senpura, he also met him, he also visited Parmanand Lal along with Madan Mohan at his Nawabganj residence and for the last time, after Parmanand Lal became ill in the year 2002, he went to his Nawabganj residence and had talks with him. He further deposed that Parmanand Lal never told him that he has revoked his Will executed in favour of his daughter Sudha and sons of his daughter. He further deposed that if any person alleges that Parmanand Lal has executed any other Will, then that Will is forged and fabricated, which has not been signed by Parmanand Lal, which bears the forged signatures of Parmanand Lal.

32. PW-2 deposed in cross-examination that he knew the testator from 5 – 7 years prior to his death. He never went to his house in Gangapur. He deposed that Rakesh Lal had requested him to get the matter compromised to which he had declined. Parmanand Lal never disclosed to him that he wanted to execute the Will in favour of Rakesh. This witness has identified the photo and signature of Parmanand Lal on Will dated 20.9.1996.

33. Mithilesh Kunwar Khare PW-3, Advocate deposed in examination-in-chief that he practices in District Court Varanasi on the civil side. He prepared the draft Will on 20.9.1996 on the direction of Parmanand Lal, got it typed, which was read by Parmanand Lal, was read over to Sukhu Prasad and after being satisfied with

its contents, was signed by Parmanand Lal in his presence, which was also signed by Sukhu Prasad and he had also signed it as a witness. He further deposed that on the same day Parmanand Lal had got it registered by presenting it in the office of the registrar. The registrar had asked Parmanand Lal about the execution of the Will, which was accepted by Parmanand Lal and thereafter, Parmanand Lal and Sukhu Prasad had also signed it and affixed their fingerprints on the back page of the Will as well as on register no.8. This witness has proved the Will dated 20.9.1996 of Parmanand Lal, in accordance with law.

34. PW-3 in cross-examination deposed that the Will deed dated 20.9.1996 was prepared by him and he is also its attesting witness. Except this Will, Parmanand Lal has not executed any other document. He is not related to Parmanand Lal.

35. Sayed Irteja Hussain PW-4, the hand writing expert, has deposed in his examination-in-chief that the Will dated 20.9.1996 and 25.5.2002 have been signed by different persons and the Will dated 25.5.2002 has not been signed by Parmanand Lal.

**Oral evidence of
defendants before the lower court**

(Propounder of Will
dated 25.5.2002)

36. Rakesh Srivastava DW-1 deposed in his examination-in-chief that Parmanand Lal was his uncle, who was very affectionate towards him and his (DW-1) brothers. When Parmanand Lal was residing in Mauja Sui Chuck, then he was looked after and cared by the deponent and his brothers. He and his

brothers used to visit house no. B.26/116 A, Nawabganj, Varanasi. Parmanand Lal was very satisfied with him and his brothers. Parmanand Lal had no son, had only 2 daughters namely Radha and Sudha, Radha died during the lifetime of Parmanand Lal, Sudha was alive, there are 3 sons of Radha namely Krishna Kumar, Yogesh Kumar and Somesh Kumar.

37. He further deposed that Parmanand Lal intended to bequeath his above house to his nephews and intended to bequeath the movable property to his daughter's son and daughter Sudha, but Radha's sons and Sudha, managed to get wrong Will dated 20.9.1996 executed from Parmanand Lal, and when this was realised by Parmanand Lal, then on 25.5.2002 Parmanand Lal again executed a Will in which the above house and other immovable property was bequeathed to his nephews and the movable property was bequeathed to his daughter and sons of the daughter. He also deposed that Parmanand Lal revoked his earlier Will dated 20.9.1996. He further deposed that the Will dated 25.5.2002 was the last Will of Parmanand Lal, which became effective on his death.

38. He further deposed that the Will dated 25.5.2002 bears the photograph and signature in English of Parmanand Lal, which was signed by Parmanand Lal in the presence of witnesses Vinod Kumar Singh and Lalji, the witnesses had also signed in presence of Parmanand Lal, the Will dated 25.5.2002 was executed by Parmanand Lal willingly, on the basis of which he and his brothers are the owners of the disputed property.

39. DW-1 in cross-examination accepted that his father and Parmanand Lal were real brothers. Gujarati Devi had executed a Will on 18.5.1987, on the basis of which, house no.B.26/116-A situated in

Nawabganj was bequeathed to Parmanand Lal and the agricultural land of the village was bequeathed to Lakshmi Lal and after the death of Lakshmi Lal, he and his brothers have got their name mutated in the revenue record. He also accepted that name of Parmanand Lal was mutated as owner of the above house.

40. He further deposed that Parmanand Lal was ill at the time of his death, who was ill from about one year prior to his death, his one leg was fractured, he denied that about two years prior to his death his hip bone was fractured, the treatment of fracture of Parmanand Lal was undertaken by him and his family members, his treatment was going at the time of his death. He denied the suggestion that since the hip bone of Parmanand Lal was fractured, he was disabled and was unable to walk. He used to frequently visit Nawabganj. He denied the suggestion that he and his brothers never resided in the Nawabganj house. He failed to disclose the boundaries of the Nawabganj house. He denied the possession of the Nawabganj house with Sudha and Krishna Kumar and others. He admitted that he cannot file any documentary evidence to prove that he and his brothers are in possession of the Nawabganj house.

41. He further deposed that Parmanand Lal never disclosed to him about the Will deed executed in favour of Sudha and others. The Will dated 25.5.2002 was prepared at the house of Parmanand Lal, which was typed by Parmanand Lal himself. He arrived at Nawabganj house, on being called, at about 2–3 PM, two witnesses, he, Sudha, Krishna Kumar and some other well-wishers were present, who belonged to the maternal side of Gujarati Devi, the names of whom he

was not aware. Parmanand Lal phoned him, on which he arrived along with two witnesses. He specifically deposed that on 25.5.2002 the Will deed was not prepared in the Kutchery. He admitted that mutation case regarding agricultural land of Parmanand Lal between him and Sudha and others was pending in tehsil. He admitted that his name was earlier mutated in PaKa-11 on the basis of possession in the month of December, 2002. He denied the suggestion that after the death of Parmanand Lal, Sudha and others had moved a mutation application on the basis of Will which was allowed and subsequently, he moved a restoration application. He also admitted that his statement was recorded and he was also cross-examined in the mutation case. He further deposed that the Will dated 25.5.2002 was not written in his presence. After the Will was handed to him between 2–3 PM, he left without witnesses. He went to his village. When he reached house no. B.26/116-A, Nawabganj, Varanasi, then Will had already been prepared.

42. He denied the suggestion that the last rites of Parmanand Lal were performed by Krishan Kumar and others. He admitted that after the tehrahvi of Parmanand Lal, he had moved mutation application in the tehsil. He also moved the mutation application on the basis of Will and on that basis, the Lekhpal had mutated his name and the name of others, in PaKa-11. He denied the suggestion that the first application was moved on 17.12.2002 in which there was no mention of Will and in collusion with Lekhpal his name was mutated. He also denied the suggestion that after the name of Sudha and others was mutated on the basis of registered Will, then he and others had moved subsequent application of mutation.

43. He further deposed that in the alleged Will deed executed by Parmanand Lal in their favour, attesting witnesses are Lalji and Vinod Kumar. He was not aware of the name of Lalji's wife. He feigned ignorance that the name of Lalji's wife was Dulari Devi, but admitted that he has executed the sale deed of his four decimal land in favour of Dulari Devi, and Lalji was the witness of the Will. He denied the suggestion that land of Parmanand Lal was cultivated by Lalji. He denied the suggestion that he threatened Lalji that he will take the land from him and compelled him to become a witness of his fraudulent Will. He feigned ignorance that he had admitted in his statement in the mutation proceedings in the tehsil, that the Will dated 25.5.2002 was prepared and executed in Kutchery. He denied the suggestion that the Will dated 25.5.2002 was a forged and fabricated document, which was not executed by Parmanand Lal.

44. Lalji DW-2 deposed in his examination-in-chief that in his presence, Parmanand Lal prepared his Will on 25.5.2002 in favour of his nephews Krishna Kumar, Awdesb Kumar, Madan Kumar, Manoj Kumar, Santosh Kumar and Rakesh Lal. The typed Will was read in his presence by Parmanand Lal and then signed on each page in English by him (Parmanand Lal). Thereafter, in the presence of Parmanand Lal, he and Vinod Kumar Singh signed the Will. The photograph of Parmanand Lal was also pasted on the first page of the Will in his presence. On that date, Parmanand Lal's body and mind was alright.

45. DW-2 deposed in cross-examination that he has neither prepared nor read his affidavit in examination-in-chief, it was prepared by Rakesh Lal, he

was not aware what was written in it, he had only signed the affidavit, he has not read it. He has not submitted any affidavit after perusing the Will of Parmanand Lal. Rakesh Lal had taken him to the tehsil, where he gave his written statement. On the day when Will of Parmanand was written, Rakesh Lal came and took him for witnessing it. He was accompanied by Vinod Kumar Yadav, Rakesh Lal and his relatives, the names of whom he was not aware, he was taken to the Durgakund residence of Parmanand Lal, he departed from his village at 12-12.30 PM and reached at 2.30 PM. He remained for an hour at Durgakund residence, the paper was in the hands of Parmanand Lal, which was read by Parmanand Lal, who also disclosed that he was bequeathing his immovable property and house to six brothers and cash to his daughter and sons of daughter. He saw the Will, but has not read it. He was not aware of the place where the Will was written. At the Durgakund residence the brothers of Rakesh, he, Vinod, Parmanand Lal, younger sister of Rakesh were present. The Will was first of all signed by Parmanand Lal, then by Vinod Kumar witness, then by him. Parmanand was saying that he had executed a Will earlier which he wanted to revoke, and he was making Will in favour of his six nephews. The Will which was signed by him, was prepared earlier. Parmanand has died, he was not aware when he died. He was not aware about his (Parmanand Lal) last rites. When the Will was prepared Parmanand was not ill, but he was incapable of walking.

46. He accepted that Dulari Devi was his wife, who resides with him, Rakesh Lal has executed sale deed of his 4 decimal land to Dulari Devi after the death of Parmanand Lal. He denied that he

cultivated the land of Parmanand Lal. Rakesh Lal are six brothers. He denied the suggestion that Parmanand Lal had not executed any Will on 25.5.2002.

47. Ramnarayan DW-3 deposed in his examination-in-chief that after the death of Parmanand Lal his nephews Krishna Kumar, Awdesb Kumar, Madan Kumar, Manoj Kumar, Santosh Kumar and Rakesh Lal were in possession of the property, being the owners. Parmanand Lal was looked after by his nephews. In cross-examination he deposed that Parmanand Lal resided in Banaras at Durgaji. Parmanand Lal died in Banaras. He denied the suggestion that Parmanand Lal resided at Durgakund with the family of his daughter. He further deposed that the whole village knew that a Will was executed by Parmanand Lal in favour of his nephews. He was not aware whether Parmanand Lal had executed in his lifetime Will in favour of Smt.Sudha Srivastava and children of Smt.Radha.

48. Vikas Srivastava DW-4, the handwriting expert, deposed in his examination chief that the Will dated 20.9.1996 and 25.5.2002 have been executed by one and the same person Parmanand Lal .

Case law applicable

49. The Apex Court in the case of ***H.Venkatachala Iyengar vs. B.N.Thimmajamma & Others, 1958 SCC OnLine SC 31 (By 3 Judges)***, while examining the issues related with execution and proof of Will has enunciated a few fundamental guiding principles that have consistently been followed and applied in almost all the cases involving such issues. The

exposition of law made by the Apex Court is as under:-

18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction

and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. *However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would*

be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. *There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged,*

courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word “conscience” in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is

deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

*22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* [(1946) 50 CWN 895] “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.*

*50. The Constitution bench of the Apex Court in the case of **Shashi Kumar Banerjee and others vs. Subodh Kumar Banerjee and others**, 1963 SCC OnLine SC 114, while examining the law relating to the manner and onus of proof and also*

the duty cast upon the court while dealing with the case based upon a Will, has held as follows:-

"The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even when there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indicators in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If

the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

51. The Apex Court in the case of **Shivakumar and others vs. Sharanabasappa and others (2021)**¹¹ SCC 277, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:-

12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as

to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.

12.7. As to whether any particular feature or a set of features

qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.

52. The Apex Court in the case of ***A. Kamala Bai(D) Through LRS vs. B. Kanna Rao(D) Through LRS, Civil Appeal No. 136 of 2013***, held as under:-

11. Admittedly, PW-5 is the only witness examined by the Appellant to prove the execution of the Will in terms of the statutory mandate under Section 63 (c) of the Succession Act and 68 of the Indian Evidence Act. Apart from PW-5, the other attesting witness or the scribe has not been examined before the Senior Civil Judge in course of inquiry to submit the report called for by the High Court. Thus, the statement of PW-5 is of great significance for the reason that it is his statement around which the execution of the Will have to be proved. When such is the situation, we have to consider the evidence of this witness with utmost attention. The statement of PW-5 in his cross-examination is reproduced herein for exactitude:

“I have not given instruction for preparing the chief affidavit belongs to me. I cannot say who have instructions for preparing my chief affidavit. I do not know the contents of my chief affidavit.”

12. In addition to the above statement, in the subsequent part of his cross examination he also states that “I do not know the contents of the will.”

13. Thus, firstly, this witness categorically admits that the chief affidavit was not prepared on his instructions and secondly, he does not know the contents of his chief affidavit. Ms. Jaikriti S. Jadeja, learned counsel for the appellant may be right to some extent in submitting that the entire statement of the witness cannot be ignored. However, the second limb of her submission that in his cross examination

this witness has proved the execution of the will is difficult to accept because in subsequent part of his cross examination this witness admits that he does not know the contents of the will. The evidence of a witness has to be read as a whole and not in isolation. On such reading the evidence of PW-5 does not inspire confidence.

14. To prove the execution of will, one of the attesting witnesses is to be examined mandatorily, however, when the sole attesting witness examined before the Court admits that his chief affidavit i.e. the examination in chief was not recorded under his instructions nor does he know the contents of his examination in chief, the evidentiary value of his statement in cross-examination is seriously dented. Even if it is not necessary for a attesting witness to know the contents of the will, the question remains that he has to depose in Court, in no uncertain terms, that he has prepared the chief affidavit under his own instructions so that the credibility of the witness is assessed in the Court as a true attestor as required under Section 63 (c) of the Succession Act and Section 68 of the Indian Evidence Act. If there is slightest doubt about the credibility of the sole attesting witness, holding the will to be a genuine one would be extremely difficult for the Court.

15. In the above view of the matter we are unable to accept the contention of learned counsel for the appellant that the will dated 11.03.1999 ought to have been found as genuine and the appellant should have been allowed to prosecute the Appeal Suit before the High Court on merits.

(emphasis supplied)

53. It is apparent from the above law laid down by the Apex Court in the case of *H.Venkatachala Iyengar* (supra), *Shashi Kumar Banerjee* (supra) and *Shivakumar* (supra) that where the execution of the Will is surrounded by suspicious circumstances then the onus lies on the propounder to remove all legitimate suspicions before the document can be accepted as the last Will of the testator. It is also apparent that such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation. It is also apparent that where the execution of Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.

54. It is evident from the pleadings of the parties and the evidence on record that the first Will of Parmanand Lal, which was registered Will executed on 20.9.1996 is not disputed by the parties. It is the case of the defendant-appellants that the above registered Will was revoked by Parmanand Lal on 25.5.2002 and in its place, another unregistered Will was executed by him in favour of the defendants. It is apparent that the execution and the authenticity of the first Will of Parmanand Lal dated 20.9.1996 is not in doubt as such, there is no need to examine its authenticity and validity for deciding the instant appeals.

55. The only dispute that arises is whether Parmanand Lal revoked his first registered Will dated 20.9.1996 and in its place, executed another unregistered Will on 25.5.2002? This Court has to examine the reasons for revoking the first Will, the place of alleged execution of the second

Will, the persons present who took active part in the preparation and execution of the second Will, when and in which manner the second Will came to be disclosed by the propounder and the suspicious circumstances surrounding the second Will?

56. It is proved from the evidence on record that Parmanand Lal had no sons, had only two married daughters namely Smt.Sudha and Radha, elder daughter Smt. Radha had died during the lifetime of Parmanand Lal, as such, by first Will dated 20.9.1996 Parmanand Lal bequeathed his entire movable and immovable property to his surviving daughter Smt.Sudha(half share) and sons of deceased daughter Radha namely Krishan Kumar Srivastava, Yogesh Kumar alias Goli and Somesh Kumar alias Rishi(half share).By this Will, Parmanand Lal(testator) bequeathed his residential house no.B.26/116-A, situated in Nawabganj, Bhelupura, Varanasi in equal half shares to his daughter Smt. Sudha and sons of deceased daughter Smt. Radha. It is apparent that there is nothing suspicious in this Will, since the testator has equally bequeathed his movable and immovable property to his heirs, who would have also otherwise inherited the property of the testator being class I heirs as per The Hindu Succession Act,1956, in the absence of the Will. As discussed earlier, the execution of this Will is not disputed by the parties.

Suspicious circumstances surrounding the Will dated 25.5.2002

(i) Ill Health of testator Parmanand Lal:-

57. Sudha Srivastava PW-1 has deposed that her father Parmanand

Lal(testator) had become bedridden two years prior to his death because his hip bone was fractured, who was unable to move and do his routine work and till his death, he was looked after and cared by the plaintiffs. She has further deposed that her father died on 22.11.2002 in his residential house no.B.26/116-A, situated in Nawabganj, Bhelupura, Varanasi. From the evidence of PW-1 it is evident that she was not aware of the alleged Will dated 25.5.2002 executed by her father.

58. From the evidence of Rakesh Lal Srivastava DW-1 it is evident that he has accepted that at the time of his death, the testator was above 80 years old, who was ill since about one year prior to his death, his leg was fractured. He denied that about two years prior to his death, the hip bone of the testator was fractured. He admitted that the testator was undergoing treatment at the time of his death. Attesting witness Lalji DW-2 has also admitted in cross-examination that the testator at the time of execution of alleged Will, was unable to walk. From the above evidence it is proved that the testator was about 80 years old at the time of the alleged execution of the Will dated 25.5.2002 and was ill.

59. Propounder of the Will DW-1 has deposed that the Will was typed by the testator himself at his Nawabganj house, but in his previous statement during mutation proceedings, he has deposed that the Will was typed in Civil Court, Varanasi at the office of Rajendra Prasad, Advocate. Since Parmanand Lal was ill, bedridden and was about 80 years old at that time, it was virtually impossible for the testator to himself type the Will at his Nawabganj residence.

(ii)Place of execution of the alleged Will:-

60. From the evidence of DW-1 it is proved that the alleged Will dated 25.5.2002 was executed at the house of the testator. This witness has stated that the alleged Will was typed himself by Parmanand Lal at his house situated in Nawabganj, Varanasi and thereafter, handed to them. He has further stated that he was called by the testator at his Nawabganj house and had reached there at 2 – 3 PM and at that time he, Sudha, Krishan Kumar and some well-wishers were also present. This witness has further stated that on the asking of the testator on phone, he arrived with the two witnesses. This witness has specifically deposed that the above Will was not prepared in Kutchery. According to this witness the Will was not prepared in his presence but when he reached the Nawabganj house of the testator, it was ready and after the Will was handed to him, he left for his village, leaving the two witnesses behind. This witness during mutation proceedings had earlier deposed that the above Will was prepared in Civil Court, Varanasi, at the office of Rajendra Prasad, Advocate and when he was confronted with his previous statement, then he feigned ignorance about it. It is apparent that the propounder of alleged Will dated 25.5.2002 DW-1 has made two contradictory statements regarding the place where the alleged Will was prepared.

61. The attesting witness of alleged Will dated 25.5.2002 Lalji DW-2 to the contrary, has deposed that the Will was prepared at the Durgakund residence of Parmanand Lal. It is evident that there is a serious contradiction between the above witnesses regarding the place where the

alleged Will was prepared by the testator, which makes it highly suspicious.

(iii)Preparation of Will:-

62. From the evidence of propounder DW-1 and attesting witness Lalji DW-2 it is proved that the witnesses were brought by the propounder to the testator's house. DW-1 has also admitted that on being asked by the testator, he arrived at the testator's house with two witnesses. It is proved that the propounder had taken an active part in the preparation of the alleged Will.

(iv)Non disclosure of the alleged Will by the propounder in mutation proceedings:-

63. It is evident from the documents submitted by the plaintiff that the propounder Rakesh Lal and his brothers had moved a mutation application on 12.12.2002 under Section 34 of the U.P. Land Revenue Act before the Court of Tehsildar, Varanasi for getting their name mutated on the basis of inheritance, being the legal heirs of deceased Parmanand Lal, who died on 22.11.2002. This application was prepared by Mansha Ram, Advocate. An affidavit by Rakesh Lal Srivastava was also filed in support of the above application.

64. It is apparent that in the above mutation application it has not been disclosed that Rakesh Lal Srivastava and his brothers inherited the agricultural land on the basis of Will allegedly executed by Parmanand Lal on 25.5.2002 in their favour. It is apparent from the perusal of the alleged Will dated 25.5.2002 that it has been prepared by Mansa Ram Mishra, Advocate. It is very surprising that in the

mutation application moved by Rakesh Lal Srivastava there was no mention of the alleged Will executed in his favour by Parmanand Lal on 25.5.2002. It is also very surprising that the mutation application was prepared by the same Advocate Mansha Ram, who had earlier allegedly prepared the Will dated 25.5.2002.

65. It is very surprising that the alleged Will was in possession of the propounder and if the alleged Will was indeed executed by the testator on 25.5.2002 and on the basis of that Will, Rakesh Lal Srivastava DW-1 and his brothers had become the owners of the agricultural land, then why its existence was not disclosed in the mutation application, which was moved on 12.12.2002, after the death of Parmanand Lal on 22.11.2002. It is all the more surprising that the mutation application and the alleged Will, both were drafted by the same Advocate Mansha Ram, but he failed to disclose about the existence of the Will in the mutation application, which is beyond comprehension. The propounder of Will DW-1 has admitted in his cross-examination that the above mutation proceedings were initiated by him. The above evidence leads to the irresistible conclusion that the alleged Will of the testator was not in existence till 12.12.2002 and it was prepared subsequently, to counter the mutation application moved by the plaintiff Sudha Srivastava PW-1 on the basis of registered Will of testator dated 20.9.1996.

(v)Evidence of Lalji DW-2, the attesting witness of the alleged Will:-

66. From the cross-examination of Lalji DW-2 it is evident that his affidavit in examination-in-chief, was prepared by

Rakesh Lal Srivastava, and he has merely signed it without reading it, he was not aware of its contents. In similar circumstances, the Apex Court in the case of *A. Kamala Bai* (supra) has held that such attesting witness does not inspire confidence and on the basis of the above statement, the execution of the Will is not proved.

67. DW-2 admitted that previously he had also given his testimony in tehsil. He also admitted that Dulari Devi is his wife, in whose favour Rakesh Lal has executed a sale deed of land of 4 decimal.

68. It is apparent that Rakesh Lal, has executed a sale deed of four decimal land in favour of the wife of DW-2, and due to this reason, DW-2 Lalji has been planted as an attesting witness of the alleged Will.

(vi) Reason for revoking earlier Will dated 20.9.1996:-

69. The alleged Will dated 25.5.2002 discloses that previously, due to fraud committed on him, the testator had executed Will dated 20.9.1996 bequeathing his ancestral property in favour of his daughter and sons of deceased daughter, regarding which he was not aware and when he became aware of the above fact, he decided to revoke his earlier Will dated 20.9.1996. By the subsequent Will dated 25.5.2002, the residential house no.B.26/116-A, situated in Nawabganj, Bhelupura, Varanasi and other immovable properties of the testator were bequeathed to the sons of his deceased elder brother Lakshmilal namely Krishna Kumar, Awadesh Kumar, Madan Kumar, Manoj Kumar, Santosh Kumar and Rakesh Lal whereas, the movable property including cash and jewellery was bequeathed to his

daughter Sudha Devi and sons of deceased daughter Radha Devi.

70. It is apparent that the reason assigned by the testator for revoking his earlier Will dated 20.9.1996 is not very convincing. The alleged Will dated 25.5.2002 discloses that a fraud was committed upon the testator. From the testimony of plaintiff Sudha Srivastava PW-1 it is evident that she was looking after her father/testator Parmanand Lal, who was bedridden, since the last two years prior to his death, as such, the reason assigned by the testator that a fraud was played upon him by his daughter and the sons of the deceased daughter, is not at all reliable.

Conclusion of the Court

71. From the above evidence on record, it is proved that Parmanand Lal (testator) was bedridden, was in ill health and was unable to go to the civil court for executing the alleged Will dated 25.5.2002. It is also apparent that there is considerable doubt regarding the place where the alleged Will was prepared. In the mutation proceedings, the propounder of the alleged Will Rakesh Lal Srivastava deposed that the alleged Will was prepared in the Civil Court Varanasi, but subsequently, he deposed that it was typed by the testator at his house situated in Nawabganj, Bhelupura Varanasi. Further, the attesting witness Lalji deposed that it was prepared at the Durgakund house of the testator, which is contradictory to the place deposed by the propounder. It is also evident that the propounder has taken active part in the preparation of the alleged Will. It is also evident that in the mutation application filed by the propounder before the court of tehsildar Varanasi, the

propounder and his brothers claimed ownership of the agricultural land on the basis of inheritance, being the legal heirs of the deceased testator. No plea of ownership on the basis of alleged Will was taken in the above mutation proceedings. It is very surprising that if the propounder was in possession of the alleged Will and on the basis of that Will, he became the owner of the agricultural land after the death of the testator, then why it was not mentioned in the mutation application. It is all the more surprising that the mutation application and the alleged Will was drafted by the same Advocate Mansha Ram, who was very well aware about the existence of the alleged Will at the time of moving the mutation application before the revenue court, but the fact of the existence of the alleged Will and acquisition of ownership on the basis of that Will, was never mentioned by the Advocate while moving the mutation application. This fact itself proves that at the time of moving the mutation application on 12.12.2002, the alleged Will was not in existence and it was subsequently, put up to counter the mutation application moved by the plaintiff Smt. Sudha Srivastava, who had alleged ownership of the disputed agricultural land on the basis of earlier registered Will dated 20.9.1996 of the testator. It is also apparent that the attesting witness Lalji being the beneficiary of land, allegedly sold to him by the propounder, was an interested witness whose evidence does not inspire confidence. It is further evident that the reason assigned by the testator for revoking his earlier Will are not at all convincing.

72. From the above circumstances proved by cogent evidence, the propounder of the alleged Will has not been able to dispel the suspicious circumstances surrounding the execution of the alleged

Will. It is well settled that in such cases, judicial conscience must be satisfied that the alleged Will was indeed executed by the testator and it was the last Will of the testator, but in the present case, the judicial conscience has not been satisfied. The execution of the alleged Will is shrouded in grave suspicion, which has not been dispelled by the propounder to the satisfaction of this Court.

73. In view of the above analysis, the trial court has not erred in rejecting the Probate application of the propounder of the alleged Will dated 25.5.2002 and allowing the Probate application of the propounder of earlier Will dated 20.9.1996. Accordingly, the instant appeals have no merit and are liable to be dismissed.

74. Accordingly, First Appeal No. 1276 of 2023 and 1274 of 2023, are dismissed. Costs easy.

75. The impugned judgement and order of the trial court dated 18.10.2023 is affirmed.

(2025) 12 ILRA 1129
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.12.2025

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE ZAFEER AHMAD, J.

Habeas Corpus Writ Petition No. 565 of 2025

Smt. Guddi Devi & Anr.	...Petitioners
Versus	
State Of U.P. & Ors.	...Respondents

Issue for Consideration

Whether a writ of Habeas Corpus is maintainable against an order of the Child Welfare Committee directing detention of the

corpus in a Government Children Home, and whether the order dated 09.06.2025 declaring the corpus to be a minor on the basis of school transfer certificate without following the procedure under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, was without jurisdiction and illegal.

Headnotes

Constitution of India — Art. 226 — Habeas Corpus — Juvenile Justice (Care and Protection of Children) Act, 2015 — ss.2(12), 27(9), 29, 94 — Age determination — School transfer certificate — Photocopies — No proof — No evidence — Mechanical order — Jurisdiction of Child Welfare Committee — Maintainability of Habeas Corpus — Detention illegal — Release directed.

Held:

A writ of Habeas Corpus is not to be entertained when a person is detained pursuant to an order of a competent court which prima facie does not suffer from lack of jurisdiction or absolute illegality. However, if the order is without jurisdiction, wholly illegal or passed mechanically without application of mind, the writ would be maintainable. The Full Bench decision in *Rachna v. State of U.P.* does not bar a petition for Habeas Corpus where the order of the Child Welfare Committee is without jurisdiction or a nullity. [Paras 5–7]

Under Section 94 of the Act, 2015, age determination requires obtaining date of birth certificate from the school or matriculation certificate and, in absence thereof, birth certificate from local authority and only thereafter medical test. A transfer certificate or entries in admission register are not date of birth certificates within the meaning of Section 94(2)(i). Mere production of school records is insufficient; the Committee, having powers of a Judicial Magistrate under Section 27(9), must take evidence and scrutinize the genuineness and source of entries. [Paras 8–12]

The Child Welfare Committee relied only on photocopies of transfer certificates and scholar register without summoning and proving original records, without examining the Headmaster on

oath regarding the source of entry of date of birth and without recording any finding regarding genuineness. The father was also not examined. The procedure under Section 94 was not followed. [Paras 13–14]

In absence of proper age determination, the essential condition for exercise of jurisdiction under Sections 2(12), 29 of the Act, 2015 did not exist. The order dated 09.06.2025 was passed mechanically and without application of mind, was without jurisdiction and a nullity. [Para 14]

The medical report indicated the age of the corpus to be 18 years or above. In absence of any legally admissible contrary evidence, the corpus was not a “child” under Section 2(12) of the Act, 2015 and the Child Welfare Committee had no jurisdiction to detain her. [Para 14]

Accordingly, writ of Habeas Corpus issued directing immediate release of the corpus from Government Children Home (Girls), Sindhi Kheda Ashray Griha Paara, Lucknow. Petition allowed. [Paras 15–16] (E-14)

Case Law Cited

Rachna and another v. State of U.P. and others, AIR 2021 All 109 (FB) — considered; Ummu Sabeena v. State of Kerala, (2011) 10 SCC 781 — relied on; Madhu Limaye, In re, (1969) 1 SCC 292 — referred to; Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 — relied on; P. Yuvaprakash v. State Rep. by Inspector of Police, 2023 SCC OnLine SC 846 — relied on; Suresh v. State of Uttar Pradesh and another, 2025 SCC OnLine SC 1579 — relied on.

List of Acts / Statutes

Constitution of India; Juvenile Justice (Care and Protection of Children) Act, 2015; Juvenile Justice (Care and Protection of Children) Rules, 2016; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Habeas Corpus; Child Welfare Committee; Age determination; Transfer certificate; School records; Mechanical order; Lack of jurisdiction; Detention; Release of corpus.

Case Arising From

Order dated 09.06.2025 passed by the Child Welfare Committee, Shahjahanpur declaring the corpus to be a minor and directing her placement at Government Children Home (Girls), Sindhi Kheda Ashray Griha Paara, Lucknow, pursuant to Case Crime No. 95 of 2025 under Section 137(2) B.N.S., Police Station concerned.

Appearance for Parties

For the Petitioners: Ashok Kumar Mishra; Shivesh Mishra

For Respondents (State): G.A.

(Delivered by Hon'ble Salil Kumar Rai, J.)

The present petition has been filed for a writ of Habeas Corpus for release of petitioner no. 1 from what is alleged to be an illegal detention by the State respondents. The petitioners claim to be married and that petitioner no. 2 is the husband of petitioner no. 1.

It is claimed in the writ petition that the date of birth of petitioner no. 1 is 01.01.2004 and petitioners married according to Hindu Rites and Customs on 25.04.2025 at Arya Samaj, Damodar Puram, Subhash Nagar, Bareilly. It has been stated that petitioner no. 1 voluntarily left her parental home and married petitioner no. 2 and no force or coercion was applied on her either to leave her parental home or marry petitioner no. 2. On 27.04.2025, the respondent no. 4 who is the father of petitioner no. 1 lodged a first information report registering Case Crime No. 95 of 2025 under Section 137 (2) of the Bhartiya Nyay Sanhita, 2023 (hereinafter referred to as 'BNS'). It was stated in the first information report that petitioner no. 1 was aged 16 years and 9 months. The first information report was challenged by the petitioners before this Hon'ble Court through Criminal Misc. Writ Petition No.

9227 of 2025 in which an order dated 08.05.2025 was passed restraining the respondents from arresting the petitioners for a period of two months. The relevant portion of the order is reproduced below:-

"4. Be that as it may, the writ petition is disposed off with a direction to the Investigating Officer to record the statement of the girl under Section 180 BNSS and also produce the petitioner No.1 before the concerned Chief Judicial Magistrate for recording her statement under Section 183 BNSS within two weeks from today. In the event, the petitioner No.1 appears before the concerned Chief Judicial Magistrate within stipulated period, the Chief Judicial Magistrate concerned shall record her statement under Section 183 BNSS and also ensure her medical age determination and thereafter the Investigating Officer shall proceed in accordance with law.

5. For a period of two months, the respondents are restrained to arrest the petitioners pursuant to impugned first information report."

(Emphasis supplied)

In pursuance to the order dated 08.05.2025 passed by this Court, the statement of petitioner no. 1 was recorded under Section 180 BNSS wherein the petitioner no. 1 stated that she was aged about 21 years, had voluntarily gone with the petitioner no. 2 and that petitioners had married in Arya Samaj, Damodar Puram, Subhash Nagar, Bareilly and were living as husband and wife. Petitioner no. 1 was also medically examined. The medical report dated 28.05.2025 submitted by the Medical Officer, District Women Hospital, Shahjahanpur reported that the radiological

age of petitioner no. 1 was 19 years. The statement of petitioner no. 1 was also recorded under Section 183 BNSS wherein she reiterated her statement given under Section 180 BNSS. Subsequently, petitioner no. 1 was produced before the Child Welfare Committee, Shahjahanpur which by its order dated 09.06.2025 declared that petitioner no. 1 was a minor and directed that she be kept at Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow. The Child Welfare Committee while passing the aforesaid order relied on the transfer certificate issued by the Purva Madhyamik Shankarpur Pitarhigh, Shahjahanpur which noted the date of birth of petitioner no. 1 as 10.07.2008. The certificate was verified by the Principal of the aforesaid institution when the Principal was summoned by the Child Welfare Committee. The Child Welfare Committee held that while determining the age of petitioner no. 1, the date of birth as recorded in the school records had to be given priority over radiological examination. A counter affidavit on behalf of the respondent has been filed by the Additional Government Advocate annexing the different school records and the medical report of petitioner no. 1.

The writ petition was subsequently amended including the prayer to quash the order dated 09.06.2025 passed by the Child Welfare Committee, Shahjahanpur.

It has been argued by the counsel for the petitioners that petitioner no. 1 is major as would be evident from the medical report as well as her statement recorded under Sections 180 and 183 BNSS and is not a child as defined under the Juvenile Justice (Care and Protection of Children) Act, 2015. It was argued that the petitioners

are married according to Hindu rites and the said marriage is a valid marriage under the Hindu Marriage Act, therefore, the father of petitioner no. 1 had no guardianship rights over the petitioner no. 1 and the order of the Child Welfare Committee dated 09.06.2025 is without jurisdiction. It has been further argued that the order dated 09.06.2025 has been passed by the Child Welfare Committee mechanically and without application of mind. It has been argued that for the aforesaid reason, the detention of petitioner no. 1 at Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow is illegal and without authority of law. It was further argued that the order dated 09.06.2025 passed by the Child Welfare Committee is liable to be quashed and writ is to be issued to release petitioner no. 1.

Rebutting the argument of the counsel for the petitioners, the Additional Government Advocate has mainly argued that the corpus is kept at Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow on the orders of the Child Welfare Committee which is a Court, therefore, the present petition for a writ of Habeas Corpus is not maintainable. In support of his contention, the AGA has mainly relied on the judgment of Full Bench of this Court reported in ***Rachna and Anr. vs. State of U.P. and Ors.*** AIR 2021 All 109 (FB). It was argued that under Section 94 of Act, 2015, the school records have priority over medical report and because the corpus is below 18 years of age and minor according to school records, therefore, the order dated 09.06.2025 passed by the Child Welfare Committee is in accordance with law and there is no illegality in the aforesaid order so as to occasion interference by this Court

under Article 226 of the Constitution of India. It was argued that for the aforesaid reasons, the writ petition is liable to be dismissed.

We have considered the submission of the counsel for the parties.

It would be appropriate that the objections of the AGA to the maintainability of the present Habeas Corpus petition be considered first.

The AGA argues that the Habeas Corpus petition is not maintainable because the corpus is detained at Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow on the orders of the Child Welfare Committee which is a Court. The AGA relies on Section 27 (9) of the Act, 2015 which provides that the Child Welfare Committee shall function as a bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of I Class to argue that the Child Welfare Committee is a Court. In support of his contention, the AGA has relied mainly on the judgment of the Full Bench of this Court in ***Rachna and Anr. (supra)***.

It has been observed by the Supreme Court in ***Ummu Sabeena vs. State of Kerela & Ors. (2011) 10 SCC 781*** that procedural safeguards given for protection of personal liberty must be strictly followed. The history of personal liberty is a history of insistence on procedural safeguards. It was observed by the Supreme Court that the principal of Habeas Corpus has been incorporated in our Constitutional law and in a democratic republic, the Judges owe a duty to safeguard the liberty

not only of the citizens but also of all persons within the territory of India. The most effective way of doing the same was by way of exercise of power by the Court by issuing a writ of Habeas Corpus. It was further observed that the aforesaid facet of the writ of Habeas Corpus makes it a writ of the highest constitutional importance being a remedy available to the lowliest citizens against the most powerful authority. It has been said that the writ of Habeas Corpus is the key that unlocks the door to freedom.

It is in the above background that we shall consider the objections regarding the maintainability of the present petition.

The issue as to whether a petition for writ of Habeas Corpus was maintainable in cases of detention by an order of the Court was considered by the Supreme Court in several cases and it has been held that a writ of Habeas Corpus was not to be entertained when a person is put to judicial custody or police custody by the competent Court by an order which prima facie did not appear to be without jurisdiction or was not passed in an absolutely mechanical manner or was not wholly illegal. The aforesaid implies that in case, the order of the court was without jurisdiction or was passed in an absolutely mechanical manner or was wholly illegal, the petition for Habeas Corpus would be maintainable and a writ directing release of the detainee would be issued. At this stage, it would be relevant to consider two decisions of the Supreme Court.

The Supreme Court in ***Madhu Limaye, In re, (1969) SCC 292***, while considering the legality of the detention after a judicial remand, observed that for successfully opposing the petition for

Habeas Corpus, it was necessary for the State to establish that at the stage of remand, the Magistrate directed detention in jail custody, after applying his mind to all relevant matters. Similarly, in ***Manubhai Ratilal Patel Tr.Ushaben vs. State of Gujarat (2013) 1 SCC 314***, the Supreme Court considered the legality of the remand orders passed by the Magistrate and dismissed the Habeas Corpus petition after noting that there was no illegality in the order passed by the Magistrate remanding the accused to judicial custody. The observations of the Supreme Court in paragraph no. 24 and 25 of the aforesaid judgment are reproduced below:-

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand

automatically or in a mechanical manner.

25. It is apt to note that in Madhu Limaye, In re [(1969) 1 SCC 292 : AIR 1969 SC 1014] it has been stated that : (SCC p. 299, para 12)

"12. Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters."

(Emphasis supplied)

It be noted that in the aforesaid paragraphs, the Supreme Court has observed that it was obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. The condition that an order shall not be passed in a mechanical manner and should be passed after application of mind is an essential feature of a judicial order. The Supreme Court in ***Manubhai Ratilal Patel (supra)*** further observed in paragraph no. 31:-

"31. ... It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramchandra Rao [(1972) 3 SCC 256: 1972 SCC (Cri) 481: AIR 1971 SC 2197] and Kanu Sanyal [(1974) SCC 141:1974 SCC (Cri) 280], the court is required to scrutinize the legality or otherwise of the

order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted.

...

...

..."

(Emphasis supplied)

It is apparent from the observations of the Supreme Court reproduced above that in a Habeas Corpus petition, the legality of a detention order can be examined to ascertain whether the order suffers from a lack of jurisdiction or is absolutely illegal or has been passed in a wholly mechanical manner. If the order detaining the person is without jurisdiction or is absolutely illegal or has been passed in a mechanical manner, a writ of Habeas Corpus directing the release of the detenue would be issued.

The judgment of the Full Bench of this Court in ***Rachna and Anr. (supra)*** which has been relied upon by the AGA does not hold that a petition for Habeas Corpus would not be maintainable even in circumstances where an order passed by the Child Welfare Committee would be without jurisdiction and a nullity or where the order has been passed mechanically and without application of mind.

In the present case, the Child Welfare Committee has passed the order detaining the corpus, i.e., petitioner no. 1 on the ground that the corpus was a child and her date of birth is 10.07.2008 relying on the

transfer certificates of Class V and VII and the scholar register of the Purva Madhyamik Vidyalaya Shankarpur Pitarhigh, Shahjahanpur. The medical report indicates that the age of petitioner is above 19 years.

Child has been defined under Section 2(12) of the Act, 2015 to mean a person who has not completed 18 years of age. Under Section 29 of the Act, 2015, the Child Welfare Committee has been empowered to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. The definition of "child in need of care and protection" is not relevant in the present case. The issue in the present case is as to whether the corpus, i.e., the petitioner no. 1 is a child as defined in Section 2 (12) of the Act, 2015 and thus covered by Section 2 (14) and whether the Child Welfare Committee had the jurisdiction to take the corpus, i.e., the petitioner no. 1 under its protection and custody and act in exercise of powers under Section 29 of the Act, 2015. The decision on the issue is dependent on the determination of age of the corpus, i.e., the petitioner no. 1.

Rule 19 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2016 states that in any inquiry as to whether any person produced before it was a child in need of care and protection, the Committee shall, prima facie, determine the age of child in order to ascertain its jurisdiction pending further inquiry as per Section 94 of the Act, if need be. Section 94 of the Act, 2015 is reproduced below:-

"94. Presumption and determination of age.—(1) Where, it is

obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of

person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

(Emphasis supplied)

A reading of Section 94 of the Act, 2015 shows that the Committee shall undertake the process of age determination by seeking evidence, first by obtaining **the date of birth certificate** from the school, if available, and in absence thereof, the birth certificate given by the local body, and in absence of birth certificates, the age shall be determined by the latest medical age determination test conducted on the orders of the Committee. Mere production of the school records would not be sufficient for the Committee to determine the age of the person produced before it. As provided in Section 27 (9) of the Act, 2015, the Child Welfare Committee has powers conferred by the Code of Criminal Procedure, 1973 on the Judicial Magistrate of I Class. The Committee, thus, has the power to take evidence on oath and to scrutinize the evidence produced before it. The Committee has to act judicially. In case the Child Welfare Committee fails to scrutinize evidence and passes a mechanical order accepting the school records produced before it without any application of mind and without the records being proved as required in law, the order of the Child Welfare Committee would be absolutely illegal and a Habeas Corpus petition would lie before the Court for release of the person who has been taken in its custody by the Child Welfare Committee.

A reading of Section 94(2) of the Act, 2015 also shows that the school records, i.e., entries in the admission register or in the transfer certificate are not the documents stipulated in the aforesaid

provision as evidence of the date of birth of the person produced before the Committee. Section 94(2) (i) provides that date of birth certificate shall be obtained from the school. A transfer certificate or entries in the admission register of the school **are not date of birth certificates**. In our aforesaid view, we are supported by the judgment of Supreme Court in *P. Yuvaprakash vs. State Rep. by Inspector of Police 2023 SCC OnLine SC 846*.

In the aforesaid case, the school transfer certificate was produced to prove the age of the child. The Supreme Court held that a school transfer certificate cannot be relied upon to determine the age of child under the Act, 2015. In this context, the observation of the Supreme Court in paragraph nos. 14, 18 and 19 of the aforesaid judgment are reproduced below:-

"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.

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....

....

Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

*18. Reverting to the facts of this case, the headmaster of M's School, CW- 1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalpalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. **She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded.** It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.*

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate

*from the school” or “the matriculation or equivalent certificate” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim’s age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating “that the age of the said girl would be more than 18 years and less than 20 years”. In the cross-examination, she admitted that M’s age could be taken as 19 years. However, the High Court rejected this evidence, saying that “when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor”. This finding is, in this court’s considered view, incorrect and erroneous. **As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim’s bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone***

test was the most authentic evidence, corroborated by the examining doctor, PW-9.”

(Emphasis supplied)

The Supreme Court in **Suresh vs. State of Uttar Pradesh and Anr. 2025 SCC OnLine SC 1579** while considering Rule 12 (3) of the rules framed under The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'Act, 2000') held that the entries in the school records would not be acceptable to determine the age of girl on the testimony of the school's Headmaster in case the date of birth in the school records has been entered on the oral representation of the parents of the person claiming juvenility. Observations of the Supreme Court in paragraph nos. 21, 23, 24 and 25 of the aforesaid judgment are reproduced below:-

21. There is no dispute on the factum that Kaushik Modern Public School, Khurgaon – the first attended school – is not a Government School and thus, the records maintained by the said School would not be ‘public documents’. Moreover, the Headmaster/Principal of such School cannot be said to be a ‘public servant’ for the purposes of the Evidence Act. The Headmaster when examined has himself taken the stand that Kaushik Modern Public School, Khurgaon was only a State Government-recognized school.

23. Even otherwise, in the case at hand, except for the Headmaster’s sole testimony, there is no material to establish that the date 18.04.1995 as Respondent No.2’s date of birth, as recorded in the certificate issued by Kaushik Modern Public School, Khurgaon, was correct. As a matter of fact, the Principal in his cross-

examination stated that when the Respondent No.2 was leaving the school on that day after making cutting he had written the correct date of birth. Moreover, the Principal has also stated that the birth-date entry was made on the basis of an oral representation alone by Respondent No.2's father and when he was asked for the horoscope or any other document in support of the date of birth of the Respondent No.2, nothing was submitted. This, in our view, discredits the certificate issued by the Kaushik Modern Public School, Khurgaon. As noted hereinbefore, the other school certificates were issued following this and therefore, meet the same fate inasmuch as they cannot be treated as correct, in the face of conflicting public records and public documents as also the Medical Report which state to the contrary.

...

...

...

24. Rule 12(3)(a) of the Rules lays down the sequential list of certificates to be examined and the order thereof. As no 'matriculation or equivalent certificates' were available under Rule 12(3)(a)(i) of the Rules, thus under Rule 12(3)(a)(ii) of the Rules, 'date of birth certificate from the school (other than a play school) first attended' was attracted and certificate issued by Kaushik Modern Public School, Khurgaon was taken as conclusive proof of date of birth. However, the deposition of the School's Headmaster, especially to the effect that the birth-date was noted as per an oral representation by Respondent No.2's father, makes the said certificate unreliable. Moving on, Rule 12(3)(a)(iii) and Rule 12(3)(b) of the Rules, respectively, provide for 'birth

certificate given by a corporation or a municipal authority or a panchayat' and 'only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.'

25. From an overall circumspection of all the facts and circumstances surrounding the case, including the Rules, the picture which emerges is that on the one hand, there is the certificate backed by the testimony of the Headmaster of the first school (which as indicated supra notes that the recordal was made on the oral say-so of Respondent No.2's father) relating to the date of birth and the three consequentially-made/issued certificates, whereas on the other hand, there exists a statutory document, being a public record and a public document, in Form (A) under Rule 2 of the Rules framed under the U.P. Panchayat Raj Act, 1947 disclosing the year of birth of Respondent No.2 as 1991 as also the entry in the Voters' List for the Legislative Assembly of the year 2012 and the Medical Report apropos the age of Respondent No.2 given by the Chief Medical Officer, Muzaffarnagar, who opined that Respondent No.2 was aged about 22 years on 01.12.2012. As such, the certificate issued by Kaushik Modern Public School, Khurgaon could not have been taken as conclusive proof of date of birth of Respondent No.2, discarding Form (A) under Rule 2 of the Rules under the U. P. Panchayat Raj Act, 1947; the entry in the Voters' List for the Legislative Assembly of the year 2012, and; the Medical Report. On the basis of the latter three documents, it is clear that Respondent No.2 cannot be said to have been a 'juvenile' on the date of the unfortunate incident."

(Emphasis supplied)

A perusal of the order dated 09.06.2025 would show that the documents relied upon by the Child Welfare Committee were photo copies of school documents referred above and the original records were not produced by the Headmaster of the institution even though, the Child Welfare Committee had summoned the original documents. There is nothing on record to indicate that any evidence was taken from the Headmaster of the institution to verify the photo copies produced before the Child Welfare Committee. There is also nothing on record to indicate as to how and on whose representation, the date of birth of the corpus, i.e., petitioner no. 1 was entered in the school records. Apparently, while determining the age of the corpus, i.e., the petitioner no. 1 and while holding that the corpus was a minor, therefore, a child as defined under Section 2(12) of the Act, 2015 and was a child in need of care and protection, the Child Welfare Committee has not taken any evidence and has not followed the procedure prescribed in Section 94 of the Act, 2015.

In the present case, the Child Welfare Committee has not recorded any finding as to the genuineness of the school records produced before it. There is nothing on record disclosing the source of entries made in the school record and the reliability of such source. The entries in school record were also not proved as required by law. The Child Welfare Committee has also not taken the evidence of the Principal of the institution to verify the school records produced before it. The father of the corpus was also not called by the Child Welfare Committee to verify the age of the corpus. It is apparent that there is no determination of the age of the corpus by the Child Welfare Committee. The

essential condition for holding that the corpus is a minor and below 18 years of age, i.e., a child as defined under Section 2 (12) of the Act, 2015 and the Child Welfare Committee has the jurisdiction to take the corpus under its care and protection or in custody do not exist. The order passed by the Child Welfare Committee has been passed mechanically and without any application of mind. The order dated 09.06.2025 is without jurisdiction and nullity. The detention of the petitioner in 09.06.2025 is without jurisdiction.

There is no other document on record except the medical report, to determine the age of the corpus. The medical test determining the age of petitioner no.1 indicates that the age of corpus, i.e., petitioner no. 1 is 18 years or above and is, therefore, not a child as defined in Section 2(12) of Act, 2015. The Child Welfare Committee has no jurisdiction to take the corpus, i.e., petitioner no. 1 under its care and protection or keep her in Government Children's Home or anywhere else. The detention of corpus, i.e., petitioner no. 1 in Rajkiya Balgrih (Balika), Sindhi Kheda Ashray Griha Paara, Lucknow is without jurisdiction.

For the aforesaid reasons, a writ of Habeas Corpus is to be issued to release Smt. Guddi Devi, corpus, i.e., petitioner no. 1. Consequently, a writ of Habeas Corpus is issued directing the Superintendent, Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow and the Chairman, Child Welfare Committee, Shahjahanpur to release forthwith Smt. Guddi Devi, petitioner no.1. The corpus, i.e., the petitioner no. 1 is free to go wherever she likes and to stay with whomsoever she wants including the petitioner no. 2.

In view of the aforesaid, the petition is *allowed*.

A copy of this order be communicated for necessary compliance to the Superintendent, Government Children Home (Girls) Sindhi Kheda Ashray Griha Paara, Lucknow and the Chairman, Child Welfare Committee, Shahjahanpur by the Registrar (Compliance) within one week.

(2025) 12 ILRA 1141
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 02.12.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Matters Under Article 227 No. 6938 of 2025

Parshuram & Anr. ...Petitioners
Versus
S.D.M., Utraula, Balrampur & Ors.
...Respondents

Issue for Consideration

Whether proceedings under Section 116 of the U.P. Revenue Code, 2006 pending before the Sub-Divisional Magistrate can remain undecided beyond the statutory period of six months on the ground of continuous strike of the Bar Association, and whether such delay attracts consequences of contempt in view of the directions issued in *Daya Shankar v. State of U.P.*?

Headnotes

U.P. Revenue Code, 2006 — S. 116 — U.P. Revenue Code Rules, 2016 — R. 109(10) — Constitution of India — Art. 227 — Expeditious disposal — Time-bound proceedings — Continuous strike of Bar — Contempt — Liability of office bearers of Bar Association — General directions.

Held:

Rule 109(10) of the Rules, 2016 mandates that the Sub-Divisional Officer shall make endeavour

to decide a suit under Section 116 of the Code within six months and if not decided, reasons must be recorded. [Paras 3, 5]

This Court in *Daya Shankar v. State of U.P.*, 2023 (6) A.D.J. 181, issued binding directions that where time is prescribed under the Code or Rules, the Presiding Officer is duty bound to conclude proceedings within such period, failing which he may be liable for contempt, unless reasonable explanation exists. It was further directed that litigants need not file writ petitions for expeditious disposal but may invoke contempt jurisdiction in case of violation. [Paras 5–6]

From the order sheet it appeared that the proceedings under Section 116 were pending primarily due to continuous strike by the Bar Association of Tehsil Utraula. In such circumstances, prima facie, delay was attributable to strike and not to the Presiding Officer. [Para 7]

Held, in view of statutory mandate and binding directions in *Daya Shankar*, the Sub-Divisional Magistrate, Tehsil Utraula, District Balrampur is directed to decide Case No. 7405 of 2022 within six months. It is clarified that if adjournments occur due to continuous strike of the Bar Association, the office bearers of the concerned Bar Association shall be liable for contempt for causing obstruction in compliance of directions issued in *Daya Shankar*. [Paras 9–10]

General directions issued for entire State of U.P. that where proceedings under the Revenue Code are not concluded within the time fixed by statute or by this Court due to continuous strike of Bar Associations at Tehsil, Collectorate or Commissionerate level, office bearers of such Bar Associations would be liable for contempt and parties would be at liberty to initiate contempt proceedings. [Para 10]

Direction issued to circulate the order through Chairman, Board of Revenue to all Revenue Authorities. [Para 12]

Petition disposed of. [Para 11]. (E-14)

Case Law Cited

Daya Shankar v. State of U.P. and others, 2023 (6) A.D.J. 181 — Relied on.

List of Acts / Statutes

Constitution of India; U.P. Revenue Code, 2006; U.P. Revenue Code Rules

List of Keywords

Revenue proceedings; Time-bound disposal; Continuous strike; Bar Association; Contempt; General directions; Expeditious disposal.

Case Arising From

Case No. 7405 of 2022 (Computerized Case No. T202208100307405), under Section 116 of the U.P. Revenue Code, 2006, *Parshuram and others v. Ramdeen and others*, pending before Sub-Divisional Magistrate, Tehsil Utraula, District Balrampur.

Appearance for Parties

For Petitioners: Shri Vimal Kishor Singh; Premkant.

For Respondents: Shri Yogesh Kumar Awasthi, learned Standing Counsel; C.S.C.; Pankaj Gupta.

(Delivered by Hon'ble Arun Kumar Singh
Deshwal, J.)

1. Heard Shri Vimal Kishor Singh, learned counsel for the petitioners and Shri Yogesh Kumar Awasthi, learned Standing Counsel for the State-respondent.

2. The present writ petition has been filed with the following prayer:-

"(i) to direct the opposite party no.1 to decide Case No. 7405/2022, Computerized Case No. T202208100307405 under Section 116 of the U.P. Revenue Code, 2006, 'Parshuram and others Vs. Ramdeen and others', pending before him since 11.11.2022, expeditiously within time stipulated by this Hon'ble Court."

3. Learned counsel for the petitioners has submitted that the suit under Section

116 of the U.P. Revenue Code, 2006 is pending since 2022 and till date the same has not been decided by the concerned Sub Divisional Magistrate. Though, as per Rule 109 (10) of the Rules, 2016 the Sub Divisional Magistrate, shall make endeavor to decide the said suit within a period of six months, except the reasons to be followed.

4. A request has been made that the S.D.M., Tehsil Utraula, District Balrampur be directed to decide the Case No. 7405 of 2022, under section 116 of the U.P. Revenue Code, 2006, in time bound manner.

5. This Court had occasion to consider the issue of expeditious disposal of cases under U.P. Revenue Code in the case of *Daya Shankar Vs. State of U.P. and others 2023 (6) A.D.J. 181*, wherein a direction was issued that in case a time has been fixed in the U.P. Revenue Code or Rules framed therein, then a concerned Presiding Officer is duty bound to decide the proceedings within the time prescribed by the Revenue Code as well as Rules framed therein. This Court further prescribed the time limit for deciding the other proceedings under Revenue Code, where no specific provision has been provided under U.P. Revenue Code or Rules framed therein regarding the time, in which the proceedings has to be concluded. Paragraphs no. 12, 13, 14, 15, 16, 17, and 18 of *Daya Shankar's* case have been quoted as under:-

" 12. For the proceeding mentioned above, the legislature has provided time bound disposal for some of the proceedings but despite specific time fixed by the Code, 2006 proceeding could not be decided for a number of reasons and in most of the cases due to negligence on

the part of presiding officers or due to the absence of sufficient number of presiding officers as well as the continuous strike of bar in Tehsil or Collectorate. The following provisions of Code, 2006 provide a specific time for deciding the proceedings as follows:-

(i) Dispute regarding boundaries by Sub-Divisional Officer is to be decided within three months from the date of the application as per Section 24(3) of Code, 2006 which is quoted as below:-

"24(3). Every proceeding under this section shall, as far as possible, be concluded by the Sub-Divisional Officer within three months from the date of the application."

(ii) Mutation proceedings u/s 35 of Code, 2006 is to be decided within 45 days if mutation is undisputed and within 90 days if mutation is disputed as per Rule 34(7) of Rules, 2016 which is quoted as below:-

"34(7). The Tahsildar shall make an endeavour to decide the undisputed case of mutation within the period of 45 days from the date of the registration of the case and the disputed case of mutation within the period of 90 days and if the proceeding is not concluded within such period the reason for the same shall be recorded"

(iii) Proceeding for correction of record as per Section 38 of Code, 2006 is to be decided within 45 days from the date of receiving application with the report as per Rule 36(6) of Rules, 2016 which is quoted as below:-

"36(6). An endeavour shall be made to conclude the proceeding for correction under section 38 within the period of 45 days from the date of receiving the application with the report and if the proceeding is not concluded within such

period the reasons for the same shall be recorded."

(iv) Application for cancellation of irregular allotment of abadi side u/s 66 should be decided within six months as per Rule 65(10) of Rules, 2016 which is quoted as below:-

"65(10). The Collector shall make an endeavour to conclude the inquiry within the period not exceeding six months from the date of registration of the case and if the inquiry is not concluded within the period aforesaid the reason for the same shall be recorded."

(v) Proceeding to prevent wrongful occupation and damage of Gram Sabha property u/s 67 is to be decided within the period of 90 days as required by Rule 67(6) of Rule, 2016 which is quoted as under:-

"67(6). The Assistant Collector shall make an endeavour to conclude the proceeding under section 67 of the Code within the period of ninety days from the date of issuance of the show cause notice and if the proceeding is not concluded within such period the reasons for the same shall be recorded."

(vi) Proceeding for granting permission to transfer the land of scheduled caste under Section-98 should be completed within period of 15 days as per Rule 99(11) and which is quoted as under:

"99(11). The Collector shall make an endeavour to dispose of the application under section 98(1) within the period of fifteen days from the date of receiving the report submitted by the inquiry officer and if the application is not disposed of within such period the reason for the same shall be recorded."

(vii) For division of holding under Section 116 of the Code, 2006 is to be decided within a period of six months as

provided by Rule 109(10) of Rules, 2016 which is quoted as under:-

"109(10). The Sub-Divisional Officer shall make an endeavour to decide the suit within the period of six months and if the suit is not decided within such period, the reason shall be recorded."

(viii) Proceeding for cancellation of irregular allotment of agricultural land u/s 128 should be completed within a period of three months as per Rules 126(6) of Rules, 2016 which is quoted as under:-

"126(6). The Collector shall endeavour to conclude the enquiry within the period of three months from the date of issuance of notice and if the enquiry is not concluded within the period of three months, the reasons for the delay shall be recorded."

13. Apart from the above proceeding for which specific time frame was fixed by the legislature in the Code, 2006 or in the Rules, 2016 there are other proceedings for which no time frame has been fixed either in Code, 2006 or in Rules, 2016 therefore, the concerned presiding officer or the revenue officer should make endeavour to decide these proceedings in following manner :-

(i) Application for right of way and other easement u/s 25 should be decided within a period of one month and if the same could not be concluded then reason for the same should be recorded.

(ii) Application for removal of obstacle from public road, path or common land of village u/s 26 should endeavour to be decided within a period of one month and if the same could not be concluded then reason for the same should be recorded;

(iii) Application u/s 58 to decide the dispute regarding property mentioned in Sections 54, 56 and 57 should be decided preferably within a period of three months

from the date of application and if the same could not be decided then reason for the same should be recorded;

(iv) Application u/s 65 for delivery of possession of allotted land from unauthorized person should be decided preferably within a period of three months and if the same could not be concluded then reason for the same should be recorded;

(v) Application for the execution of the final decree passed u/s 116 of Code, 2006 by demarcation of Kurra on site should be decided within a period of one month and if the same could not be concluded then reason for the same should be recorded;

(vi) A suit for declaration as *bhumidhar/asami* under Section-144 of the Code, 2006 should be decided within a period of the six months and if the same could not be concluded then the reason for the same should be recorded;

(vii) Any other application referable to any provision of Code, 2006 should also be decided within the period prescribed by Code, 2006 or Rules, 2016, if no time is prescribed by Code, 2006 or by Rules, 2016 then same should be decided within a period of one month and if same is not decided within aforesaid period then reason should be recorded.

14. If the proceedings mentioned above are appealable or revisable or subject to second appeal as per the provision of Code, 2006 and if no time is prescribed by the Code, 2006 then these proceedings should also be decided within a period of six months up to the level of Commissioner and within a period of one year by the Board of Revenue, and if not decided within the said period then the reason for the same should be recorded.

15. While calculating the period mentioned above as directed by this Court

for deciding different proceedings under Code, 2006, the date on which there was a strike of Bar as well as the dates on which the person seeking benefit of this order take adjournment should be excluded.

16. If any stay application, recall application or any other miscellaneous application is filed during above mentioned proceedings, then same should be decided within a period of one month and if same is not decided within aforesaid time, then reason should be recorded. It is made clear that during the pendency of recall application or stay application, no coercive action be taken against the applicant.

17. For the violation of direction mentioned above by any revenue officer including the Collector and Commissioner and as well as Board of Revenue, they would be liable for contempt of this Court for not following the direction in deciding the proceedings as mentioned above (including pending proceeding in corresponding provision of Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 and as Uttar Pradesh Land Revenue Act, 1901).

18. The litigant, whose proceeding are mentioned above was not decided despite his application relying upon this judgement within the time fixed by this court, then litigant instead of filing writ petition for expeditious disposal may directly approach this Court by filing contempt proceedings against the concerned officer."

6. From the above quoted judgement, it is clear that in case Presiding Officer failed to conclude the proceedings within the time prescribed in the U.P. Revenue Code or by this Court, then he is liable to contempt for violation of the direction issued in Daya Shankar's case, if there is no reasonable explanation to not deciding the proceedings

within time fixed by the Statute as well as by this Court in the above judgement. This Court also directed in the above judgment when any Revenue Authority failed to conclude the proceedings within the prescribed time framed then the parties need not to approach this Court for seeking direction for expeditious disposal of proceedings under the Revenue Code but they can file contempt petition before this Court for the violation of the directions issued in the **Daya Shankar's case (supra)**.

7. From the perusal of the order sheet in the present case, it is clear that the proceedings of a Case No. 7405/2022 under Section 116 of the U.P. Revenue Code, 2006 has been pending for the reason that there is continuous strike on the part of advocates of Tehsil Utraula. Though some time the case was also adjourned because of the nonavailability of the concerned Presiding Officer. Therefore, it is clear that it is the strike of Bar Association of Tehsil Utraula, which is the reason for not concluding the proceedings in question. Therefore, prima facie it is the contempt committed by the Bar Association, Tehsil Utraula, not by the Presiding Officer, Tehsil Utraula.

8. In view of the above, this Court considering the fact that there is specific direction to conclude the proceedings under Section 116 of the U.P. Revenue Code, within a period of six months and there is direction of this Court in the case of Daya Shankar (supra) to conclude such proceedings in the time bound manner, failing which amount to contempt for disobedience of general direction of this Court.

9. The present petition is disposed of with a direction to Sub Divisional Magistrate, Tehsil Utraula, District

Balrampur to decide the Case No. 7405 of 2022 within a period of six months. It is made clear that if the case is adjourned due to continuous strike of Bar Association of Tehsil Utrula then the office bearers of concerned Bar Association will be liable for contempt of this Court for making interruption to the direction in Daya Shnakar's case.

10. As the issue is effecting the public at large, specifically poor litigants (farmers), this Court issued general directions for entire U.P. that in case the proceedings under Revenue Code could not be concluded within the time framed by this Court in the case of Daya Shankar (supra) because of the continuous strike of Bar Association of any Tehsil, Collectorate or Commissionerate, then the office bearers of Bar Association would be liable for contempt of this Court for violation of direction of Daya Shankar's case and the party would be at liberty to file contempt proceedings against the office bearers of the concerned Bar Association.

11. With the aforesaid direction, the present petition is **disposed of**.

12. The office is directed to send copy of this order to the Chairman of Board of Revenue, who will circulate the same to all Revenue Authorities from Tehsil to Commissionerate (Revenue) and the copies of the same shall also be pasted on the Notice Board.

13. The Senior Registrar of this Court is directed to communicate the order for compliance.

(2025) 12 ILRA 1146
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.12.2025

BEFORE

**THE HON'BLE PRAMOD KUMAR
SRIVASTAVA, J.**

Criminal Appeal No. 3108 of 2025

Shivam Sharma ...Appellant
Versus
State Of U.P. & Anr. ...Respondents

ISSUE FOR CONSIDERATION

Whether the appellant, Shivam Sharma, is entitled to bail under Section 14-A(2) of the SC/ST Act after rejection of his bail application by the Special Judge (SC/ST Act), Sitapur.

Consideration of delay in FIR, contradictions in complainant's statements, nature of relationship, and absence of criminal history.

HEADNOTES

Criminal Law – Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 – Section – 180, 183, - Bharatiya Nyaya Sanhita (BNS), 2023 – Section - 64, 125, 352, 351(3), - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section - 3(2)(v), 3(1)(da), 3(1)(dha), 14-A(2) - Criminal Appeal under section 14-A(2) of the SC/ST Act – against rejection bail – FIR – offence under section 64, 352, 351(3), 125 BNS, 2023 and Sections 3(2)(v), 3(1)(da), 3(1)(dha) SC/ST Act – grounds taken - false implication, five-month delay in FIR, contradictions in complainant's statements (recorded under Sections 180 and 183 BNS), and absence of criminal history, conceded custody since 19.07.2025 - Court, noting contradictions, delay, relationship context, age of complainant and prolonged incarceration – held - set aside the impugned order and ordered that that appellant is entitled to be released on bail subject to strict conditions, clarifying that observations in the bail order shall not affect the merits of trial.(Para – 4, 5, 6, 7, 8, 9)
Appeal Allowed. (E-11)

CASE LAW CITED

No case cited.

LIST OF ACTS

Code of Criminal Procedure, 1973 - Indian Penal Code, 1860 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(v), 3(1)(da), 3(1)(dha) Bharatiya Nyaya Sanhita (BNS), 2023 - Section 64, 352, 351(3), 125, 180, 183.

LIST OF KEYWORDS

Criminal Appeal – Bail Application - SC/ST Act - Bharatiya Nyaya Sanhita (BNS) - Delay in FIR - Contradictory Statements - False Promise of Marriage - Custody - Criminal History – additional condition – satisfaction of the court.

CASE ARISING FROM

Bail rejection order dated 08.08.2025 passed by Special Judge (SC/ST Act), Sitapur in Case Crime No. 78 of 2025 - Police Station: Maholi, District Sitapur.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Banwari Lal
Counsel for Respondent: - Government Advocate

(Delivered by Hon'ble Pramod Kumar
Srivastava, J.)

(Criminal Misc. Bail Application no.01 of 2025)

1. Heard learned counsel for the appellant and learned Additional Government Advocate (A.G.A.) for the State. Despite sufficient opportunity, non-appeared on behalf of the opposite party no.2.

2. This appeal is filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order dated 08.08.2025, passed by the learned Special Judge (SC/ST Act), District-Sitapur, rejecting the bail application (No. 242 of 2025) of the appellant, Shivam Sharma S/o Rajesh Sharma, in connection with Case Crime No. 0078 of 2025, under Sections

64, 352, 351(3), 125 of the Bharatiya Nyaya Sanhita (BNS), 2023 and Section 3(2)(v), 3(1)(da)(dha) of the S.C./S.T. Act, Police Station Maholi, District-Sitapur. The appellant is currently in jail since 19.07.2025.

3. Learned counsel for the appellant submits that the appellant, aged about 30 years, is innocent and has been falsely implicated in the present case due to enmity and ulterior motive. It is further argued that there is a significant and unexplained delay of approximately 5 months in lodging the FIR, which was registered on 06.03.2025 for an incident allegedly occurring on 12.10.2024. The counsel contends that the complainant, who is a married woman aged about 30 years (as per FIR) but claimed to be over 40 years in the grounds, having an 11-year-old child, was living in a relationship with the appellant. It is falsely stated that the accused appellant established a physical relationship on a false promise of marriage, and it is impossible for such relations to have continued for four years solely on this basis. The counsel points out that there are vast contradictions in the statements of the complainant, which were recorded under Section 180 BNS on 07.03.2025 and changed in her subsequent statement under Section 183 BNS on 04.04.2025. Though the investigation noted the medical report stated "sexual violence cannot be ruled out," the appellant asserts the charges are fabricated. Finally, the appellant has no criminal history and has been in continuous judicial custody since 19.07.2025.

4. Learned Additional Government Advocate (AGA) vehemently opposed the prayer for bail, arguing that the offences are serious, and the chargesheet has been filed under Section 64 (Rape) BNS and

relevant sections of the SC/ST Act. However, the AGA could not directly contradict the specific factual submissions made by the appellant's counsel regarding the significant delay of about five months in lodging the FIR, or the contradictions observed in the complainant's statements, particularly the changes between her statement recorded under Section 180 BNS on 07.03.2025 and her later statement recorded under Section 183 BNS on 04.04.2025. On perusal of the record, it transpires that the complainant's age is recorded as 1995, making her about 30 years old. She is a married woman and mother of one child aged about 11 years, and it appears she was living in a relationship with the appellant and established physical relations four years prior to the FIR. The AGA conceded that the record shows the appellant has no criminal history and has been in continuous judicial custody since 19.07.2025.

5. Considering the totality of the circumstances, particularly the contradictory nature of the prosecution story evidenced by the changes in the complainant's statements (recorded under Section 180 BNS on 07.03.2025 and Section 183 BNS on 04.04.2025) and the alleged fabricated nature of the charges against the appellant's family members, the significant delay of five months in lodging the FIR, the period of incarceration already undergone by the appellant since 19.07.2025, and the fact that the appeal against the rejection of bail by the learned Special Judge (SC/ST Act), Sitapur, dated 08.08.2025 is the statutory right of the appellant, this Court is of the considered opinion that the appellant is entitled to be released on bail.

6. In view of the above, the Criminal Misc. Bail Application is allowed. The

impugned order dated 08.08.2025 passed by the learned Special Judge, S.C./S.T. Act, Sitapur, is set aside.

7. Let the appellant, **Shivum Sharma**, be released on bail in the aforesaid Case Crime No. 78 of 2025, under Sections 64, 352, 351(3), 125 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(2)(v), 3(1)(da), 3(1)(dha) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Maholi, District Sitapur, on his furnishing a personal bond and two sureties of the like amount to the satisfaction of the court concerned, subject to the following additional conditions:

(1) The appellant shall cooperate with the prosecution during trial.

(ii) The appellant shall not tamper with the evidence during trial.

(iii) The appellant shall not pressurize/intimidate the prosecution witness(s).

(iv) The appellant shall not commit an offence.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.

(vi) The appellant shall remain present before the trial court on each date fixed, either personally or through counsel.

(vii) The appellant shall not seek any adjournment on the dates fixed for

evidence when the witnesses are present in court.

(viii) The appellant shall remain present, in person, before the trial court on the dates fixed for

8. In case of default of above conditions, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

9. As this order relates to enlargement of the appellant on bail, it is clarified that observation(s) made in this order shall have no bearing on the merits of the case and the trial court shall not be influenced by any observation(s) made in this order.

(2025) 12 ILRA 1149

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 05.12.2025

BEFORE

**THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.**

Criminal Appeal No. 4117 of 2019

Ram Brijesh		...Appellant
	Versus	
State Of U.P.		...Respondent

ISSUE FOR CONSIDERATION

Whether the appellant can be convicted when the prosecution failed to prove "last seen" evidence, motive, and ballistic linkage of the weapon.

Whether the trial court correctly shift the burden of proof onto the appellant despite the prosecution's failure to establish a prima facie case.

HEADNOTES

Criminal Law – - Code of Criminal Procedure (CrPC) - Section 313 - Indian

Penal Code (IPC) - Sections 302, 304-B, 498-A, 201, 404/411, 149 - Arms Act: Section 25 - Dowry Prohibition Act: Section 4 - Indian Evidence Act: Section 106- Criminal Appeal – against conviction and sentence under Sections 395 and 397 IPC – FIR - FIR – offence of dowry harassment, dowry death, destruction of evidence, - later linked with Section 302 IPC and Section 25 Arms Act during investigation - Investigation led to recovery of pistols and jewellery at the instance of the appellant and co-accused – chargesheet - Trial proceeded – examination of eleven prosecution witnesses, including the father and cousin of the deceased, and the medical officer who confirmed firearm injuries, trial court acquitted all accused of dowry-related charges, but convicted the appellant under Section 302 IPC (life imprisonment and fine) and Section 25 Arms Act (two years imprisonment and fine) – Appeal - appellant pleaded innocence, argued misapplication of Section 106 Evidence Act, absence of "last seen" evidence, lack of motive, and inconclusive recovery – after evaluation of evidences, court finds that, prosecution evidence deficient, statement under section 313 Cr.P.C. could not fill gaps, further, noted failure to examine key eyewitnesses, and emphasized that recovery of pistols did not conclusively link with the appellant to the fatal shot – held – there is no evidence to prove guilt beyond reasonable doubt – consequently, conviction and sentences under Section 302 IPC and Section 25 Arms Act were set aside; appellant acquitted of all charges and ordered to be released forthwith.(Para – 36, 37, 38, 39, 40, 41)

Appeal **Allowed.** (E-11)

CASE LAW CITED

Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 – Takhaji Hiraji v. Thakore Kubarsing Chamansing (2001) 6 SCC 145 – Md. Anowar Hussain v. State of Assam (2022) 19 SCC 264

LIST OF ACTS

Indian Penal Code (IPC) - Code of Criminal Procedure (CrPC) - Indian Evidence Act, 1872 - Arms Act - Dowry Prohibition Act.

LIST OF KEYWORDS

Criminal Appeal – incident - Dowry demand – investigating officer – witnesses - life imprisonment – prosecution – appellant – confession - - Last seen theory - Circumstantial evidence - Section 106 Evidence Act - Burden of proof - Recovery of pistol - Motive not proved - Acquittal – innocence.

CASE ARISING FROM

Sessions Trial No. 249 of 2011 – Charges under IPC and Dowry Prohibition Act - Sessions Trial No. 250 of 2011 – Charge under Section 25 Arms Act - Judgment of Sessions Judge, Auraiya (19.04.2019).

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Ashok Kumar Tripathi, Jai Singh Yadav, Jitendra Kumar, Kamlesh Kumar Tripathi, Nidhi Tripathi, Purushottam Dixit.

Counsel for Respondent: - GA.

(Delivered by Hon'ble Salil Kumar Rai, J.)

The appellant has been convicted under Section 302 IPC and Section 25 Arms Act by judgment and order dated 19.4.2019 passed by the Sessions Judge, Auraiya in Sessions Trial No. 249 of 2011 registered under Sections 498-A, 304-B, 201, 404/411, 302/149 IPC and Section 4 Dowry Prohibition Act as well as in Session Trial No. 250 of 2011 registered under Section 25 of the Arms Act. The appellant has been sentenced to undergo life imprisonment and a fine of Rs.5,00,000/- for the charge under Section 302 IPC and two years imprisonment and a fine of Rs.5,000/- for the charge under Section 25 Arms Act.

One Priyanka Raj (hereinafter referred to as the 'deceased'), daughter of Raj Mohan Singh, the first informant, was married to the appellant on 13.5.2009. On 15.5.2010, the dead body of the deceased was found in the bushes outside the village. A first information report registering Case

Crime No. 99/2010 under Sections 498-A / 304-B / 201 IPC read with Section 3/4 Dowry Prohibition Act was registered in Police Station Bidhuna, District Auraiya on 15.5.2010 at 05:15 p.m.

The case of the prosecution, in short, is that the appellant and the in-laws of the deceased, i.e., the mother-in-law, the father-in-law, the brother-in-law (jeth) and the sister-in-law (jethani) of the deceased were not satisfied with the dowry given during the marriage. The appellant and the in-laws used to harass the deceased for more dowry and demanded a Maruti Car as well as Rs.1,00,000/- (Rs. one lakh) in cash from the deceased. It has been stated in the first information report that the appellant and the in-laws of the deceased threatened the first informant that they would not let the deceased live in peace till their demand for dowry was satisfied. On 15.5.2010, the first informant received information on phone that his daughter had been beaten by her in-laws and the appellant and shot dead outside the village and Sanoj Kumar s/o Ahivaran Singh and Pankaj @ Chhote s/o Vishram Singh assisted the appellant and others in the crime. The dead body had been thrown in the bushes. It was alleged in the first information report that the deceased was shot dead only because the first informant could not fulfill the demand for dowry made by the in-laws of the deceased.

The appellant was arrested on 16.5.2010. It has been alleged that a 315 bore country made pistol allegedly used in the crime was recovered at the instance of the appellant from near the dead body of the deceased. A recovery memo was prepared and a first information report registering Case Crime No. 102 of 2010 under Section 25 of the Arms Act was

registered on 16.5.2010 at Police Station Bidhuna, District Auraiya.

Some jewelries were also allegedly recovered from the appellant while he was being arrested and it is alleged that the appellant had confessed that the said jewelries belonged to her wife which was removed from her body by the appellant after the deceased was murdered and some of those jewelries were given to Sanoj Kumar and Pankaj @ Chhote. A recovery memo of the jewelries was also prepared.

The inquest was prepared on 15.5.2010 at 06:15 p.m. showing that the dead body was found in the bushes near the graveyard.

It is the prosecution case that another 315 bore country made pistol, two gold rings and a Pulsar motorcycle with registration no. UP 79A - 2297 was recovered on 6.6.2010 at the instance of Sanoj Kumar s/o Ahivaran Singh one of the co-accused in Case Crime No. 99 of 2010. The prosecution alleges that Sanoj Kumar confessed that the country made pistol recovered at his instance was used in the crime. A recovery memo was prepared and Case Crime No. 102 of 2010 under Sections 25/27 Arms Act was registered against Sanoj Kumar.

The autopsy was done on 16.5.2010 at 03:00 p.m. The autopsy report showed the following ante-mortem injuries on the body of the deceased :-

“Firearm wound of entry 1 cm x 1 cm x bone deep on right cheek at 2 cm below the right lower eyelid margins inserted blackening out around the wound.

Firearm wound of exit 1.5 cm x 1.5 cm x through & through to injury No.

(1), margin exerted on right side of neck at 8 cm behind right ear.”

A charge-sheet was filed and the case was committed for trial to the Sessions Court. The appellant along with Sanoj Kumar, Pankaj @ Chhote, Sarla Devi (mother-in-law of the deceased), Mahaveer Singh (father of the appellant and father-in-law of the deceased), Shiv Nath Singh (jeth of the deceased), Guddi Devi (sister-in-law, i.e., jethani of the deceased) and one Kuldeep were charged under Sections 498-A, 304-B, 201, 404/411, 302/149 IPC and in the alternative, under Section 302 read with Section 149 IPC in Session Trial No. 249 of 2011. The appellant was also charged under Section 25 of the Arms Act in Session Trial No. 250 of 2011. Sanoj Kumar was also charged under Sections 25/27 of the Arms Act in Session Trial No. 01 of 2017. All the aforesaid trials were consolidated and tried together.

The prosecution examined a total of eleven witnesses to prove its case.

The first informant, who was the father of the deceased, was examined as P.W.-1 and Sharad Kumar, the cousin of the deceased, was examined as P.W.-2 by the prosecution.

In his testimony, P.W.-1 has stated that his daughter was married to the appellant on 13.5.2009 and during the marriage the witness had given Rs.4,00,000/- (Rs. Four Lakh) in cash and goods worth Rs.1,00,000/- (Rs. One Lakh) as dowry. The witness stated that the appellant and his family were not satisfied with the dowry and after marriage, demanded one Maruti Car and Rs.1,00,000/- (Rs. One Lakh) in cash which was communicated to the witness by

the deceased. The witness stated that the in-laws of the deceased threatened that they would not let the deceased live in peace till their demand for more dowry was satisfied. The witness stated that on 15.5.2010 at 02:00 p.m., he received information that his daughter (the deceased) was physically assaulted by the accused and was shot dead outside the village. The witness further stated that Sanoj Kumar, Pankaj and Kuldeep had helped the appellant in the aforesaid crime and Sanoj and Pankaj had reached the spot on a motorcycle. It was stated by the witness that the accused had removed all the jewelries worn by the deceased on the fateful day. In his cross-examination, the witness stated that the dowry given him during the marriage of the deceased was given voluntarily. It was stated by the witness that he did not take any loan for the marriage of the deceased. It was admitted by the witness that the marriage of the deceased was solemnized in a marriage hall whose rent was paid by the father of the appellant who had also gifted clothes and jewelries to the deceased. In his cross-examination, the witness stated that he was informed about the incident by the Gram Pradhan of the village of the appellant and the first information report was lodged by the appellant on the information given by different persons. In his cross-examination, the witness admitted that he did not save the phone number from which he got information regarding the incident. It has been stated by the witness that Naem Singh, who was the Gram Pradhan, had met the appellant at the place of incident and had told the witness the manner in which the deceased was murdered.

The noticeable feature of the testimony of P.W.-1 is that in his evidence, P.W.-1 admitted that the dowry given by

him to the appellant were given voluntarily. It has also been admitted by the witness that Naem Singh, the Gram Pradhan of the village of the appellant, had told the witness about the incident and the role of the accused in the crime.

P.W.-2, i.e., Sharad Kumar stated in his testimony that in the marriage of the deceased, his uncle, i.e., P.W.-1 had given Rs.4,00,000/- (Rs. Four Lakh) in cash and goods worth Rs.1,00,000/- (Rs. One Lakh) but the in-laws of the deceased were not satisfied with the dowry given in marriage and demanded a Maruti Car and Rs.1,00,000/- (Rs. One Lakh) in cash from P.W.-1. It was also stated that after the marriage, the appellant and his family members threatened that they shall not let the deceased live in peace till their demand was satisfied. In his evidence, the witness stated that the deceased told the aforesaid fact to her parents and also to the witness when she came to her maternal home. It was admitted by the witness in his cross-examination that the demand for a Maruti Car was made by the accused before the marriage but the first informant, i.e., P.W.-1 pleaded his inability to give a Maruti Car, however, still the marriage of the deceased and the appellant was agreed upon and solemnized.

P.W.-3 has proved the chick FIR and P.W.-4 as well as P.W.-6 proved the inquest report.

The Medical Officer who conducted the autopsy was examined as P.W.-5 and has proved the post mortem report. According to the witness, the cause of death was shock and hemorrhage due to ante mortem fire arm injuries. In his testimony, the witness stated that there were only two firearm wounds on the body

of the deceased out of which one was an exit wound. There were no other injuries on the body of the deceased.

The Investigating Officer of the case was examined as P.W.-8. In his evidence, P.W.-8 has stated that on 30.5.2010, Sanoj Kumar had confessed his participation in the crime and had informed the witness that the pistol as well as motorcycle used in the crime and also the jewelries removed from the body of the deceased were recovered at the instance of Sanoj Kumar after he was taken on police remand. In his evidence, the witness also stated that the statements of Naem Singh and Dharam Singh were recorded under Section 161 Cr.P.C. in which they had claimed themselves to be the eye-witness of the incident and had also claimed that they had seen Sanoj Kumar, Pankaj and Kuldeep on a motorcycle going to the place of incident.

The appellant in his statement under Section 313 Cr.P.C. denied the charges and stated that the jewelries allegedly shown to have been recovered from him were taken from the home of the appellant and were falsely shown as recovered from the appellant. In his statement under Section 313 Cr.P.C. the appellant pleaded his innocence. The appellant stated that he was going with the deceased on a cycle and mid way his wife went in the bushes to relieve herself when the members of the Bikers gang shot the deceased because she resisted their attempt to rob her. It is the case of the appellant that he had gone to Kudarkot Police Chowki to inform the police personnel about the incident but no report was lodged by the police personnels but the appellant was detained by the police chowki. The appellant claims that he had been falsely implicated in the case.

The trial court vide its judgment and order dated 19.4.2019 has acquitted all the accused of the charge under Sections 498-A, 304-B, 201, 149, 404/411 IPC and Section 4 Dowry Prohibition Act. The trial court has convicted the appellant under Section 302 IPC and Section 25 of the Arms Act and also convicted Sanoj Kumar under Section 25 of the Arms Act. The other accused have been acquitted of the charge under Section 302 IPC. The sentence awarded to the appellant has been mentioned earlier.

In its judgment, the trial court has held that the prosecution had not been able to prove the demand for dowry or that any cruelty or harassment was meted out to the deceased by her husband, i.e., the appellant or any relative of her husband, therefore, the death of the deceased cannot be termed as dowry death. It has been held by the trial court that the prosecution failed to prove that the jewelries recovered from the appellant or Sanoj Kumar belonged to the deceased, therefore, no offence under Section 404/411 IPC was made out. It has been further held by the trial court that there was no evidence to support the charges under Sections 304-B, 498-A, 404/411 IPC and Section 201 IPC or under Section 4 of the Dowry Prohibition Act. The trial court has also rejected the case of the prosecution regarding participation of Kuldeep in the crime. It is in light of the aforesaid findings that the trial court has acquitted all the accused including the appellant from offences under Sections 304-B, 498-A, 404/411 and Section 201 IPC or under Section 4 of the Dowry Prohibition Act.

So far as the offence under Section 302 IPC and Section 25 Arms Act is concerned, the trial court has held that in

light of the explanation of the appellant under Section 313 Cr.P.C. that the appellant and the deceased were going on a cycle when the deceased stopped mid way to relieve herself and the bikers shot at the deceased when she resisted, the burden of proof shifted on the appellant under Section 106 to prove his explanation. The trial court took note of the fact that the appellant had not given any details of the motorcycle allegedly used by the robbers. The trial court relying on the recovery of pistol allegedly used in the crime held that the recovery completed the chain of necessary links to prove the prosecution case. The trial court after holding that the appellant had failed to discharge his burden, convicted the appellant under Section 302 IPC and under Section 25 Arms Act. The conviction and the consequential sentence have been passed as noted previously.

It was argued by the counsel for the appellant that the trial court has misread the evidence on record and has also misapplied the law regarding Section 106 of the Indian Evidence Act. It was argued that there is no evidence that the deceased was last seen with the appellant or was with the appellant at the time of the commission of offence, therefore, the trial court has erred in shifting the burden of proof on the appellant. It was argued that the burden to prove its case was on the prosecution and the prosecution failed to discharge its burden. It was argued that the trial court had not correctly applied the law while considering the explanation of the appellant under Section 313 Cr.P.C. It was argued that there was no motive for the appellant to murder his wife and the trial court has wrongly convicted the appellant.

Rebutting the arguments of the appellant, the Additional Government

Advocate has supported the judgment of the trial court and has argued that the evidence on record proved that the appellant was with the deceased at that time and the burden to prove his claim as made in his explanation was on the appellant. The appellant had failed to discharge the burden, therefore, the conviction by the trial court is in accordance with law. It was further argued that the pistol used in the commission of crime was recovered at the instance of the appellant which proved that the appellant had murdered the deceased. It was further argued that for the aforesaid reasons, the appeal is liable to be dismissed.

We have considered the submissions of the counsel for the parties.

As noted earlier the case of the prosecution, in short, is that the deceased was murdered by the appellant and his family members because the parents of the deceased were not able to satisfy the demand for more dowry made by the in-laws of the deceased. The motive for killing the deceased has not been accepted by the trial court which has acquitted the accused of the charge under Section 304-B IPC. The trial court has convicted the appellant on the ground that on his own explanation, the appellant was with the deceased, therefore, under Section 106 of the Indian Evidence Act, the burden to prove the circumstances of the death as claimed by the appellant was on the appellant and because the appellant failed to discharge the burden, therefore, he was liable to be convicted under Section 302 IPC. The trial court has held that the explanation of the appellant coupled with the fact that the pistol used in the offence was recovered at the instance of the appellant completes the chain of

circumstances necessary to prove the guilt of the appellant.

We find the reasoning of the trial court unacceptable.

We agree with the findings of the trial court that the charges under Sections 304-B, 498-A, 404/411 and Section 201 IPC or under Section 4 of the Dowry Prohibition Act 304-B were not proved. The significance of acquitting the appellant of the charges under Sections 304-B, 498-A and Section 4 Dowry Prohibition Act and Section 201 IPC shall be considered later. The trial court has held that the charge of Section 302 IPC against the appellant had been proved by circumstantial evidence and the trial court has relied on the explanation of the appellant under Section 313 Cr.P.C. We do not accept the findings of the trial court regarding the conviction of the appellant under Section 302 IPC.

The necessary ingredients to prove a charge by circumstantial evidence were laid down by the Supreme Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116***. It would be relevant to reproduce the observations of the Supreme Court in Paragraph nos. 153 to 157 of its judgment : -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances

concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a

criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry, thus:

"Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that up on no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression, morally certain by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Horry case was approved by this Court in *Anant Chintaman Lagu v. State of Bombay*. Lagu case as also the principles enunciated by this Court in *Hanumant case* have been uniformly and consistently followed in all later decisions of this Court without any single exception. To quote a few cases : - *Tufail case*, *Ramgopal case*, *Chandrakant Nyalchand Seth v. State of Bombay*, *Dharmbir Singh v. State of Punjab*. There are a number of other cases where although *Hanumant case* has not been expressly noticed but the same principles have been expounded and reiterated, as in *Naseem Ahmed v. Delhi Administration*, *Mohan Lal Pangasa v. State of U.P.*, *Shankarlal Gyarasilal Dixit*

v. State of Maharashtra and M.G. Agarwal v. State of Maharashtra - a five-Judge Bench decision."

(Emphasis supplied)

In order to prove the guilt of the appellant under Sections 302 IPC, the prosecution had to either prove that the appellant and the deceased were together when the crime was committed or that the appellant was last seen with the deceased. The prosecution has not examined any witness to prove that the appellant was last seen with the deceased or was seen with the deceased at the time the crime was committed. So far as the effect of the explanation of the appellant under Section 313 Cr.P.C. is concerned, the same shall be considered later on in the judgment. At this stage, it would be relevant to note that in his testimony, P.W.-2 has stated that Naem Singh informed him about the incident and in his cross-examination, the witness also admitted that Naem Singh told him the manner in which the deceased was killed by the accused. It has also been testified by the Investigating Officer, i.e., P.W.-8 that he had interrogated Naem Singh and Dharam Singh. The aforesaid persons have not been examined by the prosecution. Naem Singh is the eye-witness of the incident. The witness was a material witness but was not examined by the prosecution. The failure of the prosecution to examine Naem Singh persuades us to draw an adverse presumption that in case, he had been examined, he would have not supported the prosecution case. At this stage, it would be relevant to refer to the observations of the Supreme Court in ***Takhaji Hiraji vs. Thakore Kubersing Chamansing & Ors. (2001) 6 SCC 145.*** The observations of the Supreme Court are reproduced below:-

“19. ... It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. ... ”

(Emphasis supplied)

The prosecution failed to prove from the evidence produced that the appellant was last seen with the deceased or was with the deceased immediately before her death.

It is not the case of the prosecution that the witness was not available for examination. The evidence produced by the prosecution does not prove that the appellant was with the deceased when the crime was committed or that the deceased was last seen with the accused. The failure of the prosecution to examine Dharam Singh and Naem Singh is fatal to the prosecution case.

The explanation of the appellant under Section 313 Cr.P.C. does not help the prosecution. It is settled law that an explanation given by the accused under Section 313 Cr.P.C. cannot be used to fill the gaps in the prosecution evidence. The prosecution has to stand on its own legs and is required to prove its case beyond doubt on its own evidence. The statement under Section 313 Cr.P.C. cannot be used to nail the accused. The explanation of the accused under Section 313 Cr.P.C. is sought after the prosecution has examined its witnesses, therefore, it cannot be a substitute for the prosecution evidence. At this stage, it would be relevant to reproduce the observations of the Supreme Court in Paragraph no. 151 of *Sharad Birdhichand (supra)* :-

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this : where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the

prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.”

(Emphasis supplied)

It is apparent that in case, the explanation of the appellant under Section 313 Cr.P.C. is not taken into consideration, there is no evidence on record to show that the deceased was last seen with the appellant or was with the appellant. The trial court has used the explanation of the appellant to fill the gaps in the prosecution evidence regarding the presence of the accused at the place of the offence and that the appellant was either with the deceased or was last seen with the deceased.

The trial court has also held that the recovery of pistol at the instance of the deceased completed the links in the circumstantial evidence to prove the guilt of the appellant. Here again, we are not able to agree with the trial court. We find and it is also evident from the judgment of the trial court that two pistols were claimed to have been recovered from the place of incident - One country made pistol of 315 bore was recovered at the instance of the appellant and the other country made pistol of 315 bore was recovered at the instance of Sanoj Kumar. The recovery memo of both the pistols have been proved by the concerned officers. A perusal of the post mortem report of the deceased shows that there is only one gun shot wound. Wound no. 2 is the exit wound and corresponds with wound no. 1. Sanoj Kumar has been acquitted for the offence under Section 302 IPC. There is no evidence on record to establish that the gun shot wounding the deceased was fired from the pistol allegedly recovered at the instance of the appellant.

At this stage, it would also be relevant to note that in cases of circumstantial evidence, motive is an important factor to be established to prove the guilt of the accused. The prosecution pleaded dowry to be the motive for crime. The evidence produced by the prosecution regarding demand of dowry by the appellant or his family members has been disbelieved by the trial court and the trial court has held that there was no evidence on record to show that any cruelty or harassment for dowry was meted out to the deceased before her death. As noted earlier, we have agreed with the findings of the trial court. Apparently, the motive for the appellant to kill his wife has also not been proved.

It has also been argued by the prosecution that in light of his explanation under Section 313 Cr.P.C., the burden to prove the circumstances of the death of the deceased as claimed by the appellant was on the appellant. We disagree with the reasoning of the trial court and reject the argument of AGA. Section 106 of the Evidence Act does not shift the burden of proof from the prosecution to the defence. The burden of proof regarding commission of crime and the involvement of the accused is on the prosecution. The said burden never shifts. Section 106 of the Evidence Act only provides that a fact especially within the knowledge of any person is to be proved by the person who has the knowledge of the fact. Section 106 does not relieve the prosecution from discharging its duty to prove the guilt of the accused. It does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that

the question arises of considering facts of which burden of proof would lie upon the accused. At this stage, it would be relevant to refer to the observations of the Supreme Court in Paragraph nos. 50 to 52 of its judgment reported in ***Md. Anowar Hussain vs. State of Assam (2022) 19 SCC 264*** : -

"50. In Gargi, where the appellant was held guilty of murder of her husband by the two courts essentially with reference to the operation of Section 106 of the Evidence Act, this Court pointed out that this provision does not absolve the prosecution of its primary burden in the following words:

"33.1. Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden."

51. In Shivaji Chintappa Patil, this Court reiterated the principles that Section 106 of the Evidence Act does not absolve the prosecution of discharging the primary burden; and that want of explanation or falsity of explanation in the statement under Section 313 can only be used as an additional circumstance when the prosecution has proved the other circumstances leading to no

other conclusion but that of guilt of the accused. In that case, one of the significant features had been that as per the post-mortem report, the cause of death of the victim was asphyxia due to hanging but, admittedly, there were no marks on the body of the victim which could suggest violence or struggle; and the medical expert himself had not ruled out the possibility of suicidal death. This Court observed and said as under:

"23. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused.

25. Another circumstance relied upon by the prosecution is that the appellant failed to give any explanation in his statement under Section 313 CrPC. By now it is well-settled principle of law, that false explanation or non-explanation can only be used as an additional circumstance, when the prosecution has proved the chain of circumstances leading to no other conclusion than the guilt of the accused. However, it cannot be used as a link to complete the chain. Reference in this respect could be made to the judgment of this Court in Sharad Birdhichand Sarda."

52. In Satye Singh, wherein the prosecution failed to prove the basic facts is against the accused, this Court, again, emphasised that Section 106 of the Evidence Act does not relieve the prosecution of its primary duty to prove the guilt of the appellant as follows:

*"19. ... the Court is of the opinion that the prosecution had miserably failed to prove the entire chain of circumstances which would unerringly conclude that alleged act was committed by the accused only and none else. Reliance placed by the learned advocate Mr Mishra for the State on Section 106 of the Evidence Act is also misplaced, inasmuch as **Section 106 is not intended to relieve the prosecution from discharging its duty to prove the guilt of the accused.**"*

(Emphasis supplied)

The prosecution failed to prove the presence of the appellant at the scene of the crime or that he was last seen with the deceased. There is no evidence to prove that the gun shot wounding the deceased was fired from the pistol recovered at the instance of the appellant and not the other pistol. Both the pistols were of the same make. Prosecution failed to prove the motive for murder. In the circumstances, we are not able to persuade ourselves that the burden to prove the circumstances of the death of the deceased shifted on the appellant under Section 106 of the Evidence Act.

For all the aforesaid reasons, we hold that the prosecution has not been able to prove, beyond, doubt the appellant guilty of the charge either under Section 302 IPC or Section 25 Arms Act.

The appellant has already undergone actual imprisonment for more than 9 years as as on date.

The appeal is *allowed*.

The judgment and order dated 19.4.2019 passed by the Sessions Judge,

Auraiya in Sessions Trial No. 249 of 2011 registered under Sections 498-A, 304-B, 201, 404/411, 302/149 IPC and Section 4 Dowry Prohibition Act so far as it convicts the appellant under Section 302 IPC and also in Session Trial No. 250 of 2011 so far as it convicts the appellant under Section 25 of the Arms Act are, hereby, set-aside. Consequently, the sentences awarded to the appellant, as noted earlier, in Session Trial No. 249 of 2011 and in Session Trial No. 250 of 2011 also stand set-aside. The appellant is acquitted of the charges in Sessions Trial No. 249 of 2011 and Session Trial No. 250 of 2011.

The appellant is in jail and shall be released forthwith from jail if not detained in any other case.

Let the present judgment of this Court be certified to the trial court.

The records of the case along with the judgment shall be remitted back to the trial court for necessary action.

(2025) 12 ILRA 1160

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 19.12.2025

BEFORE

**THE HON'BLE J.J. MUNIR, J.
THE HON'BLE SANJIV KUMAR, J.**

Criminal Appeal No. 5162 of 2007

Azad Khan

...Appellant

Versus

State of U.P.

...Respondents

ISSUE FOR CONSIDERATION

Whether the appellant could have been convicted solely on the basis of his admission is the statement recorded under section 313 Cr.P.C.

Whether such admission would fall within the category of evidence.

2839 - Pramod @ Bhoka v. State of Chhattisgarh, 2024 (1) C.G.L.J. 233

HEADNOTES

Criminal Law – - Code of Criminal Procedure (Cr.P.C.), 1973 - Section 207, 304, 313, 437-A, - Indian Penal Code (IPC), 1860 - Section 395, 397 - Indian Evidence Act, 1872 - Section 3 – Constitution of India - Article 21 – Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 481- Criminal Appeal – against conviction and sentence under Sections 395 and 397 IPC – FIR - offence of dacoity – Investigation – Statement recorded – Charge-sheet – cognizance and Summing order – Session Trial – appellant voluntarily submitted an application of confession of offence – his case was separated – Special Session Trial – Charges framed under section 395 and 397 IPC – admission of guilt – trial court observed that the confession was conditional – trial proceeded – statement of appellant under section 313 CrPC – convicted and sentenced with life imprisonment – Evaluation of Evidences - court finds that, though the prosecution produced no substantive evidence beyond a formal witness proving the FIR and charge-sheet - Trial Court relied solely on his admission in a Section 313 Cr.P.C. statement – relying on the precedents (Raj Kumar Singh, Premchand, Ashok Kumar, Pramod @ Bhoka) held that, such statements are not substantive evidence under Section 3 of the Evidence Act and cannot alone sustain conviction – further, court observed that, appellant filed multiple confession applications under fear of being killed, lacked legal aid, and was denied a fair trial in violation of Article 21 and Section 304 Cr.P.C. – and considering, his 24 years in jail, Court set aside the impugned conviction and acquitted appellant from all charges, and ordered his immediate release subject to execution of a bond under Section 481 BNSS, 2023.(Para – 17, 22, 26, 27, 28, 29, 30)
Appeal **Allowed**.(E-11)

CASE LAW CITED

Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan, 2013 (4) SCC (Cri) 812 - Premchand v. State of Maharashtra, AIR 2023 SC 1487 - Ashok Kumar v. State of Haryana, AIR 2010 SC

LIST OF ACTS

Indian Penal Code (IPC) - Code of Criminal Procedure (CrPC) - Indian Evidence Act, 1872 - Constitution of India - Bharatiya Nagarik Suraksha Sanhita, 2023.

LIST OF KEYWORDS

Criminal Appeal – Dacoity - Robbery with grievous hurt – investigation – charge-sheet - Fair trial – Special Session trial – Statement under Section 313 Cr.P.C.- Confession application - Legal aid - acquittal - Fear and coercion – conviction and sentence – rigorous imprisonment – admission of guilt – corroborative/incriminating evidence.

CASE ARISING FROM

Case Crime No. 170/2000, P.S. Allau, District Mainpuri - Special Sessions Trial No. 11-A of 2001.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Mr. Yanendra Pandey, Panel Advocate, High Court Legal Services Committee.
Counsel for Respondent: - Mr. Shashi Shekhar Tiwari, Additional Government Advocate.

(Delivered by Hon'ble Sanjiv Kumar, J.)

1. This criminal appeal has been preferred by appellant, Azad Khan, son of Turab Khan, resident of Vyoti Katra, Police Station Allau, District Mainpuri, against the judgment and order dated 05.02.2002 passed by Special Judge (D.A.A.)/Additional Sessions Judge, Mainpuri, in Special Trial No. 11-A of 2001, under Sections 395 and 397 of the Indian Penal Code (in short, 'I.P.C.'), Police Station Allau, District Mainpuri.

2. By the impugned judgment and order, the appellant, Azad Khan has been convicted and sentenced to undergo rigorous imprisonment for life for the

offence punishable under Section 395 I.P.C., alongwith a fine of Rs.10,000/-. He has further been sentenced to undergo seven years' rigorous imprisonment for the offence punishable under Section 397 I.P.C., alongwith a fine of Rs.10,000/-. In default of payment of fine, he has been ordered to suffer further rigorous imprisonment for a period of two years. Both the sentences have been directed to run concurrently.

3. The brief facts of the case are that informant, Om Prakash, son of Sri Ram Pandey, resident of village Katra, Police Station Allau District Mainpuri lodged a written information (tehrir) dated 29.10.2000 with the In-charge, Police Station Allau, alleging therein that on the said day he was sleeping inside a room in his house whereas his wife, Kamla Devi and children were sleeping in the verandah. His brother, Ram Murti and his wife, Chandra Kanti were sleeping in another verandah. His nephew and his wife, Anju, were asleep in another room. At about 12:20 a.m., 10-15 miscreants entered his house after climbing down the roof and battered beating his children. A lantern was lit in the verandah. Some miscreants kicked at the door to his room, asking him to open it saying they were policemen. When he opened the door, the miscreants caught hold of him and assaulted him with a lathi, danda, a country-made pistol, and a gun. He somehow managed to escape from their clutches and ran towards the house. The miscreants assaulted his wife, children, and his brother's wife. Hearing the hue and cry, Ramesh Prajapati, Rajendra and other villagers arrived at the spot and identified the miscreants by torch light. They identified Baksa son of Manphool, resident of Jatpura; another unknown person from Jatpura; Lalman, Mahesh, and Surendra,

sons of Nathu Ram, residents of village Panchampur, Police Station Kishni; Vinod son of Ram Charan, resident of Hadua, Police Station Bewar; Azad son of Turab Khan, resident of village Katra and Raj Kumar, son of Sri Pal, resident of Niharpur. The miscreants looted cash, jewellery, besides bank and insurance papers. Parshuram, son of Sita Ram, resident of the same village, was involved in the said dacoity. During the incident, the miscreants opened fire, injuring injured Ramesh, Umesh, and Rajendra, all residents of the same village, who were taken to the Police Station.

4. Upon this information, an FIR, bearing Case Crime No. 170 of 2000, under Sections 395 and 397 IPC, was lodged at Police Station Allau, District Mainpuri, on 29.10.2000 at about 2:25 a.m. against nominated accused. Thereafter, the investigation commenced. The Investigating Officer recorded statements of the informant and other witnesses, inspected the place of occurrence and prepared a site-plan. He also inspected the torch and lantern and prepared their recovery memos.

5. After investigation, the Investigating Officer filed charge-sheet under Sections 395 and 397 I.P.C. against the seven accused. The concerned Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court, whereupon the learned Magistrate furnished them copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the case was committed to the Court of Sessions for trial.

6. The appellant, being under trial, appeared before the Court of Sessions

alongwith the other co-accused. He moved a confession application before the Trial Court, in consequence his case was separated from the Special Sessions Trial No. 11 of 2001 and renumbered as Special Sessions Trial No. 11-A of 2001.

7. The Trial Court framed charges under Sections 395 and 397 IPC against the appellant, wherein he admitted his guilt. The Trial Court observed that the confession was conditional and, therefore, directed the trial to proceed.

8. The prosecution examined P.W.1, Constable, Iqbal Singh, who proved the copy of FIR (Ext. Ka-1) and the charge-sheet (Ext. K-2) as secondary witness.

9. The statement of appellant, Azad Khan, under Section 313 Cr.P.C. was recorded. In his statement, under Section 313 Cr.P.C., the appellant said that he had voluntarily submitted the confession application and admitted his involvement in the said offence.

10. The learned Trial Court, after hearing, observed that the accused, Azad Khan, was one of the members of the gang of dacoits who committed dacoity in the night of 29.10.2000 at about 12:20 a.m., at the house of the informant. He was identified by the informant and other witnesses by the light of a torch and a lantern. The Court further observed that the accused has admitted his guilt and acknowledged that he was one of the members of the gang who committed the dacoity. Upon this admission, the Court found him guilty of offence punishable under Sections 395 and 397 I.P.C. and convicted and sentenced him to the term as indicated above.

11. We have heard Mr. Yanendra Pandey, learned Panel Advocate of the High Court Legal Services Committee for the appellant and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate for the State and perused the record.

12. It is submitted on behalf of the appellant that he has been wrongly convicted and sentenced by the learned Trial Court. There was no evidence adduced by the prosecution in support of its case. The only witness examined by the prosecution was a formal witness, who is not witness of the occurrence. He has proved the FIR and the charge-sheet. No witness of fact was examined by the prosecution in support of the case. The Trial Court convicted the appellant solely on the basis of his admission in his statement recorded under Section 313 of the Cr.P.C.

13. It is further submitted on behalf of the appellant that statement of the appellant under Section 313 Cr.P.C. does not fall within the purview of evidence under Section 3 Indian Evidence Act. In absence of any corroborative/incriminating evidence produced by the prosecution, the appellant could not have been convicted solely on the basis of his admission in his statement under Section 313 Cr.P.C. Therefore, the impugned judgment and order is illegal, and the conviction and sentence awarded to the appellant is liable to be set aside.

14. In this regard, learned counsel for the appellant has produced before the Court the following case laws in support of his contention: (i) **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan, 2013 (4) SCC (Cri) 812;** (ii) **Pramod @ Bhoko vs.**

State of Chhattisgarh, 2024 (1) C.G.L.J. 233; (iii) Premchand vs. The State of Maharashtra, AIR 2023 SC 1487; and (iv) Ashok Kumar vs. State of Haryana, AIR 2010 SC 2839, which will be discussed in later part of this judgment.

15. Per contra, the learned A.G.A. has submitted that the appellant had voluntarily confessed the crime in his statement under Section 313 Cr.P.C., and, thus the learned Trial Court has rightly convicted the appellant based on admission in his statement under Section 313 Cr.P.C. Therefore, there is no illegality or irregularity vitiating the impugned judgment and order, and this appeal has no merit. It is liable to be dismissed.

16. It is settled law that the burden of proof lies upon the prosecution to prove their case beyond reasonable doubt. In the instant case, the prosecution has examined P.W.1 alone, Constable Iqbal Singh in evidence, who is a formal witness. He has proved the copy of the FIR and the charge-sheet as secondary evidence. The prosecution has not produced the informant or any other witness to prove the facts of the case, in support of the charge. Thus, technically there is no evidence produced by the prosecution to prove their case. The appellant, in his statement recorded under Section 313 Cr.P.C., has admitted his guilt and in view of the above, the learned Trial Court, convicted him for the offences punishable under Sections 395 and 397 I.P.C.

17. Now the question is whether the appellant could have been convicted solely on the basis of his admission in the statement recorded under Section 313 Cr.P.C. Further, whether such admission would fall within the category of evidence.

In this regard, learned Counsel for the appellant has called attention to certain authorities.

18. In **Raj Kumar Singh @ Raju @ Batya** (supra), the Supreme Court, after discussing various authorities in point, has held that the law on the issue can be summarized to the effect that a statement under Section 313 Cr.P.C. is recorded to meet the requirements of natural justice as it requires that an accused may be given an opportunity to furnish an explanation about the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

19. In **Premchand** (supra), the Supreme Court has held that the explanation furnished by the accused cannot be considered in isolation but in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s) and statements of the accused in the course of examination under Section 313, do not constitute evidence under Section 3 of the Evidence Act. The Supreme Court observed in paragraph Nos.14 and 15 as under:

" 14. A bench of three Hon'ble Judges of this Court in **State of U.P. vs. Lakhmi; (1998) 4 SCC 336** has extensively dealt with the aspect of value or utility of a statement under Section 313, Cr. P.C. The object of Section 313, Cr. P.C. was explained by this Court in **Sanatan Naskar vs. State of West Bengal; (2010)8 SCC 249**. The rationale behind the requirement to comply with Section 313, Cr.P.C. was adverted to by this Court in **Reena Hazarika vs. State of Assam; (2019) 13**

SCC 289. *Close on the heels thereof, in **Parminder Kaur vs. State of Punjab; (2020) 8 SCC 811**, this Court restated the importance of Section 313, Cr.P.C. upon noticing the view taken in **Reena Hazarika (supra)** and **M. Abbas vs. State of Kerala; (2001) 10 SCC 103**.*

15. *What follows from these authorities may briefly be summarized thus:*

a. section 313, Cr. P.C. [clause (b) of sub-section 1] is a valuable safeguard in the trial process for the accused to establish his innocence;

b. section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him;

c. when questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court;

d. the accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences;

e. an accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him;

f. the explanations that an accused may furnish cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the section 313 statement(s);

g. statements of the accused in course of examination under section 313, since not on oath, do not constitute

evidence under section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case;

h. statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission; and i. if the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyze and consider his statements;

j. any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction. "

20. In **Ashok Kumar (supra)**, the Supreme Court, after examining the essential features of Section 313 Cr.P.C. and the principles of law enunciated, held that the object of recording the accused's statement under Section 313 Cr.P.C. is to put all incriminating evidence, appearing against him, so as to provide him an opportunity to explain him. Section 313(4) of the Criminal Procedure Code explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused, in any other enquiry or trial for any other offence, in cases where such answers may tend to show that he has committed the offence. In other words, the use of a statement under Section 313 Cr.P.C. as evidence is permissible according to the provisions of the Code of Criminal Procedure, but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty upon a consideration of the other evidence against him led by the prosecution. However, statements made

under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have laid down is that conviction of the accused cannot be based merely on a statement made under Section 313 of the Cr.P.C. as it cannot be regarded as a substantive piece of evidence.

21. Lastly, in **Pramod @ Bhoka** (supra), a similar question arose before Chhattisgarh High Court as the one here. In **Pramod @ Bhoka** also, the appellant had admitted his guilt at the stage of framing of charge and again at the stage of recording of his statement under Section 313 Cr.P.C. The question before the Court was whether the admission of guilt by the appellant in his examination under Section 313 Cr.P.C. constitutes substantive evidence within the meaning of Section 3 of the Evidence Act and what would be the effect of his admission of guilt in statement under Section 313 Cr.P.C. The Court considered various authorities on the point. The Division Bench of the Chhattisgarh High Court in **Pramod @ Bhoka** observed:

29. *"The Supreme Court in the matter of Raj Kumar Singh alias Raju alias Batya v. State of Rajasthan; AIR 2013 SC 3150 has clearly held that the statement made under Section 313 of the Cr.P.C. cannot be made basis for conviction as it is not subjected to oath and it cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, and observed as under in paragraph 36: -*

"36. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may

be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction.

His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution's evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 Cr.P.C.

An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself."

.....

31. In the matter of **Ashok Debbarma alias Achak Debbarma v. State of Tripura; (2014) 4 SCC 747**, relying upon the matter of **Mohan Singh v. Prem Singh; (2002) 10 SCC 236**, it has been

held that the statement made in defence by the accused under Section 313 of the Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Cr.P.C. cannot be made the sole basis of his conviction, and observed in paragraphs 24 and 25 as under:

*“24. We are of the view that, under Section 313 statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in **State of Maharashtra v. Sukhdev Singh (1992) 3 SCC 700** held that since no oath is administered to the accused, the statement made by the accused under Section 313 Cr.P.C. will not be evidence *stricto sensu* and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 Cr.P.C. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 Cr.P.C. can be taken into consideration in such an inquiry or trial. This Court in **Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468** held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In **Narain Singh v. State of Punjab (1964) 1 CriLJ 730** this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him.*

*25. This Court in **Mohan Singh v. Prem Singh**, held that:*

“27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

*In this connection, reference may also be made to the judgments of this Court in **Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15** and **Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467**. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.”*

22. In view of the above legal position, the Division Bench of Chhattisgarh High Court held that no conviction can solely be based on the admission of guilt by the appellant in his statement under Section 313 Cr.P.C., in absence of any corroborative/incriminating evidence being led by the prosecution. Accordingly, the conviction and sentence of the appellant was set aside.

23. In view of the above discussion, the explanation furnished by the accused cannot be considered in isolation but has to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of statement under Section 313 Cr.P.C.. Statements of the accused in the course of examination under Section 313, do not constitute evidence

under Section 3 of the Evidence Act. Therefore, it is clear that the admission of guilt in statement under Section 313 Cr.P.C., alone, cannot be made the basis of conviction of the appellant in the present case, in absence of any other incriminating evidence.

24. Further, it is to be noted that a perusal of the record of the Trial Court shows that the appellant moved as many as seven confession applications between 24.10.2001 (the date of framing of charge) to 05.02.2002 (date of the judgment) before the Court, and a glance at these applications shows that the appellant expressed fear of being killed by the informant, in collusion with the Police, as and when he is released from jail. He prayed that he be permitted to remain in jail to save his life. It is noticed that question no.1, in the statement of the appellant framed under Section 313 Cr.P.C. by the Trial Court, was a composite question, to which the appellant answered in the affirmative.

25. The above question and its answer is as follows:

प्रश्न सं० 1- क्या यह आवेदन पत्र जुर्म इकबाल आपने अपनी स्वैच्छा बिना किसी दबाव, भय अथवा प्रलोभन के दिया है। और आप को जानकारी है। कि इस ब्यान से आपकी सजा हो सकती है?

उत्तर- 1- जी हाँ।

26. In view of the above, the admission of the appellant under Section 313 Cr.P.C., though voluntary, cannot be said to be free from any fear or pressure. This aspect about the appellant moving

different confession applications out of fear to save his life, before the Trial Court, has gone unnoticed by the Trial Judge while reaching his conclusions. It is also relevant to note that the record does not show that the appellant had the assistance of an Advocate to defend. Also, there is nothing to disclose that he was offered and provided any legal aid, which was a violation of his right to fair trial guaranteed under Article 21 of the Constitution, besides being a violation of Section 304 Cr.P.C. Thus, the appellant was also deprived of a fair trial in this case.

27. Thus, the sad part of the matter is that the appellant is incarcerated in jail for almost 24 years, in a case in which there was no evidence against him and his admission of guilt in his statement under section 313 Cr.P.C. was not only under fear to save his life from the informant, which went unnoticed by the Trial Court, but also, if treated as one made without fear, not sufficient to found a conviction and sentence, in absence of any incriminating evidence adduced by the prosecution.

28. In view of the above discussion, we come to the conclusion that the learned Trial Court has erred in convicting the appellant, as the prosecution has miserably failed to connect the appellant with the offence in question and to prove the offence beyond reasonable doubt. Thus, the conviction of the appellant solely on the admission of guilt in his statement under Section 313 Cr.P.C. is not sustainable.

29. In view of the above, the instant criminal appeal is **allowed**. We set aside the impugned judgment and order dated 05.02.2002 passed by the Trial Court and acquit the appellant, **Azad Khan** of the charge under Sections 395 and 397 IPC.

30. The appellant, **Azad Khan** is in jail. He is directed to be released forthwith, if not wanted in any other case.

31. Before being released, the appellant shall execute a personal bond in the sum of Rs.20,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

32. Let a copy of this Judgment and order be sent to the Trial Court concerned, forthwith, alongwith the Trial Court record, for information and necessary compliance.

(2025) 12 ILRA 1169

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 19.12.2025

BEFORE

THE HON'BLE SHEKHAR KUMAR YADAV, J.

Criminal Appeal No. 11855 of 2025

Maloo

...Appellant

Versus

State of U.P.

...Respondent

ISSUE FOR CONSIDERATION

Whether continuation of criminal proceedings against the appellant, arising out of land allotments made in 1997 and FIR lodged in 2022, amounts to abuse of process of law.

Whether invocation of IPC offences and Section 3(1)(f) of the SC/ST Act is legally sustainable in absence of specific allegations, overt acts, or caste-based intent.

Whether the cognizance/summoning order was passed mechanically without judicial application of mind.

HEADNOTES

Criminal Law – Code of Criminal Procedure (CrPC) - Section 161, 14-A, 14-A(1) - Indian Penal Code (IPC) - Sections 420, 467, 468, 471, 384, 120-B - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(f) - Criminal Appeal under section 14-A(2) of the SC/ST Act – assailing the charge-sheet, summoning order as well as the entire criminal proceeding – criminal proceedings arising out of alleged irregularities in land allotments made in 1997 - FIR lodged in year 2022 - delay of 25 years - the appellant was not named in the FIR - no specific role or overt act was attributed to him - investigation – plea taken that all the allegations were vague, omnibus, and essentially civil/revenue in nature – court finds that - invocation of IPC offences and Section 3(1)(f) of the SC/ST Act was held to be mechanical and unsupported by statutory ingredients, and the summoning order was passed without judicial application of mind – further, observed that criminal prosecution cannot be used to circumvent or replace statutory remedies available under revenue law - relying on precedents such as Bhajan Lal, Anand Kumar Mohatta, Hitesh Verma, Pepsi Foods, and recent Supreme Court rulings, court held that, continuation of prosecution would amount to abuse of process and miscarriage of justice, and therefore quashed the cognizance order, charge-sheet, and entire criminal proceedings against the appellant.(Para – 16, 22, 26, 31, 32, 33, 34)

Appeal Allowed. (E-11)

CASE LAW CITED

State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335) - Anand Kumar Mohatta v. State (NCT of Delhi) (2019) 11 SCC 706 - Indian Oil Corporation v. NEPC India Ltd (2006) 6 SCC 738 - Vesa Holdings Pvt. Ltd. v. State of Kerala (2015) 8 SCC 293 - Hitesh Verma v. State of Uttarakhand (2020) 10 SCC 710 - Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749 - Iqbal v. State of U.P. (2023) 8 SCC 734 - Anukul Singh v. State of U.P. (2025) - Konde Nageshwar Rao v. A. Srirama Chandra Murty (2025) - Randheer Singh v. State of U.P. (2025).

LIST OF ACTS

Indian Penal Code (IPC) - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Code of Criminal Procedure (CrPC).

LIST OF KEYWORDS

Criminal Appeal – Land allotment - Forgery of revenue records - Civil vs. criminal dispute - Delay in FIR (24 years) - Mechanical summoning order - SC/ST Act invocation - Abuse of process of law - Deceased witnesses in charge-sheet - Omnibus allegations - Quashing of proceedings.

CASE ARISING FROM

Case Crime No. 280 of 2022 - Police Station Dadri, District Gautam Budh Nagar, Uttar Pradesh - Sessions Trial No. 364 of 2023 (State vs. Maloo & Others).

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Sageer Ahmad assisted Sr. Adv. Assisted by Shri Navnath Pandey
Counsel for Respondent: - AGA.

(Delivered by Hon'ble Shekhar Kumar Yadav, J.)

1. Heard Shree Sageer Ahmad, learned Senior Counsel assisted by Mr Navnath Pandey, learned counsel for the appellant, learned A.G.A. for the State of U.P. and perused the material available on record. It is further submitted by learned AGA that notice has been served upon the informant as per his record. Moreover, the informant has lodged the present FIR in his official capacity and hence there is no further requirement of issuing notice to the informant of the case.

2. The present criminal appeal under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been preferred assailing the impugned cognizance/summoning order dated 20.03.2023 passed by the Special Judge (SC/ST Act), Gautam Budh Nagar in

Sessions Trial No. 364 of 2023 (State vs. Maloo & others), the charge-sheet dated 06.02.2023, and the entire criminal proceedings arising out of Case Crime No. 280 of 2022, under Sections 420, 467, 468, 471, 384, 120-B IPC and Section 3(1)(f) of the SC/ST Act, Police Station Dadri, District Gautam Budh Nagar.

3. Encapsulated facts as per the First Information Report registered as Case Crime No. 280 of 2022, at Police Station Dadri, District Gautam Budh Nagar by Shri Pankaj Nirwal, Revenue Inspector, are that allegations have been levelled regarding alleged irregularities in allotment and subsequent transfer of agricultural land of village Chitahera, Tehsil Dadri. It is stated that in the year 1997, about 282 persons were granted pattas/leases of agricultural land by the competent authority, which were subsequently approved. Later on, complaints were received alleging that some allottees were ineligible and that land so allotted was transferred to private persons by execution of sale deeds through manipulation of revenue records and forged documents.

4. The FIR further alleges that certain persons, acting in connivance with others, committed forgery in revenue entries, showed enhancement of land area, and transferred land in violation of statutory provisions, thereby causing wrongful loss to the State exchequer and wrongful gain to the beneficiaries. It is also alleged that in some cases land meant for members of the Scheduled Caste community was alienated in contravention of law, resulting in invocation of Section 3(1)(f) of the SC/ST (Prevention of Atrocities) Act along with offences under Sections 420, 467, 468, 471, 384 and 120-B IPC.

5. The FIR primarily rests upon old revenue records and inquiries relating to land allotments made more than two decades prior, and the allegations against the accused persons are broadly worded, without attributing specific overt acts, dates or individual transactions to each accused, the dispute essentially arising out of alleged civil and revenue irregularities over land transactions spanning several years.

6. Learned counsel for the appellant submits that the impugned cognizance/summoning order dated 20.03.2023 and the charge-sheet dated 06.02.2023, as well as the entire proceedings arising out of Case Crime No. 280 of 2022, are manifestly illegal and amount to abuse of the process of law.

7. It is submitted that the appellant was not even named in the First Information Report lodged on 03.07.2022. The Appellant has been roped into the criminal proceedings at a subsequent stage without any material evidence, which demonstrates mala fide intention to implicate him falsely. The FIR was lodged by Shri Pankaj Nirwal, the then Revenue Inspector, Tehsil Dadri, who is not a victim but a government officer discharging official duties. The allegations pertain to transactions involving lease land of Village Chitahaira dating back to 1997, which were subject to multiple judicial proceedings and ultimately validated by competent revenue courts.

8. It is further submitted that the investigation carried out in the present matter suffers from grave and fatal irregularities that render the entire prosecution manifestly unjust and an abuse of the process of law. It is contended that the Charge sheet dated 06.02.2023 includes

various witnesses out of which five witnesses had died years before the investigation commenced and this fact conclusively establishes that the investigation is so faulty, unfair, and biased that continuing the case would amount to an abuse of the judicial process and result in a miscarriage of justice. The Investigating Officer could not have recorded statements of deceased persons, yet these persons are shown as prosecution witnesses, exposing the fabricated nature of the investigation.

9. It is further submitted that the first informant in his statements recorded under Section 161 Cr P C, showed complete ignorance about the material facts forming the basis of the alleged offences and merely stated that entire records are available in the proceedings of allotment of lease deeds, which demonstrates that the FIR was lodged mechanically without personal knowledge of alleged criminal acts.

10. It is further argued that the appellant has been falsely implicated without any specific role or overt act. He is not named in the FIR. Neither the FIR nor the charge-sheet discloses any individual act attributable to the appellant so as to satisfy the basic ingredients of the alleged offences. Reliance is placed on the celebrated judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, wherein it has been held that criminal proceedings are liable to be quashed where the allegations do not prima facie constitute any offence or are manifestly attended with mala fides.

11. Learned counsel further submits that the dispute emanates from

land allotments made in the year 1997 and subsequent revenue proceedings, and is essentially civil and revenue in nature. Criminal law has been set in motion after an inordinate delay of more than two decades. Reliance is placed on **Anand Kumar Mohatta v. State (NCT of Delhi)**, (2019) 11 SCC 706, wherein the Supreme Court held that continuation of criminal proceedings arising out of a purely civil dispute would amount to abuse of process of law and deserves interference even at the stage of cognizance. Reliance is further placed on the case of **Indian Oil Corporation Vs M/s NEPC India Ltd**, (2006) 6 SCC 738, wherein the Apex Court has deprecated the tendency to convert the Civil disputes into criminal proceedings.

12. It is further contended that the essential ingredients of offences under Sections 420, 467, 468, 471, 384 and 120-B IPC are completely absent. There is no allegation of dishonest intention at inception, no material to show preparation or use of forged documents by the appellant, and no evidence of criminal conspiracy. Reliance is placed on **Vesa Holdings Pvt. Ltd. v. State of Kerala**, (2015) 8 SCC 293, holding that in absence of mens rea and foundational facts, criminal prosecution cannot be permitted to continue.

13. With respect to invocation of Section 3(1)(f) of the SC/ST (Prevention of Atrocities) Act, learned counsel submits that the same has been applied mechanically. Reliance is placed on **Hitesh Verma v. State of Uttarakhand**, (2020) 10 SCC 710, wherein the Supreme Court held that for attracting the provisions of the SC/ST Act, the offence must be committed on the ground that the victim belongs to a Scheduled Caste or Scheduled Tribe, and

that disputes of civil nature, even involving members of SC/ST, would not ipso facto attract the Act. Lastly, learned counsel submits that the summoning order has been passed in a mechanical manner without application of judicial mind. Reliance is placed on **Pepsi Foods Ltd. v. Special Judicial Magistrate**, (1998) 5 SCC 749, wherein it has been held that summoning an accused is a serious matter and the Magistrate must carefully examine whether a prima facie case is made out.

14. Learned A.G.A. opposes the appeal and submits that the impugned cognizance order reflects due application of mind by the learned Special Judge, who, upon perusal of the charge-sheet and material on record, found sufficient grounds to proceed against the accused person. The order does not suffer from any jurisdictional error or perversity warranting interference under appellate jurisdiction.

15. The Court has considered the rival submissions and perused the record.

16. From a careful examination of the FIR, charge-sheet and accompanying material, it is evident that the allegations against the appellant are general and omnibus. No specific role, overt act or individual transaction has been attributed to the appellant so as to constitute the ingredients of the offences alleged. The principles laid down in **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335 are clearly attracted.

17. The record further shows that the dispute arises out of land allotments made in the year 1997 and subsequent revenue proceedings. The allegations primarily relate to alleged irregularities in revenue records, which have already been

the subject matter of civil and revenue adjudication. In view of the law laid down in **Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706**, continuation of criminal proceedings in such circumstances would amount to abuse of the process of law.

18. This Court also finds that the essential ingredients of offences under Sections 420, 467, 468, 471, 384 and 120-B IPC are not made out against the appellant. There is no material indicating dishonest intention at inception or preparation or use of forged documents by the appellant.

19. As regards invocation of the SC/ST Act, the FIR and charge-sheet do not disclose that the alleged acts were committed on the ground that the victim belongs to a Scheduled Caste or Scheduled Tribe. In light of the ratio laid down in **Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710**, mere reference to Scheduled Caste land or status of the informant is insufficient to attract the provisions of the Act.

20. The impugned cognizance order dated 20.03.2023 has been passed in a routine and mechanical manner, without recording satisfaction regarding existence of prima facie material against the appellant. Such an approach is impermissible in view of the law laid down in **Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749**.

21. Further, perusal of the statements of the informant, independent witnesses, inquiry officer and other witnesses recorded during investigation fortifies the case of the appellant. From the statements of various original pattadars and villagers, it emerges that the pattas were

granted as early as 1997 by competent authorities; most of the witnesses have not attributed alleged coercion, threats or inducement to the present appellant; several witnesses have categorically stated that they do not know the appellant personally, nor have they stated that any document was executed, forged or registered at the instance of the present appellant; no witness has alleged that the appellant threatened, induced or deceived them, or received any money from them in connection with the land transactions. The statements of independent witnesses and the inquiry officer primarily narrate the history of revenue litigation, cancellation proceedings with regard to the lease and administrative inquiries, but do not disclose any active role or criminal intent attributable to the appellant. At best, the material reflects disputes of civil nature. Significantly, none of the witnesses have stated that any act was committed by the accused on the ground that the pattadar belonged to a Scheduled Caste, which is a sine qua non for invocation of the SC/ST Act. Thus, even the oral evidence collected during investigation does not disclose the basic ingredients of the offences alleged against the appellant and fails to establish any prima facie case.

22. The impugned cognizance order dated 20.03.2023 has been passed in a routine and mechanical manner, without recording satisfaction regarding existence of prima facie material against the appellant. Such an approach is impermissible in view of the law laid down in **Pepsi Foods Ltd. (supra)**.

23. A further and significant aspect of the matter is that the appellant is not named in the First Information Report. Neither the FIR nor the charge-sheet

explains as to how, when or on what basis the name of the appellant surfaced during investigation. There is no reference to any incriminating document, transaction, recovery or statement of any witness showing the role of the appellant in the alleged offences.

24. Even upon perusal of the statements recorded under Section 161 Cr.P.C. of various witnesses, this Court does not find any material disclosing that the appellant was identified by any witness as a person who induced, coerced, threatened or participated in preparation or execution of any forged document. The prosecution has also failed to disclose the source of information or link evidence connecting the appellant with the alleged conspiracy. In absence of any material explaining the genesis of the appellant's implication, the mere inclusion of his name in the charge-sheet appears to be mechanical and unsupported by evidence, which cannot be sustained in law. Criminal prosecution cannot rest on assumptions or conjectures, particularly when the FIR itself is silent about the appellant. Record also discloses that investigation carried out in the present matter suffers from grave and fatal irregularities as the Charge sheet dated 06.02.2023 includes various witnesses out of which five witnesses had died years before the investigation commenced and this fact conclusively establishes that the investigation is faulty, unfair, and biased and continuing the case would amount to an abuse of the judicial process and result in a miscarriage of justice. The Investigating Officer could not have recorded statements of deceased persons, yet these persons are shown as prosecution witnesses, exposing the fabricated nature of the investigation. The inclusion of deceased persons as prosecution witnesses, without any explanation, goes to

the root of the matter and reflects non-application of mind during investigation, thereby rendering the investigation unreliable and legally unsustainable.

25. Moreover, this Court further finds that several named and unnamed co-accused persons, arising out of the same FIR and charge-sheet, have already been granted relief by Coordinate Benches of this Court. From a perusal of the orders annexed with the record, it is evident that similarly situated co-accused have been granted interim protection after recording categorical findings that the dispute is predominantly civil and revenue in nature, that no specific role was assigned to the applicants therein, and that the provisions of the SC/ST Act were prima facie not attracted. The Coordinate Benches, while granting relief to the co-accused, have consistently observed that the allegations pertain to old land allotments and revenue entries, that the FIR contains general and omnibus allegations, and that continuation of criminal proceedings would amount to abuse of the process of law. It has also been noted in those orders that the essential ingredients of Sections 420, 467, 468, 471, 384 and 120-B IPC, as well as Section 3(1)(e) of the SC/ST Act, were not prima facie made out against the applicants therein. The role attributed to the appellant is neither distinguishable nor graver than the role assigned to those co-accused who have already been granted relief. No material has been pointed out by the learned A.G.A. to demonstrate any distinguishing feature or additional incriminating circumstance against the present appellant so as to deny him similar treatment.

26. Another important aspect which weighs with this Court is that the alleged irregularities pertain to allotment of pattas made as far back as the year 1997

and the FIR was registered only on 03.07.2022? a delay of approximately 24-25 years. Even considering the subsequent events, the prosecution case alleges irregularities came to light in 2016, yet the FIR was lodged after seven years without any plausible or convincing explanation. Further despite the passage of more than two decades, learned A.G.A. has not been able to point out any civil suit, revenue proceeding or statutory action initiated for cancellation of the sale deeds. If the pattas/sale deeds were illegal, fraudulent or obtained by misrepresentation, the natural and lawful course available to the State/aggrieved was to seek their cancellation before the competent revenue or civil forum. However, no material has been placed on record to show that any such proceedings were ever initiated or pursued to their logical conclusion. The absence of any action for cancellation of deeds for such a prolonged period clearly indicates that the dispute is essentially civil and revenue in nature, and that the criminal machinery has been set in motion afterthought and as a substitute for appropriate civil remedies, which is impermissible in law. Criminal prosecution cannot be used to circumvent or replace statutory remedies available under revenue law.

27. In **Iqbal v. State of U.P., (2023) 8 SCC 734**, the Hon'ble the Supreme Court held that delay with other attending circumstances emerging from the record rendering the entire case inherently improbable may become a good ground to quash the FIR and consequential proceedings.

28. This Court also finds support from the recent pronouncements of the Hon'ble Supreme Court. In **Anukul Singh**

Vs. State of Uttar Pradesh and another (decided on 24.09.2025), the Apex Court reiterated that where criminal proceedings are initiated after an inordinate delay in matters arising out of land and revenue disputes, and where allegations are vague, omnibus and unsupported by specific material indicating mens rea, continuation of prosecution would amount to abuse of the process of law. The Court emphasized that criminal law cannot be used as a tool to settle civil or revenue disputes, particularly when statutory remedies remain unexhausted.

29. Similarly, in **Konde Nageshwar Rao Vs. A. Srirama Chandra Murty and another** (decided on 23.07.2025), the Hon'ble Supreme Court held that mere allegations of forgery or cheating, without specific attribution of acts, documents, or intent to the accused, do not justify criminal prosecution. The Court cautioned against mechanical cognizance orders passed solely on the basis of charge-sheets, observing that judicial application of mind at the stage of summoning is a constitutional safeguard against frivolous prosecutions.

30. Further, in **Randheer Singh Vs. State of U.P. and others (decided on 02.09.2025)**, the Hon'ble Supreme Court once again clarified that invocation of the provisions of the SC/ST (Prevention of Atrocities) Act must strictly satisfy the statutory requirement that the offence was committed on the ground that the victim belongs to a Scheduled Caste or Scheduled Tribe. The Court held that disputes relating to property, land allotment, or revenue entries, even if involving members of the SC/ST community, do not ipso facto attract the provisions of the Act in absence of such foundational allegations. The Apex Court

further held that mechanical addition of offences under the SC/ST Act, without specific material, vitiates the entire prosecution.

31. The ratio laid down in the aforesaid judgments squarely applies to the facts of the present case, where the appellant is not named in the FIR, no specific role or overt act is attributed to him, the dispute is predominantly civil and revenue in nature, the proceedings have been initiated after an unexplained and inordinate delay of more than two decades, and the provisions of the SC/ST Act have been invoked without satisfying the mandatory statutory ingredients.

32. This unexplained inaction on the part of the State further weakens the prosecution case and lends support to the contention that the present proceedings are an afterthought, initiated belatedly and without foundational civil adjudication.

33. In the considered opinion of this Court, continuation of the criminal proceedings would result in miscarriage of justice and would amount to abuse of the process of law.

34. In view of the above, the instant criminal appeal is allowed. The impugned cognizance/summoning order dated 20.03.2023 passed by the Special Judge (SC/ST Act), Gautam Budh Nagar in Sessions Trial No. 364 of 2023 (State vs. Maloo & others), the charge-sheet/Supplementary Charge sheet, and the entire criminal proceedings arising out of Case Crime No. 280 of 2022, under Sections 420, 467, 468, 471, 384, 120-B IPC and Section 3(1)(f) of the SC/ST Act, Police Station Dadri, District Gautam Budh Nagar stand quashed.

(2025) 12 ILRA 1176

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 19.12.2025

BEFORE

**THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE INDRAJEET SHUKLA, J.**

Writ Tax No. 2707 of 2025 alongwith other cases

M/S Bambino Agro Industries Ltd.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether uploading Show Cause Notices and Adjudication Orders on the GSTN portal or sending intimation via email/SMS amounts to valid "communication" under Section 107 of the GST Acts, thereby triggering limitation for appeal.

Whether electronic service alone can be treated as deemed service under Section 169 of the GST Acts.

HEADNOTES

Tax Law – U.P. Trade Tax Act, 1948 - Sections - 9, 30 - U.P. Value Added Tax Act, 2008 – Section 32, 55, - Central Excise Act, 1944 - Section – 35, 37C - Customs Act, 1962 - Section - 128, 153 – Finance Act, 1994 (Service Tax law) - Section 83, 85 – Income Tax Act, 1961 - Section 127, 249, 282 – Goods and Services Tax Act, 2017 (State & Central GST Acts) - Section - 107, 107(1), 107(4), 107(11), 161, 169, 169(c)(d), – Information Technology Act, 2000 - Section - 4, 12, 13 - Writ petitions - filed by small and medium traders/manufacturers - challenging the ex parte GST adjudication orders, with the dispute centered on whether service of Show Cause Notices and orders solely through electronic mode (GSTN portal/email alerts) amounted to valid "communication" under Section 107 of the GST Acts so as to start

limitation for appeal - petitioners pleaded violation of natural justice - also contending that uploading alone does not impart knowledge of contents and hence cannot be treated as service - Court examined Section 169 of the GST Acts and the Information Technology Act, 2000, - held that, while electronic service is legally permissible, the deeming fiction of constructive service applies only to tendering, speed post with acknowledgment, publication, and affixation, not to email or portal uploading - since GSTN admitted it lacks mechanisms to verify when taxpayers actually view uploaded documents, mere uploading or intimation cannot amount to "communication," - limitation for appeal begins only upon effective communication, not technical receipt - accordingly, the Court set aside the impugned adjudication orders subject to deposit of 10% of disputed tax within four weeks - with direction to the adjudicating authorities to supply notices and relied-upon documents, allow replies, fix hearings with proper notice, and conclude proceedings within six months, - and further urged GSTN to improve its portal by introducing Hindi language support and user-friendly tabs so taxpayers can comply effectively - consequently, all the petitions are allowed, matters remitted, and taxpayer rights preserved. (Para – 91, 92, 94, 95, 96, 98,10, 104, 105)
Writ Petitions **Allowed.** (E-11)

CASE LAW CITED

Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer (1961 SCC OnLine SC 140)
CCE v. M.M. Rubber & Co. (1992 Supp (1) SCC 471)
State of Punjab v. Khemi Ram (1969) 3 SCC 28
State of West Bengal v. Sadan K. Bormal (2004) 6 SCC 59
Kumar Jagdish Chandra Sinha v. CIT (1996) 86 Taxman 122 (SC)
Harikisan v. State of Maharashtra AIR 1962 SC 911
Union of India v. G.S. Chatha Rice Mills (2021) 2 SCC 209
Nokia India (P) Ltd. v. Addl. CIT (2018) 92 taxmann.com 76 (Delhi)
Atlantis Intelligence Ltd. v. Union of India [2025] 177 taxmann.com 522 (Allahabad)
D.R. Hotels (P) Ltd. v. Deputy Commissioner [2025] 179 taxmann.com 551 (Allahabad)

TVL Sri Mathuru Eswarar Traders v. Deputy State Tax Officer (Madras HC, 2025)
Mr. Sahulhameed v. Commercial Tax Officer (Madras HC, 2024)
M/s Kashi Bartan Bhandar v. State of U.P. (2019 NTN (69) 111)
Suman Jeet Agarwal v. ITO (2022) 143 taxmann.com 11 (Delhi)
Rapiscan Systems Pvt Ltd. v. ADIT (Income Tax) [2025] 170 taxmann.com 753 (Telangana)
Daujee Abhushan Bhandar Pvt Ltd. v. Union of India (2022) 136 taxmann.com 246 (Allahabad)

LIST OF ACTS

Goods and Services Tax Acts (State & Central) - U.P. Trade Tax Act, 1948 - U.P. Value Added Tax Act, 2008 - Central Sales Tax Act, 1956 - Information Technology Act, 2000 - Limitation Act, 1963.

LIST OF KEYWORDS

GSTN portal, electronic service, deemed service, constructive service, communication, limitation, appeal rights, natural justice, ex parte orders, physical service, acknowledgement.

CASE ARISING FROM

Writ petitions challenging validity of service of GST notices/orders exclusively through electronic mode by U.P. State revenue authorities.

APPEARANCE OF PARTIES

Counsel for Petitioners: - Shri Pranjali Shukla along with Sri Gauransh Mishra and Sri Parth Goswami, Ms. Pooja Talwar, Sri Vedant Agrawal and Sri Rishi Raj Kapoor, Sri Anup Shukla holding brief of Sri Devansh Mishra, Ms. Akashi Agarwal and Sri Vishwaraj Singh.

Counsel for Respondents: - Shri Anoop Trivedi learned Additional Advocate General assisted by Sri Arvind Kumar Mishra and Sri Ankur Agarwal learned Standing Counsel for the State of Uttar Pradesh, Sri S.P. Singh learned ASGI assisted by Sri Gopal Verma for the Union of India and Sri Gaurav Mahajan and Sri Amit Mahajan for the central revenue authorities and Sri Praveen Kumar, amicus curiae.

(Delivered by Hon'ble Saumitra Dayal Singh, J.)

1. Heard Sri Pranjali Shukla along with Sri Gauransh Mishra and Sri Parth Goswami, Ms. Pooja Talwar, Sri Vedant Agrawal and Sri Rishi Raj Kapoor, Sri Anup Shukla holding brief of Sri Devansh Mishra, Ms. Akashi Agarwal and Sri Vishwaraj Singh on behalf of petitioners; Sri Anoop Trivedi learned Additional Advocate General assisted by Sri Arvind Kumar Mishra and Sri Ankur Agarwal learned Standing Counsel for the State of Uttar Pradesh, Sri S.P. Singh learned ASGI assisted by Sri Gopal Verma for the Union of India and the GSTN, and Sri Gaurav Mahajan and Sri Amit Mahajan for the central revenue authorities. Also, we have taken assistance of Sri Praveen Kumar, as amicus curiae.

2. Present batch of petitions has been filed by different petitioners assailing individual Adjudication Orders passed against them, under the UPGST Act, 2017 (hereinafter referred to as the 'State Act') and the CGST Act, 2017 (hereinafter referred to as the 'Central Act'). At the outset, strong preliminary objection has been raised by the revenue as to maintainability of these petitions. It has been submitted that the Adjudication Orders are appealable. Therefore, the present petitions may not be entertained, and the individual petitioners be relegated to the forum of alternative remedy. Learned counsel for petitioners have met the preliminary objection on the strength of fact assertion that neither the Show Cause Notice nor the Order in Original/Adjudication Order was served on the petitioners, at the relevant time. Only on recoveries being initiated or other consequential steps being taken by the revenue authorities, they acquired knowledge about the Adjudication Orders passed and/or recoveries pressed

thereunder. By that time, the hard period of limitation prescribed under Section 107 (1) read with (4) of the State/Central Act, namely, 120 days (including only 30 days for condonation of delay), expired. In face of the law as has been laid down by the Supreme Court in **Commissioner of Customs & Central Excise vs Hongo India Pvt. Ltd.; (2009) 5 SCC 791** and **Assistant Commissioner (CT) LTU, Kakinada vs Glaxo Smith Kline Consumer Health Care Limited; (2020) 19 SCC 681**, the petitioners have been left remediless under the enacted law. Therefore, they have been constrained to approach this Court under its extraordinary writ jurisdiction.

3. In all cases, Adjudication Orders and the Show Cause Notices preceding those orders and the impugned orders are described to have been served on the individual petitioners by the revenue authorities - by uploading and thus making them available on the Common Portal, designed and managed by GSTN, a corporation of Union of India. Details of the Adjudication Orders involved in this batch, together with dates are tabulated below:

Writ Tax No.	Adjudication Order date	Passed under Section
2707 of 2025	20.04.2024	73 of the U.P.G.S.T. Act, 2017
1286 of 2025	20.08.2024	73 of the U.P.G.S.T. Act, 2017
2399 of 2025	24.08.2024	73 of the U.P.G.S.T.

		Act, 2017
2722 of 2025	21.08.2024	73 of the U.P.G.S.T. Act, 2017
2783 of 2025	27.08.2024	73 of the U.P.G.S.T. Act, 2017
3098 of 2025	27.08.2024	73 of the U.P.G.S.T. Act, 2017
3101 of 2025	21.09.2024	74 of the U.P.G.S.T. Act, 2017
3103 of 2025	15.02.2025	73 of the U.P.G.S.T. Act, 2017
3927 of 2025	31.12.2024	74 of the U.P.G.S.T. Act, 2017
3928 of 2025	12.08.2024	74 of the U.P.G.S.T. Act, 2017
3938 of 2025	31.12.2024	74 of the U.P.G.S.T. Act, 2017
4625 of 2025	22.08.2024	73 of the U.P.G.S.T. Act, 2017
7362 of 2025	04.05.2024	73 of the C.G.S.T. Act, 2017

4. In such facts, a question has arisen- if the orders impugned in the individual

writ petitions have been 'communicated' to the individual petitioners, within the meaning of that word used in Section 107 of the State/Central Act? Unless the orders to be appealed are effectively 'communicated' to the person aggrieved (by that order), who may then seek an appeal remedy thereagainst, the period of limitation of three months to file such appeal, may not start running.

5. The word 'communicated' is not defined under the State/Central Act. However, learned counsel appearing for either party have referred to Section 169 of those Acts as also Sections 4, 12 and 13 of the Information Technology Act 2000 (hereinafter referred to as the 'IT Act').

6. Seen in that light, a legal issue has arisen - if a Show Cause Notice or other notice or order passed either under the State Act or the Central Act may be found served or may be found 'deemed served' in terms of Section 169 of the State/Central Act, on such person, upon it being uploaded and thus made available on the Common Portal of the GSTN, or on dispatch of electronic mail at the email address provided by the affected person, at the time of obtaining registration? In that context, the effect of sending an SMS alert with respect to issuance of such notice or order, may also be examined.

7. In view of such purely legal issues involved, these writ petitions have been entertained in the following factual background and legal context.

8. The legislative context in which the issue has arisen needs closer scrutiny. Prior to the 101st Constitution Amendment (that enabled enactment of the Goods and Service Tax laws), there pre-existed in the

State of Uttar Pradesh, other taxation enactments. Upon independence, the U.P. Sales Tax Act, 1948 was enacted by the State legislature and Rules were framed thereunder. Parallely, the Parliament enacted the Central Sales Tax Act, 1956 and framed Rules thereunder, for the purpose of taxation of inter-state sales of goods. After five decades, in 1994 U.P. Sales Tax Act, 1948, was rechristened as U.P. Trade Tax Act, 1948. However, no material change arose in the context of the issue raised before us. Later, the U.P. Value Added Tax Act, 2008 was enacted. It remained in force till 30th June 2017. Also, there existed laws relating to Income Tax, Central Excise and Service Tax, besides Customs duty and Service Tax. Under those laws, there existed procedures for issuance and service of notices and orders as also there existed provisions for limitation, to file appeals and seek condonation of delay thereunder. Further, there pre-existed (under the Sales Tax laws) another provision with respect to recall of ex parte orders passed by the Assessing Authorities.

9. Upon enactment of the State/Central Act, the above-mentioned provisions have undergone a transformative change, affecting the vital behavioral responses of the assesseees. Relevant to the State of Uttar Pradesh, we may extract and highlight, in tabular form, some of the changes that have been caused upon enforcement of GST regime, in supersession of the U.P. Trade Tax Act, 1948 and U.P. Value Added Tax Act, 2008. Those are as below:

Act	Service of Notices/Orders	Appeal	Remand/Recall
U.P. Trade Tax	Rule 77. Method of service.	Section 9: Appeal (1) Any	Section 30. Power to set aside an

Act, 1948	(1) The service of any notice, summons or order under the Act or the Rules may be effected by any of the following methods, namely: (a) by giving or tendering a copy thereof to the dealer or person concerned or to his manager, munim, accountant or agent, or to one of his employees or to any audit member of his family residing with him]; (b) by registered post: Provided that if, upon an attempt having been made to serve any such notice, summons order by either of the above said methods, the authority concerned has reasonable ground to believe that the addressee is evading service or that, for any other reason which in the opinion of such authority is sufficient, service cannot be effected by any of the above said methods, the said authority shall, after	dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in section 10A or sub-section (6) of section 13A, may, within thirty days from the date of service of the copy of the order, appeal to such authority as may be prescribed: PROVIDED that where the disputed amount of tax, fee or penalty does not exceed one thousand rupees, the appellant may, at his option, request the appellate authority in writing for summary disposal of his appeal, whereupon the appellate authority may decide the appeal accordingly. (3) The appellate authority may, after calling for and examining the relevant records and after giving	order of assessment or an order in appeal Power to set aside an order of assessment or an order in appeal (1) In any case in which an order of assessment or penalty is passed ex parte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and reopen the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing: PROVIDED that no such application for setting aside an ex parte assessment order shall be entertained unless it is accompanied by

	recording the reasons therefore, cause the notice, summons or order to be served by affixing a copy thereof- (i) if the addressee is a dealer, on some conspicuous part of the dealer's place of business or the building in which the dealer's place of business is located, or upon some conspicuous part of the place of the dealer's business last intimated to the said authority by the dealer or of the place where the dealer is known to have last carried on business or the place where the dealer resides; or (i) if the addressee is not a dealer on some conspicuous part of his residence or office of the building which his office or residence is located ; and such service shall be deemed to be as effectual as if it had been made on the addressee personally.	the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (1A) (a) In the case of an order of assessment or penalty, (i) confirm or annul such order; or (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case maybe, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or (iv) direct the assessing authority to make such inquiry and to submit its	satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.		(2) When a process server, peon or any other employee of the Trade Tax Department delivers or tenders any notice, summon or order to the dealer or addressee, personally or to any of the persons referred to in clause (a) of sub-rule (1) he shall require the persons to whom the notice, summons or order is delivered or tendered to sign an acknowledgment of the service of the notice, summons or order. (3) Where the person to whom the notice, summons or order is tendered as aforesaid refuses to accept the same or refuses to sign the acknowledgment after its acceptance the process server, peon or employee shall submit a report to the concerned authority standing facts about such refusal and the name, address	report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report as been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clause; or (b) in the case of any other order confirm, cancel or vary such order: PROVIDED that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for enhancement of the assessment	

	of the person, if any, present at the time of such refusal. Such report shall be verified on oath by the process server, peon or employee. The concerned authority may, having regard to the facts and circumstances and after making such further enquiry in the matter, if any, as it thinks fit, consider such refusal to be proof of service. (4) When service is made by post, or acknowledgment purporting to have been signed by the addressee or his manager, munim, accountant or agent or an employee or member of his family or an endorsement by a postal employee that the addressee or his manager, munim, accountant or agent or employer or member of his family refused to take delivery may be deemed by the concerned authority to be proof of service. (5) When the	or penalty has been made. (6) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.			notice, summons or order is served by affixing a copy thereof in accordance with the first proviso to sub-rule) the official serving it shall return the original to the authority concerned with report endorsed thereon or annexed thereto stating t} } at he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified, and on whose presence the copy was affixed.. The said official shall also obtain the signature or thumb-impression identifying the addressee's residence or office or building or place of business to his report.		
				U.P VAT Act,	Rule 72: Mode of service The service of	Section 55 : Appeal (1) Any	Section 32. Power to set aside

2008	any notice, summons or order under the Act or the Rules may be affected by any of the following methods, namely: (a) Service to be on dealer or person concerned in person when practicable, or on his agent wherever it is practicable service shall be made on the dealer or person concerned in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient. (b) Service on agent by whom dealer or person concerned carries on business- In a case relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the authority from which the notice, summons or order is issued, service on any manager or agent, who, at the time of service, personally	dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in sub-section (7) of section 48 may, within thirty days from the date of service of the copy of the order, after serving a copy of appeal memo on the assessing authority or the Commissioner, appeal to such authority (hereinafter referred to as appellate authority), as may be prescribed: Provided that where due to any reason, any appellant fails to serve a copy of appeal memo on the assessing authority before filing appeal, he may serve copy of such appeal memo within a time of one week from the date on which appeal has been filed or within such	exparte order of assessment or penalty (1) In any case in which an order of assessment or re-assessment or rejection of application for registration or order of penalty is passed exparte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and re-open the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing: Provided that no such application for setting aside an exparte assessment order shall be entertained unless it is		carries on such business or work for such person within such limits, shall be deemed good service. (c) Service on an adult member of dealer or concerned person's family- Where in any case the dealer or person concerned is absent from his residence at the time when the service of notice, summons or order is sought to be effected at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the notice, summons or order on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. Explanation: A servant is not a member of the family within the meaning of this rule. (d) Person served to sign acknowledgement-	further time as the appellate authority may permit. ((5) The appellate authority may, after calling for and examining the relevant records and after giving a reasonable opportunity of being heard to the appellant and the Commissioner- (a) in the case of an order of assessment and penalty.- (i) confirm or annul such order ; or (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise ; or (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or (iv) direct	accompanied by satisfactory proof of the payment of the amount of tax to be due under this Act on the turnover of sales or purchases, or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater. (2) Where an assessment order under sub-section (1) of section 25 is passed, exparte, the dealer may apply to the Assessing Authority within thirty days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the tax return and deposited the tax due according to the tax return within thirty days from the last day prescribed for filing such tax return, it

Where the process server delivers or tenders a copy of the notice, order or summons to the dealer or person concerned personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice, order or summons. (e) Procedure when dealer or person concerned refuses to accept or cannot be found Where dealer or concerned person or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the process server, after using all due and reasonable diligence, cannot find the dealer or person concerned who is absent from his place of business or residence at the time when service is sought to be	the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report has been submitted or not decide the appeal in accordance with the provisions of the preceding sub-clauses; or (b) in the case of any other order- (i) confirm, cancel or vary such order; or (ii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified: Provided that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at	may modify or set aside such order and also the demand notice, if any, issued thereunder. (3) In any case in which any assessment or re-assessment has been made ex parte and (a) appeal under section 55 against such order has been dismissed as barred by time; (b) in appeal before the Tribunal under section 57, order, passed by the Appellate Authority under section 55, has been confirmed; and (c) Commissioner or Additional Commissioner designated by the Commissioner, after giving reasonable opportunity of being heard to the dealer, is satisfied that- (i) dealer, at any stage during the period of	effected on him and there is no likelihood of his being found within a reasonable time and there is no agent empowered to accept service of the notice or order or summons on his behalf, nor any other person on whom service can be made, the process server shall affix a copy of the notice, order or summons on the outer door or some other conspicuous place in the house in which the dealer or person concerned ordinarily resides or carries on business or personally works for gain, and shall then return the original to the authority from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and	any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for examination of legality or propriety of order under appeal has been made by the Commissioner (7) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.	assessment or reassessment proceedings, had no notice of initiation of such proceedings; (ii) as a result of ex parte assessment or reassessment, without proper basis amount of tax has been levied; (iii) undue hardship will be caused to the dealer if such assessed tax is realized from him; and (iv) if, after giving reasonable opportunity of being heard to the dealer, tax is reassessed, demand created by earlier order of assessment or reassessment may stand reduced to a large extent, he may direct the assessing authority to set aside such ex parte order of assessment or reassessment and to make assessment or reassessment after affording

	in whose presence the copy was affixed. (f) Endorsement of time and manner of service The process server shall, in all cases in which the notice, order or summons has been served under clause (d), endorse or annex, or cause to be endorsed or annexed, on or to the original notice, order or summons, a return stating the time when and the manner in which the notice, order or summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice, order or summons. (g) Examination of the process server Where a notice, order or summons is returned under clause(e), the authority shall, if the return under that rule has not been verified by the affidavit of the process server, and may, if it		reasonable opportunity to the dealer, if the dealer presents an application before the Commissioner within a period of sixty days from the date on which dealer receives the order passed by the Tribunal under section 57.		has been so verified, examine the process server on oath, or cause him to be so examined by another authority, touching his proceedings, and may make such further enquiry in the manner as it thinks fit: and shall either declare that the notice, order or summons has been duly served or order such service as it thinks fit. (h) Simultaneous issue of notice or order or summons for service by post in addition to personal service- (i) The authority shall, in addition to, and simultaneously with, the issue of notice, order or summons for service in the manner provided under this rule, also direct the notice, order or summons to be served by registered post, acknowledgment due, addressed to the dealer or person concerned, or his agent empowered to accept the service, at the		

	place where the dealer or person concerned, or his agent, actually and voluntarily resided or carries on business or personally works for gain. Provided that nothing in this sub-clause shall require the authority to issue a notice, order or summons for service by registered post, where, in the circumstances of the case, the authority considers it unnecessary. (ii) when an acknowledgment purporting to be signed by the dealer or person concerned or his agent is received by the authority or the postal article containing the notice, order or summons is received back by the authority with an endorsement purporting to have been made by a postal employee to the effect that the dealer or person concerned or his agent had refused to take delivery of the postal article containing the				notice, order or summons, when tendered to him, the authority issuing the notice, order or summons shall declare that the notice, order or summons had been duly served on the dealer or person concerned. Provided that where the notice, order or summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to this sub-rule shall be made notwithstanding the fact that the acknowledgment having lost or mislaid, or for other reasons, has not been received by the authority within thirty days from the date of issue of the notice, order or summons (i) Substituted service- (i) Where the authority is satisfied that there is reason to believe that the dealer or person concerned is keeping out of the way for the purpose of		

	avoiding service, or that for any other reason the notice, order or summons cannot be served in the ordinary way, the authority shall order the notice, order or summons to be served by affixing a copy thereof in some conspicuous place in the office premises, and also upon some conspicuous part of the house (if any) in which the dealer or person concerned is known to have last resided or carried on business or personally worked for gain, or in such other manner as the authority thinks fit. (ii) Where the authority acting under sub clause(i) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the dealer or person concerned is last known to have actually and voluntarily				resided, carried on business or personally worked for gain. (iii) Effect of substituted service;- Service substituted by the order of authority shall be as effectual as if it had been made on the dealer or concerned person. (iv) Time for appearance to be fixed;- Where service is substituted by the order of authority, the authority shall fix such time for the appearance of the dealer or the concerned person as the case may require. (j) Service of notice, order or summon where the dealer or person concerned resides within the jurisdiction of another authority A notice, order or summons may be sent by the authority by which it is issued, whether within or without the State, either by one of its process server or by post to any authority having jurisdiction in the place		

	where the dealer or person concerned resides. (k) Duty of authority to which notice, order or summon is sent- The authority to which a notice, order or summons is sent under clause (j) shall, upon receipt thereof, proceed as if it has been issued by such authority and shall then return the notice, order or summons to the issuing authority, together with the record (if any) of its proceedings with regard thereto. (l) Service on dealer or person concerned in prison Where the dealer or person concerned is confined in a prison, the notice, order or summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the dealer or person concerned. (m) Service on civil public officer or on				servant of railway or local authority -Where person concerned is a public officer (not belonging to the Indian military, naval or air forces), or is a servant of a railway or local authority, the authority may, if it appears to it that the notice, order or summons may be most conveniently so served, send it for service on the person concerned to the head of the officer in which he is employed together with a copy to be retained by the person concerned. (n) Duty of a person to whom notice, order or summon is delivered or sent for service- (i) Where a notice, order or summons is delivered or sent to any person for service under clause (l) or (m) above, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the dealer or		

	person concerned, and such signature shall be deemed to be evidence of service. (ii) Where for any reason service is impossible, the notice, order or summons shall be returned to the authority with a full statement of such reason and of the steps taken to procure service, and such statement shall be deemed to be evidence of nonservice. (o) Substitution of letter for notice, order or summons- (i) The authority may, notwithstanding anything hereinbefore contained, substitute for a notice, order or summons a letter signed by the authority where the dealer or person concerned is, in the opinion of the authority, of a rank entitling him to such mark of consideration. (ii) A letter substituted under sub clause (i) shall contain all the particulars required to be		

	stated in a notice, order or summons, and, subject to the provisions of sub clause (iii), shall be treated in all respects as a notice, order or summons. (iii) A letter so substituted may be sent to the dealer or person concerned by post or by a special messenger selected by the authority, or in any other manner which the authority thinks fit; and, where the dealer or the concerned person has an agent empowered to accept service, the letter may be delivered or sent to such agent.		
Central Excise Act, 1944.	Section 37C. Service of decisions, orders, summons, etc. (1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,-- (a) by tendering the decision, order, summons or notice, or sending it by registered post	35. Appeals to [Commissioner (Appeals).- (1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may	

	with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any; (b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended; (c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof	appeal to the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days].	

	on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.		
Customs Act, 1962	Section 153. Modes for service of notice order, etc.- (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:-- (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him; (b) by a registered post or speed post or courier with acknowledgment due, delivered to the person for whom it is issued or to his authorised representative,	128. Appeals to Commissioner (Appeals).- (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs] may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order: Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid	

	if any, at his last known place of business or residence; (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person; (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.	period of sixty days, allow it to be presented within a further period of thirty days.	
Finance Act, 1994	Section 83. Application of certain provisions of Act 1 of 1944.- The	SECTION 85. Appeals to the Commissioner of Central Excise	Section 83.

	provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.	(Appeals). (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals). (3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter : Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from	

		presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.	
Income Tax Act, 1961	Section 282 of the Act read with Rule 127 282. (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named, (a) by post or by such courier services as may be approved by the Board; or (b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or (c) in the form of any electronic record as provided in Chapter IV of	249. Form of appeal and limitation. (2) The appeal shall be presented within thirty days of the following date, that is to say,- (a) where the appeal is under section 248, the date of payment of the tax, or (b) where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty: Provided that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the	

	the Information Technology Act, 2000 (21 of 2000); or (d) by any other means of transmission of documents as provided by rules made by the Board in this behalf. (2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.	application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or (c) in any other case, the date on which intimation of the order sought to be appealed against is served.	
Goods & Service Tax Act, 2017	Section 169. Service of notice in certain circumstances .- (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable	Section 107. Appeals to Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three	

	person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or (b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or (d) by making it available on the common portal; or (e) by publication in a newspaper circulating in the locality in	months from the date on which the said decision or order is communicated to such person. (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order: Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable	

	which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.	opportunity of showing cause against the proposed order: Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 or section 74A.	

10. Thus, in short, it may be noted that the State/Central Acts seek to transform the pre-existing physical/offline mode of service of notices and orders as also filing of appeals, by enabling electronic modes, chiefly by employing the Common Portal of the GSTN. Thus, all communications between the authorities and the assessee are

permitted through electronic mode, by way of a complete alternative to the offline/physical mode. At present, only hearings are permitted through offline mode. The faceless mechanism otherwise adopted under the Income Tax Act, 1961, does not find place under the GST regime, at present.

11. As noted above, by way of a direct consequence of the sudden transformative change introduced upon the enforcement of the GST laws, numerous challenges arose both to the assesseees and the authorities. During this hearing, we had raised a query to Sri Gopal Verma, learned counsel for GSTN if he could inform the number of complaints received by the GSTN (from inception) about the working of the Common Portal. Vide email communication dated 26.11.2025 received by Sri Gopal Verma, he has been apprised that 2,94,811 tickets evidencing that many complaints were received by GSTN, from both streams i.e. revenue authorities as also the assesseees. Of those, 2,94,442 have been resolved and the balance 369 are in the process of being resolved. The tabular chart appended to the written instructions as have been made available to us (marked as 'X' and retained on record), is extracted below:

Year/Month	AC I	Received	Resolved	Pending
2017	0	127375	127375	0
2018	0	36664	36664	0
2019	0	16531	16531	0
2020	0	16016	16016	0
2021	0	28701	28701	0
2022	0	13673	13673	0
2023	0	17721	17721	0
2024	0	13581	13581	0
2025	0	24549	24180	369
Total	0	2,94,811	2,94,442	369

12. The present bench constitution has been dealing with similar issues (as

involved in these cases), since 07.10.2025. Faced with a regular, unending flood of similar litigation, wherein effectively similar pleadings have been made by different assesseees arising from 59 different districts of the State, we noticed that the common complaint/grievance of such assesseees/petitioners remains that they had not been served or communicated the Show Cause Notice and/or the Adjudication Order passed by the Adjudicating Authority, in their cases - almost all, issued by the State revenue authorities. Consistently, the State revenue authorities have maintained that they have disbanded the practice of service of physical notices (through Process Server and Post). As to the reason, only this much has been disclosed that Section 169(1) [chiefly sub-clause (c) and sub-clause (d)] permits the revenue authorities to serve notices and orders through electronic mode. Since the assesseees are registered on the Common Portal, service of all such notices and orders is being affected through electronic mode only, except where registration itself may have been cancelled.

13. Observing that deliberate structural change to the legislation and the consequent executive/administrative action under the GST regime, it is further observed - the grievances of the assesseees are three fold. First, the assesseees are claiming violation of principles of natural justice occasioned by non-service of Show Cause Notices and Adjudication Orders (through physical/offline mode). Second, they are aggrieved that the hard period of limitation prescribed under Section 107 is being lost for reason of non-communication of the Adjudication Orders (though physical/offline modes). Third, neither the appeal authority (under the GST regime) has the power to set aside the Adjudication

Order and remit the proceedings to the Adjudicating Authority to pass afresh order nor the Adjudicating Authority has the power (under the GST regime) to set aside an ex parte order, passed by it.

14. Cumulatively, the assessee is at loss of hearing at the first tier, which is the most crucial tier in tax litigation. Unless an assessee is given full opportunity to file objections/replies and unless he is heard by the Assessing/Adjudicating Authority, the relief in the appeal remedy may itself become more difficult to avail, especially since the appeal authority may only pass an order on the merit dispute but it may not pass any order based solely on violation of procedure or rules of natural justice.

15. Primarily, on those considerations as have been noted in **M/s Riya Construction vs State of U.P. & 3 Ors; 2025:AHC:179271-DB**, we passed the below quoted order, in that case:

“1. Ms. Farheen, learned Advocate holding brief of Shri Santosh Kumar Srivastava, learned counsel for the petitioner, Shri Ankur Agarwal, learned counsel for the Revenue and perused the record.

2. The present writ petition has been filed challenging the Adjudication Order dated 04.02.2025 passed under Section 73 of the UPGST Act passed by respondent no.3 creating a demand of tax of Rs.1,61,225.64/- for the FY 2020-21.

3. Submission is, no show cause notice was ever issued to the petitioner prior to the impugned order being passed and in any case, no date of filing of reply or personal hearing was communicated to the petitioner before the impugned order came to be passed. Also, the date of service of the

adjudication order has been doubted. Pleadings to that effect exist.

4. In many similar matters arising from same/similar mistakes committed by the Adjudicating Authorities, we have been setting aside such orders, conditionally. Hundreds, if not thousands of petitions have arisen, on same or similar grounds, clearly indicating to the Court, widespread difficulties being faced by numerous registered persons.

5. Primarily, it is being noted, show cause notices and adjudication orders are being served only through online mode. In that, many times alerts are not being sent to the noticees and in any case the notices and orders are often not readily visible on the GSTN Portal. Further, it has been noted, besides rigid/fixed period of limitation with limited power to condone the delay, the Appeal Authorities do not have the power to set aside/remand the proceedings, to the Adjudicating Authority. Thus, many times the right of appeal is lost to the aggrieved assessee, for reason of late service of Adjudication Order. Even, if the Appeal Authorities were to pass an order on merits, it would still take away one opportunity of hearing that is otherwise available to the noticee, to represent its case, under the scheme of the Act.

6. While there may be some merit in the objection being raised by the petitioner, that facts are otherwise, in the first place a coordinate bench in Mahaveer Trading Company Vs. Deputy Commissioner State Tax And Another, Neutral Citation No.-2024:AHC:38820-DB, a coordinate bench took note of similar and other violations of rules of natural justice, by Adjudicating Authorities and thus set aside the Adjudication Order.

7. Again in another order passed by a coordinate bench in M/S Shubham

Steel Traders Vs. State of U.P. and Another, Neutral Citation No2024: AHC:31108-DB, it has been observed as below:

"10. Rules of natural justice ensure fairness in proceedings. Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.

11. By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct."

8. In view of our consistent view in similar matters, no useful purpose would be served in keeping this writ petition pending or calling for counter affidavit, at this stage.

9. Accordingly, the writ petition is allowed and the impugned order is set aside, subject to the petitioner depositing Rs.16,000/- within a period of one month from today. Present writ petition is disposed of with the following directions:

(i) Subject to the above deposit being made by the petitioner, the Adjudicating Authority shall make available to the petitioner copy of the show cause notice together with any additional/supplementary notice etc issued in these proceedings together with copies of Relied Upon Documents ('RUDs' in short) within a period of two weeks from the date of compliance shown by the petitioner.

(ii) Petitioner shall file reply, if any, within a further period of four weeks therefrom.

(iii) Thereupon the respondent No. 3 shall fix appropriate date for hearing and communicate the same to the petitioner in the manner prescribed by law with at least two weeks' advance notice.

(iv) Petitioner undertakes to cooperate and participate in the proceedings and not seek any undue or long adjournment.

10. It is expected that the proceedings thus remitted would be concluded within six months from the date the petitioner makes first compliance under this order and deposits the amount specified above."

16. We called for a report from the office as to the number of cases date-wise, in which **M/s Riya Construction (supra)** has been followed. The data (upto date) furnished by the office is as below:

Date	Number of cases
13.10.2025	83
14.10.2025	94
15.10.2025	43
16.10.2025	33
17.10.2025	30
27.10.2025	13
28.10.2025	14
29.10.2025	65
30.10.2025	28
31.10.2025	10
03.11.2025	23
04.11.2025	33
06.11.2025	34
07.11.2025	28
10.11.2025	57
11.11.2025	33
12.11.2025	30
13.11.2025	27
14.11.2025	50
15.11.2025	33
17.11.2025	31
18.11.2025	21
19.11.2025	39
20.11.2025	30
21.11.2025	40
24.11.2025	39
25.11.2025	27
26.11.2025	41

27.11.2025	44
28.11.2025	70
01.12.2025	36
02.12.2025	32
03.12.2025	77
04.12.2025	44
05.12.2025	47
08.12.2025	77
09.12.2025	52
10.12.2025	110
11.12.2025	61
12.12.2025	83
15.12.2025	83
16.12.2025	20
17.12.2025	114
18.12.2025	111
19.12.2025	213

17. Consequentially, more than 2300 cases have arisen and have been disposed of in the terms of **M/s Riya Construction (supra)**, including earlier in the day, today. However, that may (in a self-critical way), only reflect the rough and ready or minimum justice delivered, owing to extreme circumstances; existence of widespread grievances, and need to serve the larger cause of justice. Citizens and other entities may be assessed to pay tax and demands made, only after being given a reasonable opportunity of being heard. Their right of appeal may not be curtailed, lightly. Also, precious revenue (to the State), may not stay locked in litigation, indefinitely. Thus, against payment of about 10% of the disputed demand of tax (which is the amount required to be deposited to file a statutory first appeal), such ex parte Adjudication Orders have been set aside and proceedings remitted to the Adjudicating Authorities, on the terms provided in individual orders. Barring cases where 10% amount is less than Rs. 5000/-, (there on the suggestion of the learned Standing Counsel, the condition of such deposit has been relaxed), and some cases involving penalty and interest demands only, all other proceedings have been remitted against deposit of 10% of the

disputed demand of tax, sometimes, even in the absence of learned counsel for the individual petitioners - at the suggestion of the learned Standing Counsel. Largely, the quantum of disputed tax involved has been a few thousands or lakhs and only sometimes running into a crore or more. It indicates to us that the grievance has arisen to small and medium sized businesses.

18. However, we see no end to the litigation on this count. For reason of the considered stand taken by the State revenue authorities - that they propose to serve the Show Cause Notices and the Adjudication Orders through electronic mode only, and not through physical mode, the fact circumstance giving rise to such litigation may never end at least in the proceedings arising at the hands of the State revenue authorities.

19. As noted in earlier orders passed in these cases, we explored possibilities to encourage the executive - to find a solution to the problem. To the extent Section 169(1) admits of (amongst others), two other regular modes of service - through tender and dispatch by Speed Post, besides communication through electronic mode (either through Common Portal or through e-mail), we were of the opinion that the State Government may itself examine the issue first, and find an administrative solution to the problem. However, in face of the last written instructions dated 08.12.2025 issued by Dr. Nitin Bansal, Commissioner State Tax U.P., Lucknow, that possibility has ceased to exist. At the same time, it has been informed - where registration may have been cancelled, notices are being dispatched through physical mode. To the extent the learned Additional Advocate General made a further statement that the said written

instruction is the last stand of the State in this matter, filing of affidavit has been dispensed. The said written instruction has been marked as 'Y' and retained on record. We consider it proper to extract the said instructions in entirety, as below:

"रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another एवं इससे सम्बद्ध अन्य वादों में मा० उच्च न्यायालय, इलाहाबाद के अंतरिम निर्णय दिनांक 26.11.2025 के संदर्भ में इंस्ट्रक्शन (Instruction)

1. यह कि रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में मा० उच्च न्यायालय, इलाहाबाद के समक्ष दिनांक 11.11.2025 को सुनवाई के दौरान विभागीय पक्ष के रूप में इंस्ट्रक्शन प्रस्तुत किया गया था, जो निम्नवत है -

A. दिनांक 01.07.2017 से लागू किये गये उ०प्र० वस्तु एवं सेवा कर अधिनियम, 2017 के अन्तर्गत समस्त कार्य ऑनलाइन किये जाने की अवधारणा रखी गयी थी एवं इस अधिनियम की धारा 169 में नोटिस/आदेश की तामिली (Service of Notice/Order) के विस्तृत प्रावधान भी किये गये हैं। चूंकि विभाग द्वारा जी०एस०टी० के अन्तर्गत समस्त कार्य जी०एस०टी०एन० पोर्टल के माध्यम से

ऑनलाइन ही किये जाते हैं, ऐसी स्थिति में सामान्य कार्यप्रणाली में कोई भी नोटिस/आदेश अधिकारियों द्वारा जी०एस०टी०एन० पोर्टल के माध्यम से ऑनलाइन ही तामिल कराये जाते हैं जो कि अधिनियम की धारा-169 के अनुरूप ही है। जी०एस०टी०एन० पोर्टल पर नोटिस/आदेश जारी किए जाने का मुख्य उद्देश्य कर अधिकारियों एवं करदाताओं के मध्य एक digital, transparent, और प्रभावी communication स्थापित करना भी है। यह प्रणाली अनुपालन की प्रक्रिया को सुव्यवस्थित करते हुए यह सुनिश्चित करती है कि दोनों पक्ष एक ही पोर्टल पर एक ही स्थान से अभिलेखीय सूचनाएँ प्राप्त कर सकें।

B. इस संदर्भ में विनमतापूर्वक निवेदन है कि यद्यपि प्रत्येक नोटिस/आदेश को करदाता को भौतिक रूप से तामिल कराया जाना जी०एस०टी० व्यवस्था की मूल अवधारणा से सुसंगत नहीं है तथापि जहाँ करदाता का पंजीकरण (Registration) नोटिस/आदेश की तिथि से पूर्व निरस्त किया जा चुका हो, उन परिस्थितियों में नोटिस/आदेश की तामिली जी०एस०टी०एन० पोर्टल पर उपलब्ध कराने के साथ-साथ भौतिक रूप से भी करायी जा सकती है।

2. यह कि रिट टैक्स संख्या- 2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में मा० उच्च न्यायालय, इलाहाबाद के समक्ष दिनांक 25.11.2025 को सुनवाई के दौरान विभागीय पक्ष के रूप में इंस्ट्रक्शन प्रस्तुत किया गया था, जो निम्नवत है -

A. यह कि रिट टैक्स संख्या- 2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में जीएसटीएन द्वारा अनुपूरक प्रतिशपथ पत्र दाखिल किया गया, जिसके बिंदु संख्या 6 में यह उल्लेख किया गया है कि जीएसटी पोर्टल पर कर अधिकारियों द्वारा जारी किए गए नोटिस, आदेश आदि को करदाता ने कब खोला-इसका कोई रिकॉर्ड लॉग (LOG) सिस्टम में नहीं बनता। इसलिए करदाता द्वारा नोटिस/अतिरिक्त नोटिस/आदेश किस तिथि को खोला गया है, इसकी जाँच पोर्टल के माध्यम से नहीं की जा सकती है।

B. यह कि जीएसटीएन द्वारा दाखिल अनुपूरक प्रतिशपथ पत्र के बिंदु 7 में यह उल्लेख किया गया है कि माननीय उच्च न्यायालय के निर्णय दिनांक 08.10.2025 के क्रम में जीएसटीएन इस तथ्य का परीक्षण करेगा कि क्या पोर्टल पर ऐसा

विकल्प बनाया जाना संभव है जिससे यह पता लगाया जा सके कि करदाता द्वारा नोटिस/आदेश/अतिरिक्त नोटिस को कब देखा गया है।

C. यह कि जीएसटीएन द्वारा दाखिल अनुपूरक प्रतिशपथ पत्र बिंदु 8 में यह उल्लेख किया गया है कि धारा 169 में नोटिस/आदेश की सेवा के सभी तरीकों का विस्तृत प्रावधान है, और विभाग/जीएसटीएन द्वारा इन्हीं प्रावधानों (विशेषकर धारा 169 (1) (c) और (d)) का पालन किया जाता है। जीएसटी प्रणाली को पूरी तरह स्वचालित अप्रत्यक्ष कर व्यवस्था बनाने के उद्देश्य से कानूनी प्रावधानों के अनुसार तैयार किया गया है। किसी भी प्रकार के बदलाव या संशोधन का दूरगामी प्रभाव पूरे जीएसटी प्रणाली की संरचना और कार्य प्रणाली को प्रभावित करेगा।

D. उपरोक्त संदर्भ में माननीय उच्च न्यायालय, इलाहाबाद के निर्देशानुसार जीएसटीएन, नोटिस/अतिरिक्त नोटिस/आदेश हेतु पोर्टल पर "पॉप-अप/व्यू टैब" व्यवस्था विकसित करने पर विचार कर रहा है।

3. यह कि मा० उच्च न्यायालय में लम्बित उक्त वाद के सम्बन्ध में अपर महाधिवक्ता, श्री अनूप त्रिवेदी के साथ आयुक्त, राज्य कर, उ०प्र०, लखनऊ एवं

अन्य विभागीय अधिकारियों द्वारा निम्न तिथियों में Zoom Meeting के माध्यम से वीडियो कॉन्फ्रेंसिंग की गयी, जिसका विवरण निम्न है -

1. दिनांक 02.12.2025 समय 06:30 PM

2. दिनांक 03.12.2025 समय 06:30 PM

3. दिनांक 06.12.2025 समय 01:00 PM

वीडियो कॉन्फ्रेंसिंग में विचार-विमर्श के बाद राज्य कर विभाग, उ०प्र० के सभी 20 जोनों से प्राप्त सूचना के अनुसार GSTN के BO-WEB पोर्टल पर वित्तीय वर्ष 2024-25 में सभी प्रकार की कुल 02.82 लाख नोटिसें जारी की गयी हैं।

4. यह कि जीएसटी प्रणाली के अंतर्गत पंजीकृत प्रत्येक करदाता द्वारा GSTN के BO-WEB पोर्टल पर निर्धारित कर अवधि के अनुसार मासिक/त्रैमासिक रिटर्न अनिवार्यतः प्रस्तुत किए जाते हैं, जिनके आधार पर कर जमा (Tax Deposit), इनपुट टैक्स क्रेडिट (ITC) का Claim तथा रिफंड का दावा किया जाता है। न्याय-निर्णयन की कार्यवाही से असंतोष की स्थिति में करदाता विभागीय स्तर पर प्रथम अपील दाखिल कर राहत प्राप्त करते हैं। उपर्युक्त समस्त कार्यवाही करदाता द्वारा विभागीय BO-WEB पोर्टल के

माध्यम से ऑनलाइन की जाती है। ऐसी दशा में जब करदाता द्वारा पोर्टल पर उपलब्ध सभी ऑनलाइन साधनों एवं सुविधाओं का प्रयोग अनिवार्य रूप से किया जाता है, तब विभाग द्वारा नोटिसों/आदेशों की भौतिक तामीली करना न केवल अव्यावहारिक होगा, बल्कि विभागीय एवं विधायी मंशा के भी प्रतिकूल सिद्ध होगा; क्योंकि ऐसी तामीली से ऑनलाइन-आधारित जीएसटी तंत्र की मूल भावना प्रभावित होगी।

5. यह कि निकट भविष्य में जीएसटी ट्रिब्यूनल के पूर्ण रूप से कार्यशील हो जाने पर करदाता को द्वितीय अपील के स्तर पर एक अतिरिक्त विधिक मंच उपलब्ध हो जाएगा।

अतः मा० उच्च न्यायालय से विनम्रतापूर्वक प्रार्थना है कि नोटिसों व आदेशों की तामीली के सम्बन्ध में किसी भी प्रकार के बदलाव या संशोधन का दूरगामी प्रभाव पूरे जीएसटी प्रणाली की संरचना और कार्य प्रणाली को प्रभावित करेगा। अतः मा० उच्च न्यायालय से निवेदन है कि प्रकरण में कोई प्रतिकूल दृष्टिकोण न अपनाये जाने की कृपा करें।

(डा० नितिन बंसल)

आयुक्त, राज्य कर,
उत्तर प्रदेश, लखनऊ।"

20. It is relevant - though the State Government of Uttar Pradesh has chosen to adopt that course, a slightly nuanced and more pragmatic approach has been adopted by the central revenue authorities inasmuch as in more than 2000 cases dealt with by us - following M/s Riya Construction (supra), barely a handful would be cases involving central revenue authorities. They may be one in a hundred, or less. On a query put to the learned ASGI (also appearing for the Union of India), as to the possible reason for the same, it has been candidly informed that the central revenue authorities have chosen to serve physical notices of proceedings and copies of orders, in addition to the service through electronic mode. Clearly, the Central Government has realised the difficulties arising from service effected through electronic mode, through the same Common Portal of the GSTN. Therefore, it may have taken a more pragmatic decision to service notices and orders through physical mode, as well.

21. Earlier, pursuant to order dated 08.10.2025, GSTN has filed Supplementary Counter Affidavit wherein it has been stated as below:

"4. That the Hon'ble High Court, vide its order dated 08.10.2025, directed the GSTN to file supplementary affidavits in all cases in that batch to make necessary disclosures with respect to point nos. (i), (ii) and (iii) of paragraph no. 7 and 11 of the said order. The relevant paragraph is reproduced below for ready reference:

7. The GSTN may file a short affidavit disclosing:

(i) the dates on which show-cause notice dated 14.05.2024 and the impugned order dated 22.08.2024 were put up on the Common Portal;

(ii) if the date on which such notice/order/additional notice may have been opened by the petitioner can be traced out through electronic trail;

(iii) if any alert was sent to the petitioner that the show-cause notice dated 14.05.2024 and the order dated 22.08.2024 had been put up on the Common Portal.

8. The affidavit would also disclose if any mechanism can be devised where once an alert is sent either through e-mail or SMS, another column may be added under the notice/order/additional notice column as may confirm that fact and also if another feature may be added whereby once the notice/order/additional notice put up on the Common Portal has been viewed by the assessee, the portal may thereafter reflect such event i.e. that the document has been "viewed".

9. Let such affidavit be filed within a period of two weeks.

10. Connect and list with Writ Tax No. 2707 of 2025 on 11.11.2025.

11. In view of the order passed today, GSTN may also file supplementary affidavits in all cases in that batch to make necessary disclosure with respect to point nos. (i), (ii) and (iii) of paragraph no. 7 of this order.

5. That with regard to directions issued by the Hon'ble Court so far as the direction contained in para No.7 (i) and 7 (iii) in order dated 08.10.2025, it is stated that any alerts (e-mail/SMS) is triggered in real time/near real time basis to the Primary Authorized Signatory's registered mobile number/e-mail ID upon the same being uploaded on the portal. The details of such alerts have already been provided by GSTN in the counter affidavit submitted by GSTN on 23.09.2025 in the matters which have been tagged along with lead matter (Writ Tax No. 2707 of 2025) and brought to the notice of GSTN.

6. *That with regard to the directions contained in para-No.7(ii) above, it is stated that the GST portal does not create a log in respect of the accessing of any communication issued by the Tax Officers, such as a Show Cause Notice, Order etc., by a taxpayer. Hence, electronic trail of the date on which such notice/order/additional notice may have been opened by the petitioner can't be traced.*

7. *That with respect to the direction contained in para-No.8 of the Hon'ble High Court's order dated 08.10.2025, it is most respectfully submitted that GSTN shall examine the feasibility of introducing such features/mechanism on GST portal. However, it is respectfully submitted that the Section 169 of the GST Act provides for various modes of Service of Notices/Orders etc.*

8. *That it is most respectfully submitted that the aforesaid provision contained under Section 169 of CGST Act 2017 exhaustively prescribed inter-alia the method of service of notice/order which has been complied (more specifically sub-clause (c) and (d) under subsection 1 of Section 169 of the Act) with by the Deptt./GSTN.*

9. *That it is most respectfully submitted that GST system has been designed as per the provision stipulated under the CGST Act and Rules thereunder with the objective of establishing a fully automated indirect tax regime in the country. Any deviation or modification thereto may have a cascading impact, potentially destabilizing the structural and functional integrity of the GST system.*

22. Another circumstance that we may notice before we proceed further is - the State of Uttar Pradesh remains the most populous

State of the country and at present one that may not be at the forefront of use of internet and digital technology, experienced in certain other parts of the country. Traders big or small, live in this diversely large State, not in homogeneous circumstances but in circumstances that vary practically every 100 kms. Besides a huge divide that otherwise exists between city dwellers and villagers, we are also mindful, though electricity may have become commonly available at the same time easy availability of internet services and use of digital technologies in day to day communications in business activities (besides online payments enabled through QR coding), ease use of electronic devices, may not be prevalent among all. Contextually, such people and the broader class to which they may be traced, have existed from before the introduction of the GST regime. The legislative background noted above, led to formation of behavioral patterns, habits formed and practices developed - enabling ease of communication with the revenue authorities, through physical mode, in absence of electronic mode.

23. Though it cannot be denied that in future, the mode of communication may move to and be more convenient to all users, through electronic platforms only, at the same time that fast sharp (reformative) turn made by the State revenue authorities occasioned solely upon enforcement of the GST regime, may have left a large section of the assesseees bemused and disbalanced, quite like a carriage being pulled by a galloping horse, over a sharp bend. They may have been caught off guard/ill-prepared and thus forced to falter, for that reason as well.

24. Also, it is integral to any tax administration that all compliances required by the law may not be made directly by the tax payer or the assessee but

through an intermediary i.e. a tax professional engaged for the purpose of filing his monthly or annual return or to reply to notices or for any other communication with the revenue authorities that may become necessary or be required. It is common for an assessee to change such consultants/professionals and employees, requiring further changes to be made to the details furnished to the revenue authorities, for making electronic communications.

25. Further, it is also an admitted position of fact, currently the Common Portal run by the GSTN knows only the foreign language i.e. English. It does not interact with the taxpayer who it seeks to serve, in his native language-Hindi. Again, we may take note - Hindi remains the language of the people of the State, besides being its official language. All communications issued by the State Government are in Hindi, including the Show Cause Notices and Adjudication Orders, in issue here. It is not only the official status of the language Hindi, but it is the underlying logic/rationale behind that status, that is relevant. Hindi is the language of the masses including the literate and the illiterate, in the State. However, apparently for technical reasons and not by way of design, the GSTN has only been able to work its Common Portal, in English, a language with which 10-15% of the population may be conversant, by some estimates. Clearly, it is a language known to tax professionals but the same is not true of all trade and business people, who the GSTN seeks to serve.

26. Therefore, there exists an underlying assumption on part of the GSTN and the revenue authorities that the large body of taxpayers may be able to

work the Common Portal, if not by self, then through the professionals they may hire. If they were to work it themselves, they will first have to navigate through various tabs and options provided only in English and then be able to reach the notice or order written in Hindi. Perhaps for that reason as well, the Central revenue authorities have adopted the mechanism to serve notices and orders, through physical/offline mode, as well.

27. Yet, the Court has been informed by the GSTN- neither it has any electronic trail nor mechanism to generate report of the date and time when any order made available on the Common Portal may have been retrieved or opened or downloaded or viewed by the addressee/taxpayer/registered person, nor there exists any mechanism to ascertain the date and time when any email communication or SMS alert may have been seen by the recipient. Also, there is no statutory obligation on the registered person/taxpayer to either open and work on the portal, every day.

28. Next, we may note the provisions. Section 107 (1), (4) and (11) of the State/Central Act read as below:

“107. Appeals to Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, 2017 (12 of 2017) by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5)

(6)

(7)

(8)

(9)

(10)

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order :

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74. "

(emphasis supplied)

29. Then, Section 161 of the State/Central Act reads as below:

Section 161. Rectification of errors apparent on the face of record.- Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, **any authority**, who has passed or issued any decision or order or notice or certificate or any other document, **may rectify any error** which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the Central Goods and Services Tax Act, 2017 (12 of 2017) or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be :

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document :

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission :

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."

(emphasis supplied)

30. Also, Section 169 of the State/Central Act reads as below:

"Section 169. Service of notice in certain circumstances.- (1) Any decision, order, summons, notice or other

communication under this Act or the rules made thereunder **shall be served by any one of the following methods**, namely :

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person ; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence ; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time ; or

(d) by making it available on the Common Portal ; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain ; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or

a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved. "

(emphasis supplied)

31. Then, Rule 142 (1), (1A) and (2) of the Rules framed in the State/Central Act reads as below:

"142. Notice and order for demand of amounts payable under the Act. - (1) The proper officer shall serve, alongwith the—

(a) **Notice issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130, a summary thereof electronically in FORM G.S.T. D.R.C.-01.**

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM G.S.T. D.R.C.-02**, specifying therein the details of the amount payable.

(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM G.S.T. D.R.C.-01A.**

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and

interest in accordance with the provisions of sub-section (5) of Section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of Section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the act [whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A)] he shall inform the proper officer of such payment in **FORM G.S.T. D.R.C.-03** and an acknowledgement, accepting the payment made by the said person in **FORM G.S.T. D.R.C.-04.**”

32. Further, Section 4, 12 and 13 of the Information Technology Act, 2000, reads as below:

“4. Legal recognition of electronic records.-Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

12. Acknowledgment of receipt.-

(1) Where the originator has not 3[stipulated] that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by-

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

13. Time and place of dispatch and receipt of electronic record.-(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:-

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer

resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,-

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered."

(emphasis supplied)

33. Also, in that context, the words – 'computer', 'computer network', 'computer resource', 'computer system', 'electronic form', 'electronic record', 'originator' as defined under IT Act read as below:

"(i) "computer" means any electronic, magnetic, optical or other high-

speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the inter-connection of one or more computers or computer systems or communication device through-

(i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the inter-connection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(r) "electronic form" with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an

electronic form or micro film or computer generated micro fiche;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary."

34. In this background, learned counsel for the respective parties have advanced submissions. First, Shri Pranjali Shukla, learned counsel for some of the petitioners submitted, upon reading Section 169 of the State/Central Act in entirety, 'deemed service' may arise or be construed only with reference to service effected through 'tendering' or 'publication' or 'affixation' (under sub-section 2), or upon dispatch of registered post or speed post (under sub-section 3), of Section 169 of the State/Central Act. Service through 'tender' and 'registered post' or 'speed post' are contemplated under Section 169(1)(a) and (b) of the State/Central Act, while service through 'publication' is contemplated under Section 169(1)(e) of the State/Central Act and service through 'affixation' is contemplated under Section 169(1)(f) of the State/Central Act. Constructive service may arise only with reference to Clauses (a), (b), (e) and (f) of Section 169(1) of the State/Central Act. Further, to the extent no deeming fiction of law has been created to Clauses (c) and (d) of Section 169(1) of the State/Central Act, no conclusion of constructive service may ever arise, by uploading the show cause notice or the order on the Common Portal of the GSTN, or by sending the communication (about such notice or order), through email. He has relied on the decision the Supreme Court in **Satendra Kumar Antil vs Central Bureau of Investigation & Anr.**; 2025 SCC OnLine SC 1578.

35. Second, it has been submitted, for an appeal to be preferred by a person against the adjudication order, such order must be effectively 'communicated' to the affected person, before limitation may start running, under Section 107 of the State/Central Act. For 'communication' of any order that may be appealed against, it's 'service' on the affected person is a sine qua non. To the extent the word 'communicated' has not been defined under the State/Central Act and to the extent only modes of service have been provided under Section 169 of the State/Central Act, unless actual or deemed/constructive service of the show cause notice and/or order exists, neither the noticee may comply with such a notice nor the aggrieved person may comply with or file appeal against the adjudication order.

36. Learned counsel for the petitioner would further submit, uploading an order or notice on the Common Portal, is not the same as 'service' contemplated under Section 169 of the State/Central Act. Read in conjunction with Section 13(1) and (2) of the Information Technology Act, 2000, the Common Portal remains a 'computer resource' of the GSTN, but not the petitioners. He further denies existence of any contract between the GSTN, and the petitioners as may allow for an interpretation to arise, that uploading of a notice and order on the Common Portal amounts to 'deemed service' of the notice or order, on the petitioner.

37. Ms. Pooja Talwar, learned counsel, has largely adopted the submissions advanced by Mr. Pranjali Shukla. Further, it is her submission, no satisfaction has been recorded in the adjudication order as to the mode of service of the Show Cause Notice. Neither such mode has been specified nor disclosed in order.

38. Next, she would submit Clauses (a), (b), (c), (d), (e) and (f) of the sub-section (1) of Section 169 of the State/Central Act are alternative modes of service. The mode later specified may be adopted only if the mode earlier provided, is not 'practicable'. Therefore, it never became open to the revenue authorities to adopt the modes of service prescribed under Clauses (c) and (d) of Section 169(1) of the Act, without making any effort to serve the Show Cause Notices and the orders on the noticee/assessee, through the modes prescribed under Clauses (a) and (b) of the sub-section (1) of Section 169 of the State/Central Act.

39. Relying on **TVL Sri Mathuru Eswarar Traders vs The Deputy State Tax Officer-I, Poolankinar Thiruppur** passed in **W.P. No. 16787 of 2025** and **Mr. Sahulhameed vs The Commercial Tax Officer** passed in **W.P. (MD) No. 26481 of 2024**, both decisions of the Madras High Court, it has been submitted - in similar circumstances physical mode of service should have been adopted first. Only if the same was not available or possible, the alternative mode (placed lower in hierarchy of choices created under Section 169(1) of State/Central Act), may have been adopted. Referring to *M/s Kashi Bartan Bhandar vs State of U.P. & 2 Ors.*; 2019 NTN (69) 111, it has been further submitted that a co-ordinate bench has already recognized service through a lower placed mode may be adopted, only if none of the higher placed modes are 'practicable'.

40. With respect to applicability of the Information Technology Act, her submissions are at variance to the submissions advanced by Sri Pranjal Shukla. She would submit, the State/Central Acts being special laws and

complete Code in themselves, there is no room to apply the general principles of the Information Technology Act.

41. The other counsel appearing for individual petitioners have adopted the submissions advanced by Sri Pranjal Shukla and Ms. Pooja Talwar. Thereafter, Sri Vishwaraj Singh, another learned counsel, besides adopting submissions noted above, has stressed that the words 'making it available' on the Common Portal used in sub-Clause (d) of sub-Section 1 of Section 169 of the State/Central Act are wider and contemplate more than uploading on the Common Portal. The legislature has deliberately not used the word 'upload' and its derivatives but the phrase 'making it available'. Thereby the legislative intent has been clearly expressed - that the document or communication should be readily/easily/conveniently available to the noticee/assessee/addressee. If the document sought to be served is hidden on the portal as may require expert knowledge or skillful handling of the Common Portal, necessarily involving more than elementary knowledge of the working of computers and websites, it may not be readily inferred that by merely uploading the document on the Common Portal, the same had been made available to the addressee/noticee/assessee.

42. Further, the memorandum of issue of GSTN enlists its main objective as:

"1. To promote trade and commerce by providing easily accessible, quick and efficient information technology and communications related services to the public and Government.

2. To assist and engage with various stakeholders in preparing information technology and

communications related infrastructure for smooth roll out of any information technology driven initiatives and other e-governance initiatives of the Government or any department or agency of the Government, specifically for the roll out of the GST."

43. GSTN has not yet fulfilled that objective of its incorporation. It only seeks to serve the revenue's interest, by displaying such tabs and notices as are dictated to it for revenue considerations. By way of example, he has relied on screenshots of the dashboard of an assessee. Clearly on the first screen itself a tab appears, containing additional/immediate notification regarding authentication of Aadhar. He has relied on other pages of the dashboard to disclose that the revenue has prioritized entries of the Electronic Credit Ledger as also status of the returns filed for the last five return period, depicted in different colors indicating whether such return has been filed, or is overdue, or has not been filed. Therefore, it is not difficult for GSTN to provide for similar easy access to all notices/orders etc. uploaded, for the purpose of service on an assessee - to make compliance, by making similar tabs/options. Unless similar measures are devised and adopted, not only the object of the GSTN may remain unfulfilled, but service of notices and/or orders may not be found complete, on mere uploading of such documents.

44. We have also heard Sri Praveen Kumar as Amicus Curiae, on the issue. He would submit, no doubt, concept of deemed service exists in tax laws (State/Central). However, a question arises - to the interpretation to be given to the law and the circumstance when such deemed service

may be permitted as a fact and the consequence that may arise, therefrom. First, a deeming fiction in law is created by the legislature for a specific purpose. The Court may give full effect to it after ascertaining existence of circumstances wherein such deeming fiction may arise. By way of necessary corollary - the applicability of the deeming fiction and that effect caused in law may not arise in circumstances beyond those contemplated by the legislature, itself.

45. Plainly, the legislature contemplated a deeming fiction of law providing deemed service/constructive service, in circumstances covered under Clauses (a), (b), (e) and (f) of Section 169 (1) of the State/Central Act only, through sub-Section 2 and 3 of Section 169. That effect in law may not be avoided. At the same time, that effect may never arise with respect to the other modes of service described under Section 169(1)(c) and (d). There is no provision of law to allow for such a consequence or interpretation of the law. Reliance has been placed on the decision of the Supreme Court in **State of West Bengal vs Sadan K. Bormal & Anr.;** (2004) 6 SCC 59.

46. Second, he has stressed the meaning to be given to the word 'communicate' used in Section 107 of the State/Central Act. According to him both for the purposes of compliance of an adjudication notice or order and for the purpose of challenge thereto, the notice/order must be 'communicated' (as a fact) to the noticee/assessee. Though for the purpose of effective communication channels/modes of service have been created by the legislature under Section 169 of the State/Central Act allowing for electronic mode, unless service of notice or

order is made with the object and purpose of adequate communication to the noticee/assessee, service would remain incomplete and purposeless. Unless the vital stake holder in the tax regime, that the noticee/assessee is, is served such notice and order - effectively communicating the same to him, the intent/purpose of that service of notice or decision of the adjudicating authority or statutory authority under the State/Central Act, may remain unfulfilled and any service that may be claimed by the revenue authorities, would remain an empty/idle formality.

47. Therefore, the word 'communicated' used in Section 107 of the State/Central Act, refers to knowledge of the contents of the dispatch made, while deemed service leads to presumption of receipt of a dispatch made, only. Examined in that light, if by any stretch of imagination, uploading of notice/order on the Common Portal is 'receipt', it would fall short of actual/constructive 'communication' of the contents of such notice or order, as may impart knowledge to the noticee/assessee of its purpose.

48. In absence of any verifiable measures provided by the GSTN to ascertain if such notice/order (as may have been sent through electronic mail or uploaded on the Common Portal) had been viewed or retrieved and thus seen by the noticee/assessee, the exercise of service through electronic modes may therefore remain incomplete.

49. Relying on **Harikisan vs State of Maharashtra & Ors.; AIR 1962 SC 911**, he would submit, though the ratio of that decision of the Supreme Court arose in the context of liberty jurisdiction, at the same time, it is relevant to note that the Supreme

Court has reasoned - for the detinue to have opportunity to represent, physical delivery is necessary. Communication in that context was interpreted to mean imparting sufficient knowledge of all the grounds on which the order of detention may be based. Applying that principle, he would contend, unless the contents of the notice/order are delivered or disclosed to the noticee/assessee, any receipt or service claimed may never satisfy the test of the document being 'communicated'. To summarise, he would submit, all communications made may include service but all service may not amount to communication.

50. Further, it has been submitted that the Common Portal was contemplated by legislature and is governed by the provision of Section 146 of the State/Central Act. Primarily, it is for the purpose of providing registration, payment of tax, filing of returns, computation and settlement of tax, issuance of e-way bills but not for issuance of show-cause notice and service or orders. To that extent, in his submission no notification has been issued by the State Government.

51. Responding to the above submissions, Sri Anoop Trivedi, learned Additional Advocate General, has relied on the provisions of the Information Technology Act, besides referring to Section 169 of the State/Central Act. He has heavily relied on the provisions of Section 2(r)(d) and Section 13 and 14 of the Information Technology Act. According to him, any information generated/sent/received or stored in any electronic record would lead to a dispatch of and its receipt in accordance with Section 13 of the State/Central Act, the moment such electronic record enters the

computer resource outside the control of the originator, here, the adjudicating authority. To the extent, the show-cause notice and/or orders were uploaded by the Adjudicating authority on the Common Portal which is a computer resource outside the control of the State/revenue authorities, due dispatch is established.

52. Second, referring to the forms filled up by the assessee while seeking registration under the State/Central Act, it has been stated that an agreement exists between the revenue authorities and GSTN. Also, they have duly disclosed the e-mail ID as also from other details used to authenticate and limit the access to the user dashboard by the registered person, to the exclusion of all others. Relying on Section 2(k) of the Information Technology Act, it has been submitted, receipt of dispatch arises on the uploading of the show-cause notice or the order on the Common Portal. To the extent e-mail be sent to an individual and not to the Common Portal, its receipt may arise as soon as it is retrieved.

53. Relying on **M/S Axiom Gen Nxt India Pvt. Ltd. vs Commercial State Tax Officer**, a decision of the learned single judge of Madras High Court in **W.P. No. 1114 of 2025**, it has been stressed, uploading a document on the Common Portal is equivalent to publication. Therefore, in any case, the consequence of deemed service/constructive service would arise as soon as show-cause notice or the order is uploaded on the Common Portal. Because of lack of time lag between uploading of a document on the Common Portal and it becoming visible to the addressee, that service is instant.

54. Next, reference has been made to Rule 142 of the Rules framed under the State and the Central Act to submit, it is wholly permissible in the scheme of the GST laws to communicate to the noticee/assessee the notices and orders by sending alerts through electronic mode. Referring to the other affidavit filed by the GSTN, it has been submitted, such e-mail communications were dispatched. Additionally, SMS alerts were also sent to the noticee/assessee on their designated mobile phone number. Therefore, the service of notice and order is wholly complete.

55. To buttress his submission, the learned Additional Advocate General has relied on two decisions of two co-ordinate benches of this Court, first in the case of **Atlantis Intelligence Ltd. vs Union of India**; [2025] 177 taxmann.com 522 (Allahabad) and the other in **D.R. Hotels (P.) Ltd. vs Deputy Commissioner**; [2025] 179 taxmann.com 551 (Allahabad). According to him in **Atlantis Intelligence Ltd. (supra)**, the co-ordinate bench has taken a categorical view that service of an order by electronic mail is valid service and the date on which such dispatch is made would count as the date for the purpose of start of limitation to file appeal u/s 107 of the State/Central Act. Also, according to him in **D.R. Hotels (P.) Ltd. (supra)** merely because an assessee/noticee may have assigned usage of his user ID on the Common Portal, to his employee or such person who may or may not have communicated (to the assessee), due information (in real time), may make no difference to the extent that service made through electronic mode is valid service, as may admit of no doubt.

56. Further, reliance has been placed on the decision of the Delhi High Court in **M/S Mathur Polymers vs Union of India; 2025:DHC:7435-DB**, the issues being raised before this Court are described to have been answered in favour of the revenue and against the assessee, by the Delhi High Court by relying on its earlier decision in **Rishi Enterprises vs Additional Commissioner, Central Tax Delhi; 2025:DHC:7353-DB**. To that extent, it has been submitted that uploaded notice or order on the Common Portal would invite inference of deemed service of such notice/order on the addressee. He has also relied on **State of Punjab vs Khemi Ram, (1969) 3 SCC 28; Kumar Jagdish Chand Sinha vs CIT [1996] 86 Taxman 122 (SC); Madan Lal vs State of UP; (1975) 2 SCC 779; Assistant Transport Commissioner Lucknow & Ors. vs Nand Singh; (1979) 4 SCC 19**.

57. Having heard learned counsel for the parties and having perused the record, first, the fact aspects may be noted. Undeniably, the petitioners before the Court in this batch and the other petitioners who have been dealt with in terms of the earlier orders in **M/s Riya Construction (supra)**, are primarily small to medium sized businesses. Within that, the petitioners are traders and manufacturers of goods. Prior to the enforcement of the GST laws, they were governed by the provisions of the U.P. Trade Tax Act, 1948 as was superseded by the U.P. Value Added Tax Act, 2008, and the Central Sales Tax Act, 1956. As has been noted above, the behavioural pattern of such assessee came to be defined and governed (up to the enactment of the GST laws), by the legislative measures contained in the above-named Acts. Practices had developed and were widely prevalent in the

entire State where under it was a norm that any notice or order issued by the assessing authority or any revenue authority, either under the U.P. Trade Tax Act, 1948 or the U.P. Value Added Tax Act, 2008, was served through physical mode, only.

58. That practice has been suddenly abandoned with effect from 1.7.2017 upon enforcement of the GST Act. While statutory authorities faced some difficulty in migrating to new procedures now adopted, leading to complaints made to GSTN, the assessee/taxpayers were certainly not involved in that decision making - migrate from offline mode to online mode. They claim genuine hardship. That cannot be brushed aside, lightly. That thought, amongst others has persuaded us to take the view we have taken in **M/s Riya Construction (supra)**, amongst others for reasons noted next:

59. Second, it is equally true, under the old regime of taxation laws that existed up to 30.6.2017, power existed under Section 30 of the U.P. Trade Tax Act, 1948 and Section 32 of the U.P. Value Added Tax Act, 2008, with the original authority, to recall its ex parte order, subject to satisfaction that the assessee had not been served with the notice preceding the order or that he could not appear on the date fixed, for sufficient cause. That led to the formation of the second behavioral norm or practice that pre-existed the enforcement of the GST laws, wherein persons such as the petitioners had an opportunity to avail a remedy to seek recall the ex parte order, if no notice had been served. That remedy is no longer available under the State/Central Acts.

60. Third, if such ex parte or other adverse orders existed, the appeal

authorities had power to set aside such orders and remit the proceedings to the original authority. It also led to a practice/norm. Assessee who may not have been fully/properly heard by the Assessing Authorities, could go back to them, for full, effective redressal of their grievances. That power of the appeal authorities has been taken away under the State/Central Acts.

61. Fourth, the normal period of limitation to file appeal though prescribed, similarly, in view of the applicability of Section 5 of the Limitation Act, delay in filing appeals could be explained under the old regime, beyond the minimal period of 30 days. However, upon enforcement of the GST laws, that discretion has been taken away from the appeal authorities. At present, they can only condone delays up to 30 days. That too requires a behavioral change with the assessee, to understand that delay in filing appeal may not be condoned, beyond 30 days. Thus, the general power of the appeal authority to condone delays, has been conditioned and limited, to 30 days only.

62. Those difficulties arising from doing away with pre-existing norms and practices may not govern the outcome of this batch of writ petitions. However, it does indicate, the extent to which breach of rules of natural justice both with respect to service of notice, to enable filing of replies and service of orders, to enable filing of appeals, is being claimed. It therefore commends to us to examine the issue raised and the submissions advanced, with that much more sensitivity, and care.

63. Coming to the submissions advanced, it cannot be denied, the GST laws are progressive, to the extent they provide service of notices, furnishing of

replies and service of orders, through electronic mode, also. The world that exists today and the trajectory of development that it appears to follow, commends us - such legislative steps are progressive, to the extent they seek to achieve an objective of ease of communication between the revenue authorities and the assessee/taxpayers. At the same time, as has been fairly admitted by all sides, service through electronic mode is not the only mode prescribed under the Act. The caveat being, the laudable objective may be realised, only after the major stakeholder/taxpayers are completely on board with the new mechanism.

64. On legalities, we are unable to accept the submissions advanced by some of the learned counsel for the parties that modes of service prescribed under Section 169 (1) of the State/Central Act, namely under Clauses (a), (b), (c), (d), (e) and (f) are in that order of hierarchy of preference. Suffice to note, the mode of service through affixation is the last mode where the legislature has clearly provided that it must be resorted to by way of last measure when none of the five other modes prescribed under Section 169 (1) of the State/Central Act is 'practicable'. Decision of a coordinate bench in **M/S Kashi Bartan Bhandar (supra)** is therefore applicable only for the purpose of Section 169 (1)(f) of the State/Central Act. That reasoning is not available in favour of the petitioners insofar as Clauses (a) to (e) of sub-section (1) of Section 169 of the State/Central Act.

65. Though it may be accepted (as submitted by learned Additional Advocate General), that these are in the alternative [except as to (f)], to be adopted on the choice vested with the revenue authorities -

to choose any mode, at present, that choice made by revenue authorities is divided. While the Central revenue authorities have chosen to move on to electronic mode, without abandoning service through offline mode, the State revenue authorities have charted a different course by abandoning service through physical mode, completely, except where registration itself may have been cancelled. Thus, the revenue authorities (Central and the State) are divided in their opinion - as to the most desirable mode of service of notice and the orders on the assesseees/taxpayers. Certainly, on the face of it, appreciation made by the Central revenue authorities appears to lean in favour of the contentions advanced by the learned counsel for the petitioners, that at present, service through electronic mode (only), may not be most desirable decision. Yet, that divergence of policy may also not lead to the conclusion to be drawn to the legalities of the issue. However, we do recognize - that policy divergence is indicative of the ground realities in which the same/similar taxation laws of the State/Central Acts are being implemented, By two different governments, one State and the other Central.

66. Looking at Section 169 of the State/Central Act, it first prescribes six modes of service under sub-section (1) of that Act. In the second part through sub-sections (2) and (3), it creates a legal fiction of deemed service in certain circumstances. To decide the issue canvassed before us, it is crucial to examine if that fiction of law applies to Clauses (c) and (d) of sub-section (1) of Section 169 of the State/Central Act. There is no denial that the legislature may create a deeming fiction including as to constructive service. However, as to the true rule of interpretation to be applied to

determine the applicability of such a clause, two tests are undeniable. First, the deeming fiction in law must be given full effect for the purpose for which it is created. Second, once that has been done, no further inference may be drawn to extend it's enforcement or applicability to other circumstances, not contemplated by legislature.

67. Here, as noted above, there are six modes of service created by legislature. Thus, it was aware of that fact, yet, it has thereafter chosen to provide for deeming fiction/constructive service against four modes of service, only. As noted above, the six modes of service/circumstances provided under Section 169(1) of the State/Central Act are:

- (i) *tendering directly or by messenger;*
- (ii) *dispatch by speed post, etc. with acknowledgement due;*
- (iii) *sending communication by email;*
- (iv) *by making available on the common portal;*
- (v) *by publication in a newspaper and;*
- (vi) *by affixation.*

68. Sub-sections (2) and (3) of Section 169 of the State/Central Acts create that deeming fiction and cause the effect of deemed service, not generally but specifically with respect to notices, orders etc., that may have been 'tendered' or 'published' or 'affixed'. That service may be deemed to arise on the date such 'tender', 'publication' or 'affixation', is completed. In the second part, under sub-section (3), another deeming fiction arises with respect to dispatch made by speed post [but not through courier mentioned in sub-clause

(b)]. That may arise not on the date of dispatch made but on expiry of normal period required for transmission of such communication from the sender, i.e. revenue authorities, to the noticee/taxpayers, by speed post, that too with acknowledgement due.

69. While providing for two separate sub-sections creating such specific deeming fiction, the legislature has been careful not to include either dispatch by 'courier' [under sub-clause (b)] or sending communication by email or by making it available on the common portal. That deliberate omission on part of the legislature is a conscious act of wisdom which is not open to contest in these proceedings.

70. Suffice to note, the clear legislative intent that emerges on the co-joint reading of the Section 169(1), (2) and (3) is - in the first place, six modes of service have been prescribed, of which five are in the alternate i.e. at the discretion of the revenue authorities, while the sixth may be adopted only if none of the other/first five is 'practicable'. Second, the effect of deemed service may arise only with respect to modes of service (a), (b) only to the extent it alludes to dispatch made by speed post but not through courier and (e) upon publication in newspaper but no other publication and; (f) by affixation, if that mode be adopted, in accordance with law.

71. In **Sadan K. Bormal (supra)**, the principle governing the provision creating the fiction in law, was examined by the Supreme Court, and it was unequivocally laid down as below:

"So far as interpretation of a provision creating a legal fiction is

concerned, it is trite that the court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council, when he observed:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

72. That authority itself is enough to make it clear that the purpose and object of a deeming fiction clause must be understood in the context of the legislative language itself and not on any other appraisal to be made, by Courts.

73. Second, (in absence of constructive service arising under Section 169 of the State/Central Act), as to actual service through modes created under section 169(1)(c) and (d) of the State/Central Acts, it is material to note that the stand of the revenue authorities and

GSTN is, at present they do not have the means or access on the Common Portal etc., as may enable them to ascertain the date or time when any notice or order may have been actually retrieved or downloaded or opened or its contents viewed or seen by the noticee or the taxpayer, to whom such communication may have been addressed, either through e-mail or through the Common Portal. Therefore, at present, the date and time when such order may have been received by the noticee/taxpayer may remain unknown to the revenue authorities. Therefore, we had queried GSTN to give its response thereto. It has been noted above.

74. Though (as noted above), it has been informed that e-mail communications were dispatched at the designated e-mail address of individual assesses and notices and orders were uploaded on the Common Portal, the GSTN and the revenue authorities do not have the means (at present) to ascertain the time when that electronic document/record may have been accessed or retrieved or downloaded or viewed or opened by the noticee/taxpayer, either on the Common Portal or the e-mail address of the assessee. While a general assurance has been offered for such a measure to be developed later, neither such measures exist nor GSTN has made any commitment when such measures may be made available.

75. Therefore, on the factual aspect of the issue, we have no hesitation in inferring the date and time of service of any matter uploaded on the Common Portal or dispatched through e-mail, is not known to the revenue authorities or GSTN. In many cases the taxpayer feels aggrieved by the ex parte nature of the orders passed. While no submission may be entertained as to the

absence of powers to recall ex parte orders and while there is no challenge to any provision of law curtailing the powers of the appeal authority to remit/remand to any Adjudicating Authority, it is therefore most crucial that a limited opportunity of appeal made available to the assessee/tax-payer under Section 107 of the Act, be kept intact and real.

76. Thus, besides absence of factual or constructive service, the period of limitation has been prescribed as three months with delay condonable only for a month from the date of the order being 'communicated'. The legislature has consciously not used the word 'served' or 'received' in Section 107 of the State/Central Act. Rather, it has used the word 'communicated'. That may inhere in it knowledge of all facts contained in the notice or order thus 'communicated'. The words 'communication' and 'service' 'received' have been denied in the Black's Law Dictionary and Stroud's Judicial Dictionary of Words and Phrases as below:

Black's Law Dictionary, South Asian Edition, Eighth Edition

"1. Communication: 1. *The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception.* 2. *The information so expressed or exchanged.*

2. Service: 1. *The formal delivery of a writ, summons, or other legal process. -Also termed service of process. [Cases: Federal Civil Procedure 411-518; Process 48-150. C.J.S. Process 26-91].* 2. *The formal delivery of some other legal notice, such as a pleading. [Cases: Federal Civil Procedure 665].*

constructive service. 1. See *substituted service.* 2. Service accomplished by a method or circumstance that does not give actual notice.

3. *Received:* adj. 1 Capable of being admitted or accepted. 2. Awaiting receipt of payment accounts receivable>. 3. Subject to a call for payment.

Stroud's Judicial Dictionary, Eighth Edition

1. **Communication:** "Electronic Communication". For discussion of the nature of an electronic communication, see *R vs Effik* [1994] 3 All E.R. 458, HL and *Morgans v Director of Public Prosecution* [2000] 2 All E.R. 522, HL. See also Stat. Def., s.15(1) of the Electronic Communication Act 2000(c.7) (includes a communication comprising sounds or images or both and a communication effecting a payment")

2. **Served:** A person is not "served" with proceedings for the purposes of Council Regulation (EC) 44/2001 art.34(2) merely by way of being notified but not in accordance with the relevant regulations [*Tavoulareas v Tsavlis* (2006) EWCA Civ 1772].

3. **Received:** Sums "received" in the United Kingdom in respect of securities elsewhere and chargeable with income tax under s.100 Sch. D Case 4 of the Income Tax Act 1842 (c.35) did not include sums only constructively received in Great Britain, in yearly accounts of profits and loss (*Gresham Life Assurance v Bishop* [1902] A.C. 287, weakening effect of, if not over-ruling, *Universal Life Assurance v Bishop*, 68 L.J.Q.B. 962; following *Scottish Mortgage Co of New Mexico v Mc Kelvie*, 24 S.L.R. 87, and *Norwich Union Fire Insurance v Magee*, 44 W.R. 384). See further *Forbes v Scottish Provident*

Institution, 33 S.L.R. 228. Sums actually received in the United Kingdom in respect of a business abroad were, prima facie, profits chargeable with income tax (*Scottish Provident Institution v Allan* [1903] A.C. 129; *The Same v Farmer*, 6 Tax Cas. 34).

77. In **Raja Harish Chandra Raj Singh vs Deputy Land Acquisition Officer & Anr.**; 1961 SCC OnLine SC 140, an issue arose if the limitation to seek a reference would commence from the date of the award as marked by the authority framing such an award, or the date of its communication to the person concerned. The High Court had taken a view construing the language of section of the Land Acquisition Act, literally - as the date marked in the award. In that context, the Supreme Court observed as below:

"6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced

in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement, an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

78. Then, in **CCE vs M.M. Rubber and Co., 1992 Supp (1) SCC 471**, the Supreme Court had the occasion to directly consider, the date of 'communication' of an order on the affected person, as may give rise to the start point of running of limitation and if it could be different from the date on which such order may have been signed and put beyond the control of the issuing authority, as may give rise to 'communication', in the first sense. It was thus observed:

"9. The words "from the date of decision or order" used with reference to the limitation for filing an appeal or revision under certain statutory provisions

had come up for consideration in a number of cases. We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal or revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.

10. Under Section 25 of the Madras Boundary Act, 1860 the starting point of limitation for appeal by way of suit allowed by that section was the passing of the Survey Officer's decision and in two of the earliest cases, namely, *Annamalai Chetti v. Col. J.G. Cloete* [ILR (1883) 6 Mad 189] and *Seshama v. Sankara* [ILR (1889) 12 Mad 1] it was held that the decision was passed when it was communicated to the parties. In *Secretary of State for India in Council v. Gopiseti Narayanaswami Naidu Garu* [ILR (1910) 34 Mad 151 : (1911) 1 MWN 28 : 8 MLT 310] construing a similar provision in the Survey and Boundary Act, 1897 the same High Court held that a decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances the parties affected by it have a reasonable opportunity of knowing what it contains. "Till then though it may be written out, signed and dated, it is nothing but a decision which the officer intends to pass. It is not passed so long it is open to him to tear off what he has written and write something else." In *"Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer* [(1962) 1 SCR 676 : AIR 1961 SC 1500] construing the proviso to Section 18 of the Land Acquisition Act which prescribed for applications seeking reference to the court, a time-limit of six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever first expires, this Court

held that the six months period will have to be calculated from the date of communication of the award. In *Asstt. Transport Commissioner, Lucknow v. Nand Singh* [(1979) 4 SCC 19 : (1980) 1 SCR 131] construing the provision of Section 15 of the U.P. Motor Vehicles Taxation Act, it was held that for an aggrieved party the limitation will run from the date when the order was communicated to him.

11. The ratio of these judgments were applied in interpreting Section 33-A(2) of the Indian Income Tax Act, 1922 in *Muthia Chettiar v. CIT* [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] with reference to a right of revision provided to an aggrieved assessee. Section 33-A(1) of the Act on the other hand authorised the Commissioner to suo moto call for the records of any proceedings under the Act in which an order has been passed by any authority subordinate to him and pass such order thereon as he thinks fit. The proviso, however, stated that the Commissioner shall not revise any order under that sub-section if the order (sought to be revised) has been made more than one year previously. Construing this provision the High Court in *Muthia Chettiar case* [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] held that the power to call for the records and pass the order will cease with the lapse of one year from the date of the order by the subordinate authority and the ratio of date of the knowledge of the order applicable to an aggrieved party is not applicable for the purpose of exercising suo moto power. Similarly in another decision reported in *Viswanathan Chettiar v. CIT* [(1954) 25 ITR 79 (Mad)] construing the time-limit for completion of an assessment under Section 34(2) of the Income Tax Act, 1922, which provided that it shall be made within four years from the end of the year in which the

income, profit and gains were first assessable, it was held that the time-limit of four years for exercise of the power should be calculated with reference to the date on which the assessment or reassessment was made and not the date on which such assessment or reassessment order made under Section 34(2) was served on the assessee.

12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made : that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it

contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J. in *Muthia Chettiar v. CIT* [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] a salutary and just principle. The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the government is bound by the proceedings of its officers but persons affected are not concluded by the decision.

(emphasis supplied)

79. Coming to the law cited by the learned Additional Advocate General, the decision in the case of **State of Punjab vs Khemi Ram; (1969) 3 SCC 28** relied by

the learned Additional Advocate General may not be applicable to the present facts. It also does not run contrary to the decision in **Raja Harish Chandra Raj Singh (supra)**. In that case order of suspension was published in the Official Gazette, besides dispatch by telegram mode, and charge sheet physically dispatched to the delinquent employees' home address. Publication of any document in the Official Gazette acquires a different connotation and imparts a different texture to the issue of 'service'. The publication made in the Official Gazette is information given to the public at large as may never give any opportunity of denial of service. However, we may hasten to act no such publication exists in this case.

80. Second, more crucially, the core issue involved in that decision was the date when the suspension order (passed against a government employee) became 'effective', considering Rule 3.26(d) of the relevant service Rules. Also, Khemi Ram had been earlier issued telegram informing him about the suspension order, while he was still in service. The issue was whether such a suspension order - caused the effect of suspension from service, though physical service of the suspension order arose after the delinquent employee had attained the age of superannuation. It was found, the suspension order became effective from the date of its issue and to that extent it was deemed communicated on the delinquent employee.

81. If we apply that analogy to the present facts, it can be said the show cause notices and the adjudication orders come into existence on the date of dispatch made through electronic mode, to the extent they may also create a demand of tax etc., against the taxpayer. However, by that

attribute of communication fulfilled, it does not lead to the fulfilment of the second attribute of communication that could lead to start of running of limitation to file appeal against the adjudication order or to seek remedies against such show cause notices and Adjudication orders. For that second attribute to be fulfilled, actual or constructive service of the show cause notices and the Adjudication orders, is necessary, strictly in terms of Section 169 of the State/Central Acts. That issue was not involved in **Khemi Ram (supra)**. There, the issue was examined in the context of Rule 3.26(d) of the relevant service Rules, not shown to be *pari materia* to Section 169 of the State/Central Acts. Rather, that aspect of the law was considered in **M.M. Rubber and Co. (supra)**.

82. Then, in **Kumar Jagdish Chandra Sinha vs Commissioner of Income-tax; 1996 SCC OnLine SC 172**, the following questions of law had arisen upon reference made under Section 256(1) :

“1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the return of income furnished by the assessee by virtue of the provisions contained in sub-section (4) of section 139 of the Income-tax Act, 1961, beyond the time allowed under sub-section (1) or sub-section (2) of the said section, could not be construed as a return furnished under either of the latter subsections and in that view holding that the assessee was not entitled to file a revised return under sub-section (5) of section 139 of the Income-tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the

assessments made by the Income-tax Officer for the assessment years 1964- 65 and 1965-66 were within the time-limit prescribed in section 153(1)(b) of the Income-tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the cases for the assessment years 1964-65 and 1965-66 were such as falling within clause (c) of sub-section (1) of section 271 ?”

83. In view of the limited questions that arose before the Supreme Court, not directly dealing with the issue of ‘communication’, the observation made in paragraph no. 15 of the said report does not contain the ratio of the said decision. In that, in the absence of any recital regarding initiation of proceedings and its communication during the earlier proceedings, the consequential orders passed were found invalid. Plainly, the said decision also does not apply to the present facts.

84. Then, in **Madan Lal vs State of U.P. & Ors.; (1975) 2 SCC 779**, again it was observed as below:

“8. The Act we are concerned with does not state what would happen if the Forest Settlement Officer made an order under Section 11 without notice to the parties and in their absence. In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in Order 20, Rule 1 of the Code of Civil Procedure; though the Forest

Settlement Officer adjudicating on the claims under the Act is not a court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions must also apply to him. The point has been considered and decided by this Court in Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer [AIR 1961 SC 1500 : (1962) 1 SCR 676] . This was a case under the Land Acquisition Act, 1894 and the Court was considering the question of limitation under the proviso to Section 18 of that Act. Under Section 18 of the Land Acquisition Act a person who has not accepted the Collector's award can apply to the Collector requiring him to refer the matter for the determination of the court. This application has to be made within six months from the date of the Collector's award in the case where the person interested was not present or represented before the Collector at the time when he made his award or had received no notice from the Collector of the award. Construing the expression "the date of the award" this Court observed:

"The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way.

... where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the

order must mean either actual or constructive communication of the said order to the party concerned."

85. In **Assistant Transport Commissioner, Lucknow & Ors. vs Nand Singh; (1979) 4 SCC 19, Raja Harish Chandra Raj Singh (supra)** was followed and it was further observed as below :

"2. In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of

Section 15 of the U.P. Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date."

86. The decision in **Nokia India (P) Ltd vs Additional Commissioner Income Tax (2018) 92 taxmann.com 76 (Delhi)** involved validity of assessment proceedings under the Income Tax Act, 1961, in the extended period of limitation - based on another order to conduct special audit. Objecting that the assessment order was passed beyond limitation, it was relied on - that the order of special audit (that caused the extension of limitation) was served after expiry of limitation to pass the assessment order. Again, as in **Khem Ram (supra)** the order providing for special audit was found to have become effective upon that order coming into existence and being dispatched. Accordingly, the first aspect of the communication was found fulfilled in favour of the revenue. Simultaneously, for the purpose of computation of limitation to raise challenge to such order, it was opined that the rule of actual or constructive service would continue to apply. Relying on **M.M. Rubber and Co. (supra)**, it was reasoned as below:

"36. M.M. Rubber and Company (supra) had clarified on two different principles of law relating to limitation. The first principle relates to exercise of power or an act, affecting the rights of the parties within the period of limitation prescribed. The order or decision of the authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed. This happens when the order is made or passed; that is to say when the order is made public or notified in some form or is sent out by

the authority so as to have left his hands. Thereafter, the authority cannot tear or draft a different order. Date of communication of the order to the parties whose rights are affected is not the relevant date for purpose of deciding whether or not the order was passed within the prescribed time.

37. The second principle relates to computation of period of limitation for a party affected by the order or decision, who invokes remedy by way of appeal, revision, etc. The rule is that the period of limitation for invoking the remedy starts from the date the order is communicated to the party or the date when it is pronounced or published, whereby the party affected has a reasonable opportunity of knowing of the passing of the order or its content. Communication in the second sense is different from communication in the first sense, i.e., the first principle. Communication in the second sense must be satisfied before the decision is said to be conclusive or binding. This principle is not dependent upon the provisions of a particular statute but under the general law.

38. Pertinently, in M.M. Rubber and Company (supra) it was observed that knowledge of the party affected by the decision may be either actual or constructive. Knowledge of the party affected by the decision either actual or constructive, is the essential element which must be satisfied. This is a salutary and just principle.

39. We often overlook the aforesaid distinction when we examine the question as to whether an order has been passed within the period of limitation and apply decision with first and second principle interchangeably, which is impermissible and wrong. It is in this context we would also like to refer to the

decision of the Supreme Court in CIT v. Major Tikka Khushwant Singh (1995) 212 ITR 650 (SC) which referred to the earlier decision in the case of R.K. Upadhyay v. Shanabhai P. Patel (1987) 166 ITR 163 (SC) and rejected the plea of the assessee and upheld the contention of the Revenue that the date of issue of notice would determine, if it was within the period of limitation and would give jurisdiction to the Assessing Officer to proceed and not the date on which notice was served. It was observed that the issue of notice within the statutory period gives jurisdiction but reassessment cannot be made till notice was served."

87. In **Daujee Abhushan Bhandar Pvt Ltd. vs Union of India; (2022) 136 taxmann.com 246 (All)**, the issue had arisen in a completely different legislative and fact context. Whether jurisdiction to re-assess had been initiated within limitation of time, was the core issue in that case. Second, service of notice through electronic mode was admitted to the petitioner in that case. It is fundamental to re-assessment proceedings under the Income Tax Act that such proceedings may be found to be within limitation subject to the re-assessment notice being issued within time. To the extent such notice had been digitally signed on the last date of limitation and thus (admittedly) issued, through electronic mail, the issue of date of actual communication secondary to the primary issue of notice issued within time. To the extent digital signature on the re-assessment notice was found sufficient for that purpose, that fact/legal issue is not involved, here.

88. Insofar as **Union of India vs M/S G.S. Chatha Rice Mills; (2021) 2 SCC 209** is concerned, there the primary issue

involved was the date and time when a statutory notification issued through electronic mode came into force. That issue is not involved here. The other issue was the consequence of bills of entry for home consumption presented for clearance. As a fact it was clear that presentation of documents preceded the time when the law was amended upon issuance of notification through electronic mode. The rate of duty being applicable at the time of import, that case was decided on the strength of time of presentation of bills of entry, for clearance. Clearly, the issue was wholly different from the present case.

89. In **Suman Jeet Agarwal vs Income Tax Officer (2022) 143 taxmann.com 11 (Delhi)**, again the issues raised were different. There was no dispute as to issue of reassessment notice, through email. At the same time, validity of reassessment notices and therefore, assumption of jurisdiction of reassessment was decided on the own facts of that case. Where notices were found issued (even through electronic mode), within limitation, those proceedings were found valid.

90. In **Rapiscan Systems Pvt Ltd. vs ADIT (Income Tax) [2025] 170 taxmann.com 753 (Telangana)** the interpretation made to section 144C (13) of the Income Tax Act, 1961 wherein for the purpose of limitation the date on which direction was 'received' was relevant. As discussed above, though the concept of 'receipt' is contained in the IT Act, for the vital purpose of limitation to file appeal more than 'receipt', actual or constructive 'communication', is decisive, that too, on the test of actual or constructive service, in terms of Section 169 of the State/Central Act, and not in a generic or common sense test or even by way of receipt.

91. That leaves us to consider the further submissions advanced by the learned Additional Advocate General, on the strength of provisions of the Information Technology Act. While we are not in a position to accept the submissions advanced by some of the learned counsel for the petitioner that the State/Central Act are complete codes to the extent, that they admit of no applicability of the Information Technology Act, it would remain to be examined if the provisions of the Information Technology Act truly lead to an inference that the notice/order uploaded on the Common Portal would amount to service or communication for the purposes of Section 169 and 107 of the State/Central Act or it may stop at 'receipt' not amounting to actual or deemed service or 'communication'. We accept the applicability of the terms 'computer', 'computer network', 'computer resource', 'computer system', 'electronic form', 'electronic record', 'originator' and other terms defined under the Information Technology Act, to be of relevance for the purposes of proceedings under the GST Act to the extent such proceedings being adopted through electronic mode of communication. However, Section 4 of the Information Technology Act is a provision that only allows for electronic mail or document made available through the Common Portal, to be an equivalent to a physical document. It does not create and it does not seek to introduce any element of 'service' or 'communication' of such documents. In other words, how the electronic document may be served or communicated may remain to be examined independent of Section 4 of the Information Technology Act.

92. As noted above, at present, as per the say of GSTN, and the revenue

authorities, there is no mechanism to generate automatic acknowledgement or receipt of document downloaded or retrieved or viewed by an assessee/taxpayer from the Common Portal. All that is available with GSTN and therefore, to the revenue authorities, is the knowledge of actual dispatch or uploading of a document, by the revenue authorities, only.

93. To that extent, the learned Additional Advocate General, has relied on the provisions of Section 12 and 13 of the Information Technology Act. Section 13 is a provision that creates presumptions as to time and place of dispatch and receipt of certain electronic records. As to actual dispatch of an electronic record - either to upload notice or orders or dispatch of email, facts are admitted. But the petitioners here do not admit having received e-mail alerts. In any case, it is not the say of the revenue authorities that they had sent through e-mail communications, entire notices or orders as may have enabled the recipients/addressees/taxpayers, to file appeal thereagainst. They only claim to have sent information about such notices and orders. Therefore, it may never be claimed that by sending such intimation the addressee/recipient had been 'communicated' the notice or the orders or their contents, necessary to be 'communicated', to file any appeal thereagainst.

94. At the same time, Section 13(2) of the IT Act also provides a deeming fiction of receipt of electronic record arising the moment electronic document enters the 'designated computer resource'. However, if such a 'computer resource' is not a 'designated computer resource', receipt may occur at the time when electronic

record is retrieved by the addressee. In the present facts, the 'designated computer resource' means the 'computer system' or 'computer network' on which the notice or order has been uploaded. That admittedly is the Common Portal. In face of the admission made (as has been repeatedly noted above) that the GSTN is unable to ascertain, and therefore divulge the time when the Show Cause Notice or order may have been retrieved or downloaded or viewed by the addressee, therefore, that date and time of 'communication' through that mode [in term of Section 13(2)(a)(ii)], is indeterminate, in each of these cases.

95. Insofar as Section 13(2)(a)(ii) is concerned, to the extent the revenue authorities are unable to state when intimation of the electronic record i.e. that Show Cause Notice or the Orders was retrieved from the 'computer resource' through which the assessee/addressee may have access to electronic mail communication, again that issue remains indeterminate, in each of these cases. In any case, as already noted such electronic mail did not contain the contents of either the show cause notice or the adjudication order as may have enabled the addressee/recipient, to either comply or challenge such notice or adjudication order.

96. Thus, in any case, 'receipt' under Section 13(1) read with 13(2)(a)(i) of IT Act falls short of 'communication' and therefore service (actual or constructive) under Section 169 of State/Central Act and it may never amount to 'communicated' under Section 107 of the State/Central Act, for the purpose of start point of running of limitation to file an appeal, as no 'acknowledgment' has been generated under Section 12 of the IT Act and no

notice has been issued under Section 12(3) of the IT Act.

97. Before parting on the issue, we may further note, even with respect to service through physical mode only upon Registered Post or Speed Post but not through Courier, the effect of deemed service may arise only when such dispatch is made with 'acknowledgement due' to the addressee. Thus, while creating a legal fiction in cases involving physical dispatch, element of 'acknowledgement' has been introduced to put in place verifiable measures. To the extent Sections 12 of the IT Act provides for 'acknowledgement', and further to the extent at present such acknowledgement has not been sought [in terms of Section 12(3)] it would be over simplistic to equate the two distinct modes of service, one through physical mode and the other through electronic mode, to allow for the consequences of 'deemed service' to arise, in both.

98. Further, it is doubtful if effect of (Show Cause Notice or Order) 'communicated' to the assessee may arise in law, merely on the strength of time of such notice or order entering the Common Portal of the GSTN, from where it is possible for the addressee to retrieve such document to record. It is akin to the early stages of postal service where a letter/communication dispatched by post was sorted and kept at the Post Office nearest the addressee, from where he could collect it, at this convenience. In the absence of time stamp being available, when the addressee may have retrieved that communication and further in the absence of any notice with acknowledgment, that determination is not possible or feasible.

99. Coming to two decisions of the coordinate bench, In **Atlantis Intelligence Ltd. (supra)** in paragraph-4 of the report, it has been recorded as below:

“4. It is admitted by the petitioner that the petitioner was served by registered email on the very same date of passing of the impugned order. However, learned counsel appearing on behalf of petitioner, submits that there was no service made to the petitioner by way of registered post.”

(emphasis supplied)

100. Specifically, the petitioner in that case had admitted that the email was served on the petitioner at his registered email address. Once that admission arose, the coordinate bench had only considered the effect caused. Therefore, it did not have the opportunity to examine what would follow if there was no such admission. That issue has arisen in the present case. Though dispatch through uploading and email has been claimed by GSTN and in that regard it has filed an affidavit disclosing the contents of the email, there is no admission of receipt of the same. In any case, it does not contain a copy of or the contents of the Order. However, in view of the admission made in **Atlantis Intelligence Ltd. (supra)**, the coordinate bench in paragraph-6 observed thus:

“Accordingly, we are of the view that service of the order by registered email is a valid service and the date on which such service is made would count as the date for the purpose of limitation.”

(emphasis supplied)

101. Clearly, as noted above, once email was admitted to have been served on

the registered email address and that service was admitted, the effect of service of the order was acknowledged. Therefore, we find no different view has been taken by the coordinate bench in **Atlantis Intelligence Ltd. (supra)** on the issue canvassed before us.

102. In **D.R. Hotels (P) Ltd. (supra)**, it was not the case of that petitioner that it had not received electronic mail. Rather, it was the case that the said email was operated by an employee who had been disengaged. To the extent receipt of email was again admitted (at the registered email address), and that fact was acknowledged between the parties, further consideration arose in that regard. Crucially, in no uncertain terms the issue examined by the coordinate bench in **D.R. Hotels (P) Ltd. (supra)**, was of maintainability of the writ petition in face of statutory remedy of appeal available. On the issue of deemed service of notice and order through electronic mode, the coordinate bench made the following pertinent observation in paragraph-18:

“18. we do not proceed to determine the question as to whether as per sub clause 2 of section 169 once the service has been effected as per sub clause (c) & (d) of section 169, it shall be deemed to have been served on the date it is tendered.”

(emphasis supplied)

103. Thus, the coordinate bench had left the issue open but only refused to entertain the writ petition for reason of statutory remedy of appeal available. Thus, the two decisions of coordinate benches have not taken a view, different from the one proposed to be taken by us. Hence, we

find no occasion to refer the matter to a larger bench. Insofar as the decisions of the other High Courts taking a contrary view, are concerned, we regret not being persuaded to take that view - that uploading a document on the Common Portal is enough communication or service for the purpose of Section 107 of the State/Central Acts. For the reasons noted above, we find that the deeming fiction of law created under Section 169(2) and (3) of the State/Central Act read with Sections 12 and 13 of the IT Act cannot be enlarged - to benefit the revenue, though no prejudice may be caused to it, otherwise. To equate uploading of a document on the Common Portal with 'tendering' or 'by speed post', 'publication' or 'affixation', would be over simplistic, in our humble opinion. To the extent the words used in sub-sections (2) and (3) of Section 169 of the State/Central Act exist in conjunction with other words such that 'tendering' has not been used in isolation but as 'tendering it directly' under clause (a), 'by speed post' have not been used in isolation but as 'speed post with acknowledgement due', 'publication' in clause (e) has not been used in isolation but in conjunction 'publication in a newspaper' and 'affixation' stands on a completely different footing (as discussed above), it would be over simplistic and therefore unacceptable in law to infer that a notice or order uploaded on the Common Portal may be equated with the word 'tendering' or 'publishing' and therefore, be deemed to have been served though no deeming fiction in law has been created by the legislature to reach that conclusion, for the purpose of Section 107 of the State/Central Acts.

104. Therefore, the preliminary objection raised is decided against the State. We may have relegated the present

petitioners to the appeal remedy for the reasons given by us. However, we also note, even today, before dictation of this order, we have dealt with similar writ petitions in terms of the order passed in **M/s Riya Construction (supra)**. To that extent, we are persuaded to maintain consistency in these matters and to set aside individual orders and remit the matters to the Adjudicating Authority, against payment of 10% of the demand of tax, by individual petitions, as the present petitioners have remained pending for very long. To summarise we may conclude:

(i) Service of Show Cause Notice and orders under the State/Central Act, by making such documents available on the Common Portal or by making dispatch through electronic mode, is permissible in law, and therefore a valid procedure.

(ii) No order of priority exists between the first five modes of service, that may be adopted by the revenue authorities amongst clauses (a) to (e), of Section 169(1) of the Act.

(iii) Only before adopting service through affixation under clause (f), satisfaction must be recorded that it is not ☐practicable☐ to serve such notice or order through any of the modes specified in clauses (a) to (e). That principle has no application to the choice that the revenue authorities may otherwise make between the modes specified in clauses (a) to (e).

(iv) The deeming fiction of law leading to constructive service, is available only with respect to service effected through modes specified in Clauses (a), (b), (e) and (f) (where applicable), of Section 169(1) of the Act.

(v) By way of necessary corollary, the deeming fiction of law leading to constructive service is not available with respect to Clauses (e) and (f)

of Section 169 (1) of the State/Central Acts, in view of the direct provisions of those Acts.

(vi) The IT Act is clearly applicable to the State/Central Acts, to the extent its provisions may be invoked in matters not squarely covered by or provided for under the State/Central Act. To that extent the provisions of Sections 4, 12 and 13 are invokable with reference to □despatch□ & □receipt□ service attempted through electronic modes but not to actual or constructive service provided under Section 169 of the State/Central Acts, there is no conflict between the two sets of legislation, one relating to GST laws and the other to IT laws.

(vii) To the extent there is no acknowledgement generated and further to the extent the GSTN and the revenue authorities are unaware and therefore unable to inform when any notice or order dispatched through electronic mode (made available on the Common Portal designed and managed by the GSTN), may have been retrieved or downloaded by the addressee, no inference may be drawn as to the actual date and time of such service, in terms of section 12 and 13 of the IT Act, for the purpose of Section 107 of the State/Central Acts.

(viii) To the extent it is not admitted to the petitioners that they have received any email and to the extent that fact may remain disputable, no useful purpose may ever be served in entering into that enquiry by any Court or Tribunal or authority as it may involve deep forensic investigation of the 'computer resource' used by the addressee, before any conclusion may be drawn. It would amount to immense waste of productive time and money, both by the revenue authorities and the assessees. Plainly, at present it may remain impractical and therefore, an

undesirable course to be adopted. In any case, admittedly, the entire adjudication order has not even been attempted to be served through e-mail. Therefore, that order may never be described to have been 'communicated' to the petitioner, through e-mail, for the purpose of Section 107 of the State/Central Act.

(ix) Since the period of limitation to file appeal under Section 107 may start running from the date of effective 'communication' of an order, we may only note that in view of the above discussion and conclusions drawn, in the present state of affairs effective 'communication' of the show cause notices and adjudication orders, may be governed by actual or constructive 'communication' to the assessee of the contents of such notices and orders, strictly in terms of Section 169 of the State/Central Acts, specifically for the purpose of filing appeal or raising other challenge to an adjudication order etc.

(x) We avoid suggesting any administrative measure that the revenue authorities may adopt, since the measures proposed have been strongly objected to and it has also been informed to the Court (through 'Y'), that the State Government cannot provide for such measures. However, we leave it to the wisdom of the State authorities to look at the practicalities of the situation and the steps taken by the Central revenue authorities, in the same situation. The assessees being one class of persons who exist in a singular tax eco-system created by uniform GST laws that are pari materia to each other, from beginning to end, i.e. the State Act and the Central Act, the fact that in some proceedings drawn by authorities under the Central Act, notices and orders may be issued through physical mode also, while in another set of proceedings (against the same class of persons), drawn by the State

authorities, notices and orders may be issued only through electronic mode, is not desirable. It creates confusion by bringing in duality and therefore uncertainty of procedures being followed, to implement a single substantive law, leading to doubts and conflicts that have given rise to the present wholly avoidable litigation.

(xi) Suffice to note, wherever an assessee files an appeal declaring that it is within time from the date of actual 'communication' of the order, a presumption may arise in favour of the assessee on the strength of such declaration. The burden to prove otherwise, may lie on the revenue - to establish that actual 'communication' of the contents of the Show Cause Notice or adjudication order had been made prior in time, as may have allowed the limitation to start running from such prior date. Failing that, the limitation to file appeal may be computed with reference to the date that may be disclosed by the individual assessee, in each appeal.

(xii) To the extent learned ASGI has already apprised that the central authorities are issuing physical notices and copies of the orders also through postal mode, first, in those cases the issue of start point of limitation may be determined on the date of actual or constructive service, with reference to service through physical mode, in terms of Section 169 of the State/Central Acts.

(xiii) To avoid any conflict with respect to start point of limitation, it is provided - wherever the date of 'communication' may be determined or be claimed through electronic and physical mode, the date of communication through offline/physical mode may prevail over service through electronic mode, unless the contrary is proved, by either party.

(xiv) We also leave it open to the revenue authorities to adopt any of the modes including physical tender through messenger etc. as was being done under the pre-existing Trade Tax/VAT regime, in the State of Uttar Pradesh.

(xv) Positive intervention by the Court may have been desirable in the facts of these cases - to direct the GSTN to take effective steps in the first place to provide for the Common Portal in the language of the State i.e. Hindi; to create Tabs for ease of use and convenience to the assessee, to view notices that are pending compliance and orders that may have been passed against him. However, we are constrained to observe for reason of obstinate stand taken by the GSTN, demonstrating extreme reluctance at the first stage itself, to take any positive criticism of the working of its Common Portal, and the urgent need to improve it - to make it more user friendly and enable the taxpayers to make compliances and pay their revenues within time, we leave GSTN with the thought that it is not its object of incorporation to deal with lakhs of complaints as it already has and to continue to remain rigid in its approach. Rather, its object of incorporation commends that it responds to the need of the times pro-actively, to cater to the needs of the India's growing economy and the traders and business persons who are its users and who trust and rely on such mechanism not for any other reason but to help their businesses grow, that in turn contributes to the economic growth of the country itself.

105. Accordingly, these writ petitions are **allowed**. Individual Adjudication Orders are set aside, subject to deposit of 10% of the disputed demand of tax only, within four weeks from today. Also:

(i) *Subject to the individual petitioner filing a copy of this order together with proof of deposit made, before the Adjudicating Authority within a month, the Adjudicating Authority shall make available to the petitioner copy of the show cause notice together with any additional/supplementary notice etc. issued in these proceedings together with copies of Relied Upon Documents ('RUDs' in short) within a period of two weeks from the date of compliance shown by the petitioner.*

(ii) *Petitioners shall file individual replies, if any, within a further period of four weeks therefrom.*

(iii) *Thereupon the Adjudicating Authority shall fix appropriate date for hearing and communicate the same to the individual petitioner, in the manner prescribed by law with at least two weeks' advance notice.*

(iv) *Petitioners undertake to cooperate and participate in the proceedings and not seek any undue or long adjournment.*

(v) *Any amount already deposited or recovered pursuant to the impugned adjudication order, may be adjusted against the amount to be deposited against this order, which shall abide by final adjudication order.*

(vi) *It is expected that the proceedings thus remitted would be concluded within six months from the date of first compliance made by the petitioner.*

(vii) *No order as to costs.*

(2025) 12 ILRA 1232

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 12.12.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.

THE HON'BLE VIVEK SARAN, J.

Writ Tax No. 5865 of 2025

**M/s Prakash Medical Stores ...Petitioner
Versus
Union Of India & Ors. ...Respondents**

ISSUE FOR CONSIDERATION

Whether the petitioner's appeal under Section 107 of the UP GST Act, 2017 was time-barred.

Whether the principle of Section 14 of the Limitation Act could be applied to exclude the period spent in pursuing a rectification application under Section 161.

HEADNOTES

Tax Law – UP GST Act, 2017 - Sections 107, 161, - Limitation Act, 1963 - Sections 5, 14, 29 - Writ petition – filed to challenge dismissal of GST appeal as time-barred – dispute arose from ex-parte adjudication order and subsequent rectification application – plea taken that Section 14 Limitation Act principle applies to exclude time spent in rectification proceedings – court finds that, rectification was bona fide, limitation kept in abeyance, appeal filed within statutory period – court held that, the period of limitation being three months, and therefore the appeal filed was well within limitation – consequently, the writ petition is allowed – impugned order is set aside – and the appeal is restored to its original number and status with to decide the same strictly in accordance with law on merits, expeditiously. (Para – 29, 30, 31, 32)

Writ Petitions **Allowed**.(E-11)

CASE LAW CITED

M.P. Steel Corporation v. Commissioner of Central Excise (2015) 319 ELT 373 (SC)
Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd. (2009) 5 SCC 791
Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd. (2020) 19 SCC 681
SPK and Co. v. State Tax Officer (Madras HC, 2024)
Arvind Fashion Ltd. v. State of Haryana (P&H HC, 2025)

Atlantis Intelligence Ltd. v. Union of India (Allahabad HC, 2025)
 Union of India v. West Coast Paper Mills Ltd. (2004) 3 SCC 458
 Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi (1975) 4 SCC 628
 India Electric Works Ltd. v. James Mantosh (1971) 1 SCC 24

LIST OF ACTS

UP GST Act, 2017 - Limitation Act, 1963.

LIST OF KEYWORDS

GST appeal limitation - Rectification application - Section 14 principle - Bona fide proceedings - Exclusion vs. condonation - Cause of justice - Time-barred appeal.

CASE ARISING FROM

Ex-parte adjudication order dated 23.04.2024 by Deputy Commissioner, State Tax, Kanpur. - Rectification application filed 23.05.2024, rejected 22.10.2024 - Appeal filed 29.11.2024, dismissed as time-barred on 05.03.2025.

APPEARANCE OF PARTIES

Counsel for Petitioners: - Shri Shri Shubham Agrawal.

Counsel for Respondents: - Shri Ankur Agarwal (Standing Counsel), Sudarshan Singh (CGC).

(Delivered by Hon'ble Saumitra Dayal
 Singh, J.

&

Hon'ble Vivek Saran, J.)

1. Heard Shri Shubham Agrawal, learned counsel for the petitioner, Shri Ankur Agarwal, learned Standing Counsel for the Revenue and perused the record.

2. The present writ petition has been filed to assail the order dated 05.03.2025 passed by Additional Commissioner, Grade-2 (Appeal)-V, State Tax, Kanpur (respondent No.4) whereby the first appeal filed by the petitioner under Section 107 of the UP GST Act, 2017 (herein after referred to as the Act), against the ex-parte adjudication order dated

23.04.2024 passed by the Deputy Commissioner, State Tax, Sector-27, Lakhanpur Kanpur-respondent No.3, under Section 73 of the Act for the Financial Year 2018-19, (creating demand of Tax/Cess Rs.7,81,838.98/- together with interest Rs.7,86,164/- and penalty Rs.78,184/-) has been dismissed as time barred. The remaining prayers (in the petition) have not been pressed.

3. Arising from the ex-parte adjudication order dated 23.04.2024, the petitioner first filed an application referable to Section 161 of the Act (seeking rectification in the order dated 23.04.2024), on 23.5.2024 i.e. after a month and one day. The said application was rejected by the order dated 22.10.2024, as not maintainable.

4. At that stage, the petitioner filed an appeal under section 107 of the Act on 29.11.2024 i.e. within a month and eight days from the date of the order passed under Section 161 of the Act.

5. According to the petitioner, there was no delay in filing that appeal as it was entitled to the benefit of the principle underlying Section 14 of the Limitation Act, 1963 (hereinafter referred to as "Limitation Act"). However, the appellate authority has rejected the appeal and dismissed those proceedings as time-barred, vide order dated 05.03.2025.

6. Primarily, this order is under challenge in the present writ petition. At present, the Tribunal has not been made functional. For that reason, the present writ petition has been entertained, upon lifting the self imposed bar of alternative remedy.

7. Submission of learned counsel for the petitioner is-though, in terms, Section 14 of the Limitation Act does not apply to

proceedings under the Act, at the same time, the underlying principle contained in Section 14 of the Limitation Act does apply. Reliance has been placed on a decision of the Supreme Court in **M.P. Steel Corporation vs. Commissioner of Central Excise 2015 (319) E.L.T. 373 (S.C.)**. Further reliance has been placed on a decision of the Madras High Court in **M/s. SPK and Co. vs. The State Tax Officer in W.P.(MD) Nos. 27787 and 27788 of 2024 and W.M.P.(MD) Nos. 23585 and 23586 of 2024** decided on 22.11.2024 and another decision of the Punjab and Haryana High Court in **M/s Arvind Fashion Limited vs. State of Haryana and others 2025:PHHC:135347-DB**. Also, reliance has been placed upon observation made in paragraph No.14(D) of the order passed by a co-ordinate bench in **Atlantis Intelligence Ltd. vs. Union of India and 2 others, 2025:AHC:135383-DB**.

8. Thus, it has been submitted, the learned Appeal Authority has erred in law in declining to give benefit of the principle contained in Section 14 of the Limitation Act. If the duration of pendency of the rectification of mistake application filed by the petitioner under Section 161 of the Act is excluded, the appeal filed by the petitioner would be within three months from the date of communication of the order dated 23.4.2024. Thus, the appeal filed is within limitation.

9. On the other hand, learned Standing Counsel would contend that the period of limitation is prescribed under the Act, to file appeals etc. In the first place, the limitation of three months existed to file such appeal. Thereafter, delay of only one month could be condoned, subject to sufficient cause being established by the

petitioner. Since admittedly, the appeal was first preferred by the petitioner on 29.11.2024, outside four months from the date of communication of the Adjudication Order dated 24.03.2024, the delay condonation application has rightly been dismissed, as time barred.

10. To the extent the Act provides for an inflexible period of limitation to file appeals, the principle of law enshrined under Section 14 of the Limitation Act has no application. Reliance has been placed on **Commissioner of Customs & Central Excise vs. Hongo India Pvt. Ltd. (2009) 5 SCC 791** and **Assistant Commissioner (CT) LTU, Kakinada vs. Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 SCC 681**.

11. Alternatively, it has been submitted, wherever any application seeking rectification may be filed after expiry of limitation to file such application, no benefit may be drawn by such a person, by relying on principle contained under Section 14 of the Limitation Act.

12. Having heard learned counsel for the parties and having perused the record, before we discuss the issue any further, it would be useful to extract the provisions of Section 107(1), (4) of the Act. They read as below:

"Section 107(1): Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the

date on which the said decision or order is communicated to such person.

(2)...

(3)...

(4):The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

(emphasis supplied)

13. Section 161 of the Act reads as below:

"Section 161: Rectification of errors apparent on the face of record.-

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of

six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."

(emphasis supplied)

14. We also find it useful to extract the provisions of Section 14 of Limitation Act, which reads as below:

"Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction.- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be

excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section, —

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

(emphasis supplied)

15. As to applicability of the Limitation Act, the issue is not res integra. In **M.P. Steel (supra)**, the Supreme Court considered the principle of pre-existing law laid down by that court in **Bhudan Singh and another vs. Nabi Bux and another (1970) 2 SCR 10**; **J. Kumaradasan Nair vs. Iric Sohan (2009) 12 SCC 175**, **Consolidated Engg Enterprises vs. Irrigation Department (2008) 7 SCC 169**

and Commissioner of Sales Tax vs. Parson Tools and Plants (1975) 4 SCC 22. Thereafter, the Court distinguished **Parson Tools (supra)** and held though the provisions of Section 14 of the Limitation Act may not apply in terms-to proceedings/appeals under the Customs Act, at the same time, the underlying principle of Section 14 would apply to such proceedings, as well.

16. In **M.P. Steel (supra)**, against the order of adjudication, the aggrieved person directly approached the Custom Excise Service Appellate Tribunal (the second appeal authority). That Tribunal allowed the appeal. Against that order, the matter travelled to the Supreme Court. The Revenue's appeal was allowed, and the order of the Tribunal was set aside. Thereafter, the aggrieved person approached the first appeal authority and explained-it had committed a mistake in approaching the Tribunal directly. The first appeal was dismissed on account of delay. On the matter again reaching the Supreme Court (in the second round of litigation), it was ruled that the underlying principle of Section 14 would apply to such facts as well.

17. Relevant to the above, first, **Parson Tools (supra)** was distinguished, on the following reasoning:

"34. However, it remains to consider whether Shri Sanghi is right in stating that Section 128 is a complete code by itself which necessarily excludes the application of Section 14 of the Limitation Act. For this proposition he relied strongly on Parson Tools which has been discussed hereinabove. As has already been stated, Parson Tools was a judgment which turned on the three features mentioned in the said

case. Unlike the U.P. Sales Tax Act, there is no provision in the Customs Act which enables a party to invoke suo moto the appellate power and grant relief to a person who institutes an appeal out of time in an appropriate case. Also, Section 10 of the U.P. Sales Tax Act dealt with the filing of a revision petition after a first appeal had already been rejected, and not to a case of a first appeal as provided under Section 128 of the Customs Act. Another feature, which is of direct relevance in this case, is that for revision petitions filed under the U.P. Sales Tax Act a sufficiently long period of 18 months had been given beyond which it was the policy of the legislature not to extend limitation any further. This aspect of Parson Tools has been explained in Consolidated Engineering in some detail by both the main judgment as well as the concurring judgment. In the latter judgment, it has been pointed out that there is a vital distinction between extending time and condoning delay. Like Section 34 of the Arbitration Act, Section 128 of the Customs Act is a Section which lays down that delay cannot be condoned beyond a certain period. Like Section 34 of the Arbitration Act, Section 128 of the Customs Act does not lay down a long period. In these circumstances, to infer exclusion of Section 14 or the principles contained in Section 14 would be unduly harsh and would not advance the cause of justice. It must not be forgotten as is pointed out in the concurring judgment in Consolidated Engineering that:

“Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which

the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [(2006) 6 SCC 239] therefore lays down the correct legal position.”

(Emphasis supplied)

18. Second, as to the applicability of the principle contained in Section 14 of the Limitation Act, the Supreme Court further observed as below:

35. Merely because Parson Tools also dealt with a provision in a tax statute does not make the ratio of the said decision apply to a completely differently worded tax statute with a much shorter period of limitation – Section 128 of the Customs Act. Also, the principle of Section 14 would apply not merely in condoning delay within the outer period prescribed for condonation but would apply de hors such period for the reason pointed out in Consolidated Engineering above, being the difference between exclusion of a certain period altogether under Section 14 principles and condoning delay. As has been pointed out in the said judgment, when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the concerned statute continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.”

(emphasis supplied)

19. Third, as to the object/purpose of Section 14 or its principle, the Supreme Court observed as below:

"41. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bonafide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant ? appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be

excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression ?the time during which the plaintiff has been prosecuting with due diligence another civil proceeding? needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice."

(emphasis supplied)

20. Fourth, as to interpretation of Section 14 of the Limitation Act, after considering the pre-existing law on that point, the Supreme Court opined-it must be interpreted extremely liberally as it furthers the cause of justice. Thus, it was observed below:

*"42. Section 14 has been interpreted by this Court extremely liberally inasmuch as it is a provision which furthers the cause of justice. Thus, in *Union of India v. West Coast Paper Mills Ltd.*, (2004) 3 SCC 458, this Court held:*

“14. ... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be ‘defect of jurisdiction or other cause of a like nature’ within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression ‘other cause of like nature’ came up for the consideration of this Court in Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi[(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.”

Similarly, in India Electric Works Ltd. v. James Mantosh, (1971) 1 SCC 24, this Court held:

“7. It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts

cannot travel beyond them the words ‘or other cause of a like nature’ must be construed liberally. Some clue is furnished with regard to the intention of the legislature by Explanation III in Section 14(2). Before the enactment of the Act in 1908, there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words ‘or other cause of a like nature’. It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it.”

(emphasis supplied)

21. Insofar as the decisions of the Madras High Court and High Court of Punjab and Haryana in **M/s. SPK and Co. (supra)** and **M/s Arvind Fashion Limited (supra)** are concerned, they too have laid down law consistent to the decision of the Supreme Court, in **M.P. Steel (supra)**. While we may not find ourselves in perfect agreement to the expression of ‘merger’ used in those decisions, and may only say on rectification made by the same authority/court that order relates back to the date of the original order passed, on the meaty/fundamental issue of applicability of the underlying ‘principle’ of Section 14, we find ourselves in complete agreement, to those decisions.

22. Insofar as the order passed by co-ordinate bench in **Atlantis Intelligence Ltd. (supra)** is concerned, though the issue raised therein may have been slightly different, observation made in paragraph 14(D) is pertinent. For ready reference, it reads as below:

"D. The principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

(emphasis supplied)

23. However, there may survive no merit in the other submission advanced by learned counsel for the petitioner on the strength of Section 29 of the Limitation Act. With respect to that, in **M.P. Steel (supra)**, it was observed as below:

"28. The sheet anchor in Mukri Gopalan was Section 29(2) of the Limitation Act. Section 29(2) states:-

"29. Savings. — (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

A bare reading of this Section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the schedule. This would necessarily mean that such special or local

law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the schedule. We have already held that such suits, appeals or applications as are referred to in the schedule are only to courts and not to quasi-judicial bodies or Tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the schedule is to be filed in a court under a special or local law that the provision gets attracted.

This is made even clearer by a reading of Section 29(3). Section 29(3) states:-

"29. Savings. — (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law."

29. When it comes to the law of marriage and divorce, the Section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29(2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in courts."

(emphasis supplied)

24. Then, as to the objection raised by learned Standing Counsel on the strength of

Hongo India (supra) and **Glaxo Smith Kline (supra)**, those are cases that excluded applicability of Section 5 of the Limitation Act to proceedings under similar pari materia provisions of other Acts. The exclusion of principle contained in Section 5 of the Limitation Act arises not on the strength of any specific or direct exclusion offered under express provision of the Act or the Limitation Act, but by virtue of the self-contained specific scheme of limitation and condonation of delay limited (by time) provision in Section 107(1) read with Section 107(4) of the Act, as extracted above. In the first place, the period of limitation available to file appeals is three months. Second, the power to condone delay is limited and thus hedged in terms of the provisions of sub-section (4) of Section 107 of the Act, to one month.

25. Accordingly, the delay may be condoned for not more than one month. Once the power to condone delay has been specifically provided under Section 107(4) of the Act, that is a special Act, it amounts to necessary and automatic exclusion of the general principle contained in Section 5 of the Limitation Act. On that point, the decisions of the Supreme Court in **Hongo India (supra)** and **Glaxo Smith Kline (supra)** specifically hold the field. In **Hongo India (supra)**, it has been observed as below:

"32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to

entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

33...

34...

35. *It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In*

other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

37. In the light of the above discussion, we hold that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days and rightly dismissed the reference on the ground of limitation."

26. However, no such implied or necessary exclusion to the general applicability of the underlying principle of Section 14 of the Limitation Act may be read in the Act, even though it remains a special Act. As summarized by the Supreme Court in **M.P. Steel (supra)**, Section 14 is a beneficial piece of legislation-to further the cause of justice where a person pursues a case with due diligence. He may not be non-suited occasioned by a mistake of seeking remedy before a wrong forum. Thus, the underlying principle of Section 14 recognizes-that it applies to persons (claiming its benefit),

who may have admittedly made a mistake. Only then, the applicability of Section 14 of the Limitation Act may arise and not otherwise. As to what nature of mistake may lead to application of Section 14 of the Act, it is clear that it may be in the nature of lack of jurisdiction or defect of like nature (construed liberally). As to the wrong forum before whom, such mistake may have been committed, Section 14 is categorical. It includes in its scope, proceedings instituted before the original authority.

27. Seen in that light, an application seeking rectification of mistake was, filed by way of a remedy exists on the statute book. It lies before the authority that may have passed the order, including the Adjudication Authority. Whether such an application may be maintainable, and if maintainable, whether it may be allowed, are questions that may be answered only after conclusion of proceedings for rectification.

28. To the extent the statute creates a forum but permits exercise of its jurisdiction only in certain circumstances and not in others, it cannot be said that the application filed by the petitioner was so misconceived to begin with that it may be readily inferred therefrom-either it was not in 'good faith' or that it was not 'bona fide'. Therefore, that conclusion, if reached, would be harsh and may result in unnecessarily restricting natural full applicability of the underlying principle contained in Section 14 of the Limitation Act. That would itself obstruct the cause of justice.

29. The statutory remedy to seek rectification of our order being in addition to the statutory remedy to file an appeal, at

first, limitation to seek either or both those remedies, starts running, simultaneously. If no application is filed under Section 161 of the Act to seek rectification (of a mistake in such order), upto three months, the limitation to seek rectification would expire at the end of three months. In that case, simultaneously, the normal period of limitation to file first appeal against such order would also have run continuously and concurrently and, therefore, it would also be exhausted, simultaneously. If, however, before expiry of three months, an application is filed under Section 161 of the Act, to seek rectification in that order, the running of limitation (to file appeal against such order), would be put in abeyance from the date of filing of such application, upto the date when that application is decided.

30. This leads us to the conclusion, to apply the underlying principle of Section 14 Limitation Act, wherever an application seeking rectification of mistake apparent on the face of record may be filed within time, as may have been done in the present case, the application of the underlying principle of Section 14 Limitation Act, may not be examined with a microscope, any further. To the extent that application is filed 'bona fide' in 'good faith' and is pursued, that principle would apply, without doubt. The only exception to that principle may be where the application seeking rectification of a mistake is itself filed beyond the period of limitation prescribed under Section 161 of the Act. There no such benefit may arise. Here, that application was filed within the time prescribed under the said provisions.

31. To the extent, respondent no. 3 rejected that application, we find occasion arose to the petitioner to claim benefit of Section 14 of the Limitation Act,

occasioned by the mistake on part of the petitioner, in filing that application. Consequentially, and without exception, the duration of that application (filed by the petitioner seeking rectification of mistake in the adjudication order dated 23.4.2024), having remained pending, has to be excluded from the limitation to file appeal, as running of limitation remained in abeyance, during pendency of application filed under Section 161 of the Act. Here, that period must be excluded. Thus, the appeal was filed within two months and nine days from the date of the ex-parte adjudication order. The period of limitation being three months, the appeal filed was well within limitation.

32. Consequently, the writ petition is **allowed**. Accordingly, the order dated 23.04.2024 is **set aside** and the appeal is restored to its original number and status. We expect that the same would be dealt with and decided strictly in accordance with law on merits, expeditiously.

33. No order as to costs.

(2025) 12 ILRA 1243
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.12.2025

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Application U/S 482 No. 33209 of 2023

Gaurav Mehta	...Applicant
State of U.P. & Anr.	...Opp. Parties
Versus	

ISSUE FOR CONSIDERATION

Whether the Applicant (husband) filing altered ICICI Bank statements in maintenance proceedings amounts to **forgery under Section 466 IPC**, and whether the summoning

order dated 17.10.2019 can be quashed under Section 482 CrPC.

Chandra Chatterji v. Kumar Satish Kantha Roy, AIR 1923 PC 73.

HEADNOTES

Criminal Law – Code of Criminal Procedure, 1973 – Sections 125, 91, 482 – Indian Penal Code, 1860 – Sections 420, 463, 464, 466, 468, 471 – Hindu Marriage Act, 1955 – Section 13B- Application U/section 482 Cr.P.C. - filed for quashing of summoning order and entire criminal proceedings – marriage of Applicant & Opposite Party No. 2 – matrimonial dispute arose – divorce petition filed - divorce decree - parties resided separately thereafter – however, wife initiated maintenance proceedings against applicant under section 125 CrPC – trial court directed husband (Applicant) to file last three years' income tax returns, bank account details, FD/bonds, movable assets, and salary slip – interim order passed directing payment of Rs. 15,000/- per month towards maintenance till son attains majority – husband submitted bank statements – wife lodged FIR, alleging offence of forgery u/s 466 IPC – allegations are that, her husband filed forged/fabricated ICICI bank statements in court to mislead – investigation revealed variance between statements filed in maintenance case and authentic ICICI records – recovery of genuine statements showed missing entries – charge sheet filed – trial court took cognizance and issued summons – Applicant challenged summoning order before High Court – Court's finds that, filing forged/alterd bank statements in judicial proceedings is prima facie forgery, - it gives unfair advantage and undermines judicial integrity, - any attempt to file forged documents before court is an insult to majesty of law – Court held that, sufficient grounds are exist for trial and hence summoning order is valid – accordingly, application is dismissed.(Para – 22, 29, 30, 31, 34)
Application **Dismissed.** (E-11)

CASE LAW CITED

Vimla v. Delhi Administration, AIR 1963 SC 1572 - Commissioner of Customs (Preventive) v. Aafloat Textiles (I) Pvt. Ltd., (2009) 11 SCC 18 - Vishnu Kumar Gupta v. State of U.P., 2020 (11) ADJ 615 - State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426 - Indian Bank v. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550 - Satish

LIST OF ACTS

Code of Criminal Procedure, 1973 – Indian Penal Code, 1860 – Hindu Marriage Act, 1955.

LIST OF KEYWORDS

Forgery, False Document, Fraudulently, Dishonestly, Maintenance Proceedings, Summoning Order, Section 482 CrPC, Bank Statement, Concealment of Income, Judicial Integrity.

CASE ARISING FROM

Criminal Case No. 5043 of 2019 (State v. Gaurav Mehta) - FIR No. 0869 of 2019, PS Surajpur, Gautam Buddh Nagar - Summoning order dated 17.10.2019 by Second Additional Chief Judicial Magistrate, Gautam Buddh Naga.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Ishir Sripat,
Counsel for Respondent: - Sri Anamika Chopra,
Shri O P Dwivedi, AGA.

(Delivered by Hon'ble Vikram D.
Chauhan, J.)

1. Heard Sri Ishir Sripat, learned counsel for Applicant, Ms. Anamika Chopra, Opposite party no. 2 appearing in person and Sri O.P. Dwivedi, learned A.G.A. for the State.

2. The present application under Section 482 of Code of Criminal Procedure, 1973, is preferred by Applicant challenging summoning order dated 17.10.2019 passed by learned Second Additional Chief Judicial Magistrate, Gautam Buddh Nagar as well as entire proceedings in pursuance to Criminal Case No. 5043 of 2019 (State Vs. Gaurav Mehta) under Section 466 of Indian Penal Code, Police Station-Surajpur, District-Gautambudh Nagar in the court of Second Additional Chief Judicial Magistrate, Gautam Buddh Nagar.

3. The brief facts arising out of present case are as under :-

a) The Applicant and Opposite party no. 2, marriage was solemnized on 27.2.2004 at Noida.

b) Out of aforesaid wedlock, one son namely Abhimanyu Mehta (renamed to Aryaman Chopra) was born on 27.12.2004. The Applicant and Opposite party no. 2, resided as husband & wife till 16.8.2006 whereafter due to differences between the parties, they approached the court of District Judge, New Delhi and Divorce Decree under Section 13B of Hindu Marriage Act, 1955 was passed vide Judgement and Decree dated 20.8.2007.

c) The Applicant and Opposite party no. 2 thereafter resided separately and the abovementioned son of parties resided with Opposite party no. 2. Thereafter for maintenance of said son, Opposite party no. 2 instituted Case No. 374 of 2013 (earlier number being 50 of 2009) under Section 125 of Code of Criminal Procedure, 1973. In the aforesaid application maintenance to the tune of Rs.15,000/- per month was claimed in respect of above-mentioned child.

d) In the said application under Section 125 of Code of Criminal Procedure, 1973, an order was passed by court concerned on 26.2.2019 directing Applicant to submit last three years income tax return, bank account details, fixed deposit or bond and other movable assets and salary slip.

e) The Applicant in pursuance to aforementioned order dated 26.2.2019 filed his submissions before the court concerned (where proceeding under Section 125 Cr.P.C. was pending, hereinafter referred to as Maintenance Court) wherein the statement of ICICI bank account for Year 2011-12, 2012-13 and 2013-14 was also

submitted before the Maintenance Court. The Maintenance Court further by order dated 30.4.2019 directed Applicant to submit salary slip and details of immovable property.

f) The Maintenance Court by order dated 21.11.2019 directed the Applicant to pay Rs. 15,000/- per month towards maintenance of the son till he attains majority.

g) The Opposite party no 2 thereafter lodged a zero first information report in New Delhi, which was subsequently lodged on 22.7.2019 as Case Crime No. 0869 of 2019 at Police Station Surajpur, District-Gautam Buddh Nagar, under Sections 420, 468 and 471 of Indian Penal Code against Applicant. In the above-mentioned first information report, it is alleged that informant was engaged in child maintenance litigation with Applicant for almost 10 years and Applicant had refused to maintain his own son. By order dated 26.2.2019 passed by the A.S.J./F.T.C., Gautam Buddh Nagar, the court had ordered for production of documents in respect of Applicant being bank statements and details of immovable property, fixed deposits, shares, bonds and other related financial documents before the next date of hearing. In response to above-mentioned order dated 26.2.2019, Applicant filed bank statement of ICICI bank account for time period 2011-12, 2012-13, 2013-14 along with affidavit stating that Applicant owned no vehicle or any other immovable assets. The ICICI Bank statement filed by Applicant for above-mentioned financial years are forged and fabricated document submitted by Applicant in order to mislead the court into believing that his income is far less than the actual. The Applicant further concealed information of his financial relationship with ICICI bank besides the saving bank

account. The informant inquired and came to know that bank statement filed by Applicant does not conform to format in which bank statement issued by ICICI bank. The statement submitted in the court does not have ICICI bank stamp and authorised signature, making it evident that the documents are fabricated. It is also alleged that complaint was made to the DCP, Parliament Street, New Delhi as the master data shows that the head office of bank is at Barakhamba Road, New Delhi. During the course of enquiry, the police obtained bank statement of said account from ICICI Bank. On perusal of bank statement filed by Applicant before Maintenance Court and account statement obtained from ICICI Bank, it came to light that various entries were deleted from bank statement that was submitted in Maintenance Court in order to conceal his correct income and mislead the court and on account of aforesaid, the application of informant under Section 91 of Cr.P.C. was rejected by court concerned.

h) The Investigating Officer thereafter has recorded the statement of the informant under Section 161 of Code of Criminal Procedure, 1973 on 22.7.2019 wherein the informant has supported the prosecution case.

i) The Investigating Officer thereafter submitted the charge-sheet dated 23.9.2019 under Section 466 of Indian Penal Code against the Applicant and thereafter the court concerned by impugned order dated 17.10.2019, summoned the Applicant for offence under Section 466 of Indian Penal Code.

4. It is submitted by learned counsel for Applicant that Applicant is being proceeded and summoned under Section 466 I.P.C. by the impugned summoning order dated 17.10.2019. Learned counsel

for Applicant further submits that Applicant and Opposite party no. 2 were husband & wife and divorce order was passed on 20.08.2007. Learned counsel for Applicant further submits that out of said wedlock, one son was born. An application was filed by Opposite party no. 2 on behalf of minor child for maintenance under Section 125 Cr.P.C. on 11.9.2009. In the aforesaid application an order was passed on 26.2.2019 directing the Applicant to produce statement of last three years i.e. from the date of order dated 26.2.2019. Learned counsel for Applicant further submits that in pursuance to the aforesaid order, statements were submitted which is annexed at page no. 164 of paper book wherein paragraph no. 7, the statement of account for the years 2011-12, 2012-13 and 2013-14 were submitted. Learned counsel for Applicant further submits that the said document were only the excerpts of statement of account and actual statement of account are submitted before this Court. The documents including the statement of bank entries is from page no. 72 of the paper book. It is submitted that the aforesaid application under Section 125 Cr.P.C. was allowed by order dated 21.11.2019 granting maintenance of Rs. 15,000/- per month to the child. The claim in the application under Section 125 Cr.P.C. itself was in respect of Rs. 15,000/- per month which was allowed in toto.

5. Learned counsel for Applicant further submits that since last three years statement of account was not submitted and order was passed on 30.4.2019 directing Applicant to submit the salary slip which was submitted. Learned counsel for Applicant further submits that it is not in dispute that the alleged statement of account filed before the Magistrate concerned (Maintenance Court), which is at

page no. 72 of paper book, was not the exact copy of statement of account received by the Investigating Officer from the ICICI Bank and there are some missing debit and credit entries. However, learned counsel for Applicant further submits that for the purpose of Section 466 of IPC read with Section 463 I.P.C., forgery would lie if there is any wrongful gain/wrongful loss or dishonest intention. Learned counsel for Applicant further submits that there was no wrongful gain or wrongful loss to any of the parties as Section 125 Cr.P.C. application was finalised in favour of the son of Applicant and as such the present proceedings are not maintainable. Learned counsel for Applicant has also relied upon the judgments of the Supreme Court in **Vimla Vs. Delhi Administration, AIR 1963 SC 1572, Commissioner of Customs (Preventive) Vs. Aafloat Textiles (I) Pvt. Ltd. and Ors., (2009) 11 SCC 18 and Vishnu Kumar Gupta and Ors. Vs. State of U.P. and Ors., 2020 (11) ADJ 615**. It is further submitted that in view of judgments of Supreme Court the present criminal proceedings would not be tenable unless the finding is recorded that there was any wrongful loss or wrongful gain to any of the parties. Learned counsel for Applicant further submits that perusal of summoning order would go to show that same is on the printed proforma which is in teeth of the judgment of the Supreme Court in **Vishnu Kumar Gupta (supra)**.

6. The Opposite party no. 2 appearing in person submits that it is not in dispute between the parties that statement of account submitted by the Applicant before the Magistrate concerned under Section 125 Cr.P.C. were not the same statement of account as was recovered by the Investigating Officer during investigation. The Opposite party no. 2 further submits

that debit and credit entries were missing and in the aforesaid entries some of entries pertain to transfer of amount to another bank account and by deleting the reference to the aforesaid entries in statement of account submitted before the Maintenance Court, the Applicant has tried to mislead and deceive in judicial proceedings.

7. The Opposite party no. 2 further submits that maintenance proceedings in respect of minor child travelled for ten years on account of all these activities by Applicant. The maintenance petition was finally decided after giving 177 dates and in the year 2019 only final documents were submitted which was also incorrect. It is also submitted by Opposite party no. 2 that the present application under Section 482 Cr.P.C. would not be maintainable in view of the law laid down by the Supreme Court in **State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri) 426**, the present case does not fall in any of the parameters of **Bhajan Lal (supra)** case.

8. Learned A.G.A. has opposed the prayer made by learned counsel for Applicant and submits that there was difference in the statement of account recovered by the Investigating Officer and the statement of account which Applicant had submitted before the Maintenance Court and on the aforesaid basis charge sheet has been submitted under Section 466 I.P.C. and the court concerned has not erred in law in issuing the summoning order.

9. The present Applicant is summoned by order dated 17.10.2019 under Section 466 of Indian Penal Code. The first information report was lodged by Opposite party no. 2 at Police Station-Surajpur, District-Gautam Budhnagar under Sections 420, 468, 471 of Indian Penal Code against

the Applicant. In the above-mentioned first information report it is alleged that Informant-Opposite party no. 2 was engaged in child maintenance litigation with Applicant for almost ten years and the Applicant had refused to maintain his own son. By order dated 26.2.2019 passed by A.S.J./F.T.C., Gautam Budh Nagar, the court had ordered for production of documents in respect of Applicant's bank details/statements and details of immovable property, fixed deposits, shares, bonds and other related financial documents before the next date of hearing. In response to above-mentioned order dated 26.2.2019, Applicant filed bank statement from ICICI Bank account for time period 2011-12, 2012-13, 2013-14 along with affidavit stating that Applicant owned no vehicle or any other immovable assets. The ICICI Bank statement filed by Applicant for above-mentioned financial years is a forged and fabricated document and has been made by Applicant in order to mislead the court into believing that his income is far less than actual. The Applicant further concealed information of his financial relationship with ICICI Bank besides the saving bank account. The informant inquired and came to know that the bank statement filed by Applicant does not conform to format in which bank statement is issued by ICICI Bank. The statement submitted in the court does not have ICICI Bank stamp and authorised signature making evident that documents are fabricated. It is also alleged that the complaint was made to the DCP, Parliament Street, New Delhi as the Master data shows that the head office of the bank is at Barakhamba Road, New Delhi. During the course of enquiry, the police obtained bank statement of the said account from the ICICI Bank. On perusal of the bank statement filed by Applicant before

Maintenance Court and the account statement obtained from ICICI Bank, it came to light that various entries were deleted from bank statement that was submitted in the Maintenance Court in order to conceal Applicant's correct income and mislead the court and on account of aforesaid, the application of informant under section 91 of Cr.P.C. was rejected by Maintenance Court.

10. The Applicant and Opposite party No. 2 were married on 27.2.2004 at Noida. Out of the said wedlock a child was born on 27.12.2004. A Divorce Decree was passed by the court of District Judge, Delhi by Judgement and Decree dated 20.8.2007 passed in H.M.A. No 483 of 2007. Thereafter, the Applicant and Opposite party no. 2 are residing separately, however, the son is residing with Opposite party no. 2. The Opposite party no. 2 thereafter instituted Case No. 374 of 2013 (earlier number 50 of 2009) under Section 125 of the Code of Criminal Procedure for maintenance of the above-mentioned son.

11. In the above-mentioned case on 26.2.2019, the court concerned (before whom the maintenance proceedings were pending) directed the Applicant to file his last three years income tax returns, current bank account details along with details of other assets. The above-mentioned order dated 26.2.2019 passed by Maintenance Court is quoted hereinbelow:-

“याचिका संख्या 374/2013

आर्यमन बनाम गौरव

U/S-125 Cr.P.C.

26.02.2019

पत्रावली आज पेश हुई। 36 ग व 52ग प्रार्थनापत्र पर उभयपक्ष के विद्वान अधिवक्ता को पूर्व में सुना जा चुका है व पत्रावली आदेश हेतु नियत है।

प्रार्थनापत्र 36 ग द्वारा वादी अन्तर्गत धारा-91 दं०प्र०सं० के तहत विपक्षी से प्रार्थनापत्र में वर्णित प्रपत्र को तलब करने हेतु प्रस्तुत किया गया है। विपक्षी द्वारा आपत्ति दाखिल की गयी है तथा प्रार्थनापत्र 52ग द्वारा वादी माननीय उच्च न्यायालय के आदेश दिनांक 18.4.16 का अनुपालन कराने हेतु प्रस्तुत किया गया है। विपक्षी द्वारा आपत्ति दाखिल की गयी है।

सुना तथा प्रपत्रों का अवलोकन किया।

पत्रावली के अवलोकन से विदित होता है कि यह वाद वादिनी द्वारा अपने पुत्र के भरण-पोषण हेतु योजित किया गया है। धारा 125 दं०प्र०सं० के वाद में विपक्षी की इनकम से संबंधित साक्ष्य पत्रावली पर आना आवश्यक है ताकि उचित आदेश पारित किया जा सके। अतः विपक्षी को आदेशित किया जाता है कि वह पिछले तीन वर्ष का इनकम टैक्स रिटर्न, बैंक खाते से सम्बन्धित विवरण, फिक्स एफडी, शेयर व बांड आदि प्रपत्रों को तथा अपनी अचल सम्पत्ति से संबंधित प्रपत्र व सैलरी स्लिप दाखिल करे तथा विपक्षी को यह भी आदेशित किया जाता है कि प्रा०प० 52ग के परिप्रेक्ष्य में वह माननीय उच्च न्यायालय के आदेश दिनांक 18.4.16 का अनुपालन अक्षरतः करे तथा जो भी शेष धनराशि वादी की है उसे अन्दर एक माह अदा करना सुनिश्चित करे। चूंकि वाद काफी पुराना है। अतः पक्षकारों को आदेशित किया जाता है कि वे वाद के निस्तारण में विलम्ब नहीं करेंगे। पत्रावली वास्ते सुनवाई 7.3.19 को पेश हो।

अतिरिक्त प्रधान न्यायाधीश/परिवार न्यायालय
गौतमबुद्धनगर।

12. In pursuance to the above-mentioned order dated 26.2.2019, the Applicant filed his submissions dated 4.4.2019 before the Maintenance Court annexing the documents. The submission along with the documents have been filed by Applicant before the court, which is annexed at page 64 of the paper book. The paragraph no. 7 of the above-mentioned submission (submitted by the Applicant before the Maintenance Court) is quoted hereinbelow :-

“7. That in Compliance of the order of this Hon’ble Court Bank account statement of ICICI bearing 025001517104 (Salary Savings account) 2011-12, 2012-

13, 2013-14. Further respondent has no investment in shares and bonds, no vehicle in ownership, no title deed of any immovable asset in ownership.”

13. A perusal of above-mentioned paragraph no. 7 of submission (submitted by Applicant before the court where the maintenance proceedings were pending) would go to show that Applicant had submitted before Maintenance Court, the statement of ICICI Bank for the years 2011-12, 2012-12, 2013-14. The aforesaid statements are annexed along with the 482 application before this Court from page no. 72 of paper book. Although before this Court the Applicant in paragraph no. 10 of application under Section 482 Cr.P.C, 1973, has stated that he had filed before the court concerned along with the submissions excerpts of salary account for the above-mentioned years.

14. The statement of account submitted by Applicant before the Maintenance Court annexed at page no. 72 of paper book, which contains the logo of bank and starts with the heading □DETAILED STATEMENT□. The Applicant has filed along with paper book from page no. 209 of present application, the statement of account of ICICI Bank before this Court for the period 1.4.2011 to 1.7.2011, 1.7.2011 to 1.10.2011, 1.10.2011 to 31.12.2011, 1.1.2012 to 31.3.2012, 1.4.2012 to 1.7.2012, 1.7.2012 to 1.10.2012, 1.10.2012 to 31.12.2012, 1.1.2013 to 31.3.2013, 1.4.2013 to 1.7.2013, 1.4.2014 to 1.7.2014, 1.7.2014 to 1.10.2014, 1.10.2014 to 31.12.2014 and 1.1.2015 to 31.1.2015.

15. A comparison of statement of account of ICICI Bank submitted by Applicant before the Maintenance Court

(which is at page no. 72 of the paper book) and statement of account of ICICI Bank submitted by Investigating Officer with charge sheet (which is annexed at page 209 of the paper book), the following differences are noted :-

(a) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement at page no. 72 of paper book discloses to be a □detailed statement□ carrying the logo of ICICI Bank. The aforesaid statement of account although is for the period from 1.4.2011 to 31.3.2012, however, the actual entry is in the said statement of account starts from 27.4.2011. Although in the statement of account filed before this Court (at page no. 209 of the paper book) for the period from 1.4.2011 to 1.7.2011 reflects two withdrawals one of which is of 4.4.2011 of Rs. 18,000/- and the other entry of the same date of withdrawal in the favour of Applicant of Rs. 1,00,000/-. The aforesaid two entries of the date 4.4.2011 is not reflected in the statement of account submitted before the court concerned (in maintenance proceedings).

(b) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement (which is annexed at page no. 72 of the paper book), discloses to be a “detailed statement” carrying the logo of the ICICI Bank. The statement of account of ICICI Bank filed by Applicant before this Court (which is annexed at page no. 209 of the paper book) shows an entry of withdrawal dated 4.5.2011 of Rs. 60,000/- in favour of Applicant, however, the aforesaid entry of Rs. 60,000/- does not find place in the

statement of account filed before the Maintenance Court.

(c) The statement of account filed by Applicant before the Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement annexed at page no. 72 of paper book discloses to be a “detailed statement” carrying the logo of ICICI Bank. The statement of account of ICICI Bank filed before this Court, which is annexed at page no. 209 of paper book, shows an entry of withdrawal dated 4.5.2011 of Rs. 46,054/-, however, the aforesaid entry of Rs. 46,054/- does not find place in aforesaid statement of account which is annexed at page no. 72 of the paper book filed by Applicant before the Maintenance Court.

(d) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement (which is annexed at page no. 72 of the paper book) discloses to be a “detailed statement” carrying the logo of ICICI Bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 209 of paper book) shows an entry of withdrawal dated 4.5.2011 of Rs. 1,00,000/-, however, the aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account, which is annexed at page no. 72 of the paper book filed by the Applicant before the Maintenance Court.

(e) The statement of account filed by Applicant before the Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement (which is annexed at page no. 72 of the paper book) discloses to be a “detailed statement” carrying the logo of ICICI Bank. The

statement of the account of ICICI Bank filed before this Court (which is annexed at page no. 209 of paper book) shows an entry of deposit dated 1.7.2011 of Rs. 3,63,353/-, however, the aforesaid entry of Rs. 3,63,353/- does not find place in the aforesaid statement of account (which is annexed at page no. 73 of the paper book), filed by Applicant before the court concerned (in maintenance proceedings).

(f) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement (which is annexed at page no. 72 of the paper book) discloses to be a “detailed statement” carrying the logo of ICICI Bank. The statement of account of ICICI Bank filed before this Court at page no. 209 of paper book shows an entry of withdrawal dated 1.7.2011 of Rs. 1,00,000/- (in favour of Applicant), however, the aforesaid entry of Rs. 1,00,000/- does not find place in the aforesaid statement of account which is annexed at page no. 73 of the paper book filed by Applicant before court concerned (in maintenance proceedings).

(g) The statement of account filed by Applicant before Maintenance Court (which is annexed at page 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement which is annexed at page no. 72 of the paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book), shows an entry of withdrawal dated 4.7.2011 of Rs. 1,00,000/- (in favour of Applicant), however, the aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 73 of the paper book)

filed by Applicant before the court concerned (in maintenance proceedings).

(h) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of the paper book, discloses to be a “detailed statement” carrying the logo of the bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 4.7.2011 of Rs. 1,00,000/- (in favour of Applicant), however, the aforesaid entry of Rs. 1,00,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 73 of the paper book) filed by the Applicant before the court concerned (in maintenance proceedings).

(i) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement which is annexed at page no. 72 of paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 4.7.2011 of Rs. 50,000/- (in favour of Applicant), however, the aforesaid entry of Rs 50,000/- does not find place in aforesaid statement of account, which is annexed at page no. 73 of the paper book, filed by the Applicant before the court concerned (in maintenance proceedings).

(j) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which

is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 8.8.2011 of Rs. 18,000/- , however, the aforesaid entry of Rs. 18,000/- does not find place in aforesaid statement of account (which is annexed at page no. 73 of the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(k) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of the bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 24.8.2011 of Rs. 17,368/- , however, the aforesaid entry of Rs. 17,368/- does not find place in aforesaid statement of account (which is annexed at page no. 73 of the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(l) The statement of account filed by the Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 1.9.2011 of Rs. 50,000/-, however, the aforesaid entry of Rs. 50,000/- does not find place in aforesaid statement of account

(which is annexed at page no. 74 of the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(m) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of the paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of deposit dated 1.9.2011 of Rs. 471/-, however, the aforesaid entry of Rs. 471/- does not find place in aforesaid statement of account (which is annexed at page no. 74 of the paper book) filed by the Applicant before the court concerned (in maintenance proceedings).

(n) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of withdrawal dated 12.9.2011 of Rs.46,000/- however, the aforesaid entry of Rs. 46,000/- does not find place in aforesaid statement of account (which is annexed at page no. 74 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(o) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book,

discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 211 of paper book) shows an entry of deposit dated 29.9.2011 of Rs. 1,88,957/-, however, the aforesaid entry of Rs. 1,88,957/- does not find place in the aforesaid statement of account (which is annexed at page 74 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(p) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 213 of paper book) shows an entry of withdrawal dated 7.10.2011 of Rs. 2,00,000/-, however, aforesaid entry of Rs. 2,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 74 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(q) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page 72 of the paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 213 of paper book) shows an entry of withdrawal dated 31.10.2011 of Rs. 75,000/-, however, aforesaid entry of Rs. 75,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 74 of

the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(r) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of the paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court, which is annexed at page no. 213 of paper book, shows an entry of withdrawal dated 10.11.2011 of Rs. 37,000/-, however, the aforesaid entry of Rs. 37,000/- does not find place in aforesaid statement of account (which is annexed at page no. 74 of the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(s) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI bank filed before this Court (which is annexed at page no. 213 of paper book) shows an entry of withdrawal dated 12.11.2011 of Rs. 50,000/-, however, aforesaid entry of Rs. 50,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 74 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(t) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book,

discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court, which is annexed at page no. 213 of paper book shows an entry of withdrawal dated 8.12.2011 of Rs. 18,000/-, however, aforesaid entry of Rs. 18,000/- does not find place in aforesaid statement of account (which is annexed at page no. 75 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(u) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 213 of paper book) shows an entry of withdrawal dated 8.12.2011 of Rs. 1,000/-, however, the aforesaid entry of Rs. 1,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 75 of the paper book) filed by Applicant before court concerned (in maintenance proceedings).

(v) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 213 of paper book) shows an entry of withdrawal dated 13.12.2011 of Rs. 12,817/-, however, the aforesaid entry of Rs. 12,817/- does not find place in the aforesaid statement of account (which is annexed at page no. 75 of the paper book) filed by Applicant before

court concerned (in maintenance proceedings).

(w) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of the paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 214 of paper book) shows an entry of withdrawal dated 24.12.2011 of Rs. 50,000/-, however, the aforesaid entry of Rs. 50,000/- does not find place in aforesaid statement of account (which is annexed at page no. 75 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(x) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 215 of paper book) shows an entry of withdrawal dated 2.1.2012 of Rs. 19,357/-, however, aforesaid entry of Rs. 19,357/- does not find place in aforesaid statement of account (which is annexed at page no. 75 of the paper book) filed by Applicant before court concerned (in maintenance proceedings).

(y) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of

account of ICICI Bank filed before this Court, which is annexed at page no. 215 of paper book shows an entry of withdrawal dated 3.1.2012 of Rs. 90,000/-, however, the aforesaid entry of Rs.90,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 75 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(z) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 215 of paper book) shows an entry of withdrawal dated 7.1.2012 of Rs. 8,435/-, however, aforesaid entry of Rs. 8,435/- does not find place in aforesaid statement of account (which is annexed at page no. 75 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(aa) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 215 of paper book) shows an entry of withdrawal dated 10.2.2012 of Rs. 1,00,000/- however, the aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 76 of the paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(bb) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for the period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court, which is annexed at page no. 215 of paper book shows an entry of deposit dated 1.3.2012 of Rs. 1,219/-, however, the aforesaid entry of Rs.1,219/- does not find place in aforesaid statement of account (which is annexed at page no. 76 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(cc) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 72 of paper book) was for period from 1.4.2011 to 31.3.2012. The aforesaid statement, which is annexed at page no. 72 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 215 of paper book) shows an entry of withdrawal dated 1.3.2012 of Rs. 1,00,000/-, however, aforesaid entry of Rs.1,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 76 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(dd) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement, which is annexed at page no. 77 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court, which is annexed at page no. 217 of

paper book, shows an entry of withdrawal dated 8.4.2012 of Rs. 90,000/-, however, aforesaid entry of Rs.90,000/- does not find place in the aforesaid statement of account (which is annexed at page no. 77 of the paper book) filed by Applicant before court concerned (in maintenance proceedings).

(ee) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement, which is annexed at page no. 77 of paper book, discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 217 of paper book) shows an entry of withdrawal dated 1.5.2012 of Rs. 1,00,000/-, however, aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 77 of the paper book) filed by Applicant before court concerned (in maintenance proceedings).

(ff) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement, which is annexed at page no. 77 of paper book, discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 219 of paper book) shows an entry of withdrawal dated 2.7.2012 of Rs. 1,00,000/-, however, aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account (which is annexed at at page no. 79 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(gg) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012

to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 219 of paper book) shows an entry of deposit dated 2.8.2012 of Rs. 1,12,981/-, however, the aforesaid entry of Rs. 1,12,981/- does not find place in aforesaid statement of account (which is annexed at page no. 79 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(hh) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 219 of paper book) shows an entry of deposit dated 1.9.2012 of Rs. 396/-, however, the aforesaid entry of Rs. 396/- does not find place in aforesaid statement of account (which is annexed at page no. 80 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(ii) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 219 of paper book) shows an entry of withdrawal dated 14.9.2012 of Rs. 7,502/-, however, aforesaid entry of Rs. 7,502/- does not find place in aforesaid statement of account (which is annexed at page no. 80 of paper

book) filed by Applicant before court concerned (in maintenance proceedings).

(jj) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 220 of paper book) shows an entry of withdrawal dated 1.10.2012 of Rs. 1,00,000/-, however, the aforesaid entry of Rs. 1,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(kk) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 221 of paper book) shows an entry of withdrawal dated 1.10.2012 of Rs. 80,000/-, however, aforesaid entry of Rs. 80,000/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(ll) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of

account of ICICI Bank filed before this Court (which is annexed at page no. 221 of paper book) shows an entry of deposit dated 31.10.2012 of Rs. 2,15,832/-, however, aforesaid entry of Rs. 2,15,832/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(mm) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 221 of paper book) shows an entry of withdrawal dated 1.11.2012 of Rs. 1,60,000/-, however, aforesaid entry of Rs. 1,60,000/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(nn) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 221 of paper book) shows an entry of withdrawal dated 9.11.2012 of Rs. 22,500/-, however, aforesaid entry of Rs. 22,500/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(oo) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 222 of paper book) shows an entry of withdrawal dated 1.12.2012 of Rs. 10,655/-, however, aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(pp) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of the paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 222 of paper book) shows an entry of withdrawal dated 4.12.2012 of Rs. 80,000/-, however, aforesaid entry of Rs. 80,000/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(qq) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of the paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page

no. 223 of paper book) shows an entry of withdrawal dated 1.1.2013 of Rs. 10,655/-, however, aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 81 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(rr) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 223 of paper book) shows an entry of withdrawal dated 11.1.2013 of Rs. 90,000/-, however, aforesaid entry of Rs. 90,000/- does not find place in aforesaid statement of account (which is annexed at page no. 82 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(ss) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying the logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 223 of paper book) shows an entry of withdrawal dated 1.2.2013 of Rs. 10,655/-, however, aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 82 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(tt) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper

book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 224 of paper book) shows an entry of deposit dated 1.3.2013 of Rs. 786/-, however, the aforesaid entry of Rs.786/- does not find place in aforesaid statement of account (which is annexed at page no. 83 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(uu) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 77 of paper book) was for period from 1.4.2012 to 31.3.2013. The aforesaid statement which is annexed at page no. 77 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 224 of paper book) shows an entry of withdrawal dated 1.3.2013 of Rs. 10,655/-, however, the aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 83 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(vv) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 2.4.2013 of Rs. 10,655/-, however, the aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account

(which is annexed at page no. 84 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(ww) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 9.4.2013 of Rs. 2,00,000/-, however, aforesaid entry of Rs.2,00,000/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(xx) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 2.5.2013 of Rs. 10,655/-, however, aforesaid entry of Rs.10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(yy) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of

account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 9.5.2013 of Rs. 48,000/-, however, aforesaid entry of Rs. 48,000/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(zz) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for the period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 21.5.2013 of Rs. 60,000/-, however, aforesaid entry of Rs. 60,000/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(aaa) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for the period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 1.6.2013 of Rs. 10,655/-, however, aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

(bbb) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement which is annexed at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 12.6.2013 of Rs. 1,24,143/-, however, aforesaid entry of Rs. 1,24,143/- does not find place in aforesaid statement of account (which is annexed at page no. 84 of paper book) filed by Applicant before the court concerned (in maintenance proceedings).

(ccc) The statement of account filed by Applicant before Maintenance Court (which is annexed at page no. 84 of paper book) was for period from 1.4.2013 to 31.3.2014. The aforesaid statement at page no. 84 of paper book discloses to be a “detailed statement” carrying logo of bank. The statement of account of ICICI Bank filed before this Court (which is annexed at page no. 225 of paper book) shows an entry of withdrawal dated 1.7.2013 of Rs. 10,655/-, however, the aforesaid entry of Rs. 10,655/- does not find place in aforesaid statement of account (which is annexed at page no. 84-85 of paper book) filed by Applicant before court concerned (in maintenance proceedings).

16. In the present case, Applicant is being proceeded with under Section 466 of Indian Penal Code. The aforesaid section provides that whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or

document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

17. The offence of forgery is defined under Section 463 of Indian Penal Code as whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

18. Section 464 of Indian Penal Code defines making of false document and the same is quoted hereunder :-

“464. Making a false document.-

A person is said to make a false document or false electronic record-

First-Who dishonestly or fraudulently-

(a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record; (c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by

the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly-Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly-Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

19. In the present case, the allegations of informant - Opposite party no. 2 are to the effect that Applicant had filed before court concerned (where the maintenance proceedings were instituted by Opposite party no. 2), statement of account of ICICI Bank which did not reflect the true entries as per the original statement of account of bank. It is not in dispute between the parties that disputed statement of account was filed by Applicant before the court concerned. It is also not denied by Applicant before this Court that disputed statement of account filed by Applicant before the Maintenance Court are at variance with the original statement of account of ICICI Bank of the same period. The background of present litigation arises out of a dispute between the Applicant (husband) and Opposite party no. 2 (wife)

[although at the date of the filing of the maintenance proceedings a divorce was entered into between Applicant and the Opposite party no. 2]. The maintenance proceedings were preferred by Opposite party no. 2 claiming maintenance of minor son born out of abovementioned wedlock. In the aforesaid maintenance proceedings, the court concerned directed the Applicant to file statement of bank and in this background, the disputed document (being the statement of account of ICICI Bank) was preferred/filed by Applicant before court concerned (the court where the maintenance proceedings were pending).

20. In a litigation before any court of law, it is imperative that the parties make fair disclosure before the court and same is based on principle of maintaining integrity of judicial process. The parties to litigation are expected to come with clean hands before the court of law. Filing a forged document is a direct assault on said principle. It is an attempt to pervert the course of justice by deceiving the court into accepting a false reality as truth. Filing of forged document before court of law gives an unfair advantage and disturbs the level playing field which the courts are bound to maintain. Any attempt to prefer forged document before any court, is to be construed as an insult to the majesty of law.

21. In the context of present case, the essential ingredient for an offence under Section 466 of the Indian Penal Code is as under :-

(a) the accused forged a document

(b) the document was a record of proceedings of or in the court of law.

22. It is not in dispute between the parties that statement of account of ICICI Bank (disputed document) was part of the record of court (in maintenance proceedings). Insofar as forging of disputed document by accused-applicant is concerned, the language of Section 463 of Indian Penal Code envisages that whoever makes any false document or part of document with intent to cause damage or injury to any person or to support any claim or title or to cause any person to part with the property or to enter into any express or implied contract or with intent to commit fraud or that the fraud may be committed. The essential ingredients under Section 463 of Indian Penal Code are as under :-

(a) making of false document or part of document by the accused

(b) with the intent :-

A. to cause damage or injury to any person or

B. to support any claim or title or,

C. to cause any person to part with property or

D. to enter into any express or implied contract or

E. to commit fraud or that fraud may be committed.

23. In respect of the first ingredient of Section 463 of Indian Penal Code the expression of making of false document or part of document is concerned, the same is expressed in Section 464 of Indian Penal Code. Section 464 of Indian Penal Code provides that a person is said to make a false document (in context of present controversy) who dishonestly or fraudulently makes a document or part of document with intention of causing it to be believed that such document or part of document was made by the authority of a person by whom or by whose authority such person knows that it was not made.

24. One of the important aspects of “making a false document” under Section 464 of Indian Penal Code is the expression “dishonestly” or “fraudulently”. In the aforesaid Section 464 of Indian Penal Code, the expression “dishonestly” or “fraudulently” is used alternatively indicating that the one excludes the other. The implication of aforesaid would be that the making of false document would be either dishonestly or fraudulently. Section 24 of Indian Penal Code defines “dishonestly” as whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly. The expression “fraudulently” is denoted under Section 25 of Indian Penal Code that person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

25. The Supreme Court in **Vimla (supra)** while analysing the distinction between the expression “dishonestly” and “fraudulently” has observed in paragraph no. 10 as under :-

“10. The word "defraud" includes an element of deceit. Deceit is not an ingredient of the definition of the word "dishonestly" while it is an important ingredient of the definition of the words "fraudulently". The former involves a pecuniary or economic gain or loss while the latter by construction excludes that element. Further, the juxtaposition of the two expressions "dishonestly" and "fraudulently" used in the various sections of the Code indicates their close affinity and therefore the definition of one may give colour to the other. To illustrate, in the definition of "dishonestly", wrongful gain or wrongful loss is the necessary ingredient. Both need not exist, one would be enough.

So too, if the expression "fraudulently" were to be held to involve the element of injury to the person or persons deceived it would be reasonable to assume that the injury should be something other than pecuniary or economic loss. Though almost always an advantage to one causes loss to another and vice versa, it need not necessarily be so. Should we hold that the concept of "fraud" should include not only deceit but also some injury to the person deceived, it would be appropriate to hold by analogy drawn from the definition of "dishonestly" that to satisfy the definition of "fraudulently" it would be enough if there was a non-economic advantage to the deceiver or a non-economic loss to the deceived. Both need not co-exist.”

26. In respect of the expression “dishonestly” the same involves a pecuniary or economic gain or loss. However, the expression “fraudulently” involves injury which should be something other than pecuniary or economic loss. The expression “defraud” in the definition of Fraudulently would have two elements namely “deceit” and “injury”. The expression “injury” is defined under Section 44 of Indian Penal Code denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. The question of defraud may therefore also arise where the injury occurs in the mind or body of the person deceived. The Supreme Court in **Vimla (supra)** in respect of expression “defraud” in paragraph no. 33 has observed as under :-

“33. To summarize: the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable,

or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

27. Once any act is done fraudulently, the injury may also arise in the mind or reputation of an individual, therefore, the question of nature of injury is a matter of evidence or inference drawn from proved facts. The Supreme Court in **Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 SCC 550** has observed as under: -

"29. Forgery under the Indian Penal Code is an offence which has been defined in Section 463, while Section 464, deals with the making of a false document. Section 465 prescribes punishment for forgery. "Forged document" is defined in Section 470 while Section 471 deals with the crime of using as genuine, the forged document.

30. Forgery and Fraud are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts.

31. The Privy Council in Satish Chandra Chatterji v. Kumar Satish Kantha Roy and Ors. AIR (1923) PC 73, laid down as under:

"Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspensions and surmises and conjecture are not permissible substitutes for those facts

or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dextrous knave would escape."

28. In view of the above, the nature of injury caused to an individual is a question of evidence or inference drawn from proved facts. An individual in such transaction may suffer injury in the mind or reputation or other manner. Such an issue can only be ascertained when the evidence is led and the trial is undertaken. Even otherwise whether an individual has suffered any pecuniary loss is also to be examined and proved at the trial.

29. Insofar as the second essential ingredient is concerned, the stand taken by Applicant (in paragraph no. 10 of affidavit filed in support of present application) is to the effect that the excerpts of the salary account for relevant years were filed in compliance of order dated 26.2.2019 of Maintenance Court. The order dated 26.2.2019 of court concerned specifically directed for submission of detail of relevant bank account. The Applicant has submitted along with the submission, the detailed statement of ICICI Bank account of Applicant with specific statement in paragraph no. 7 of the submission (before Maintenance Court) that in compliance of order of Hon'ble Court, bank account statement of ICICI (salary saving account) 2011-12, 2012-13 and 2013-14 and the detailed statement of ICICI Bank (disputed document) was submitted by Applicant along with the submission before Maintenance Court. Before this Court, the stand has been taken by Applicant that the

excerpts of salary account were submitted through disputed document. Such a stand has not been shown to have been taken before Maintenance Court or in submission submitted before the court concerned (in maintenance proceedings) by Applicant. The heading of disputed document (statement of account of ICICI Bank before Maintenance Court) states it to be a "DETAILED STATEMENT" along with logo of ICICI Bank. The aforesaid disputed document nowhere makes any endorsement that the aforesaid disputed document is an excerpt. The nature of entries that have been found missing in the disputed document (as mentioned hereinabove) would go to show that the same would have important bearing on the maintenance claim made by Opposite party no. 2. The selective missing entries (as detailed hereinabove) in the statement of bank (disputed document) without any explanation offered by Applicant before this Court as to why the aforesaid entries were not shown in the disputed document, shows that the entries have not been disclosed before the court concerned.

30. The presentation of detailed statement of ICICI Bank in respect of the account of Applicant before Maintenance Court with missing entries (as detailed hereinabove) more specifically when the same was required by the court concerned by order dated 26.2.2019 is *prima facie* indicative that the potential use for hiding of entries in the bank statement from the court concerned was to support the claim/defence made by the Applicant before the court concerned or to cause damage to the claim for maintenance preferred by Opposite party no. 2. It is not in dispute between the parties that the disputed document was presented by Applicant before Maintenance Court and

the stand of Applicant that the document disputed is excerpts of salary account which necessarily implies that document was made by Applicant. The disputed document did not reflect all the entries of statement of account of bank and some of entries were not placed before Maintenance Court, however, disputed document was presented as detailed statement of ICICI Bank and in the disputed document there was no narration to the effect that the disputed document contains excerpts of original statement of account of bank as such *prima facie* the document was a false document made by the Applicant. The fairness required that the Applicant ought to have declared before the court concerned that the disputed document represents some of the entries of the original statement of account. The question of nature of disputed document and the manner in which the same was presented before the court concerned is a question of evidence which can be detailed at the stage of trial. At this stage, *prima facie* the disputed document is false in nature, as it does not reflect the true and complete entries of statement of account of bank.

31. At the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the First Information Report or the material in support of the same. The court concerned is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. The expression "sufficient ground" provided in Sections 203, 204 and 209 of Criminal Procedure Code means the satisfaction that a *prima facie* case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. The Court is not expected to weigh the evidence

meticulously or determine the likelihood of conviction at this stage.

32. The First Information report and the material in support of the allegations, do constitute a prima facie case against the Applicant for issuance of summons in view of the facts, circumstances and reasons stated herein above.

33. Insofar as the argument of learned counsel for Applicant that impugned summoning order has been issued without application of mind is concerned, as the learned counsel for Applicant has advanced argument on the merits of case and this Court hereinabove has found sufficient material so that the summoning order can be issued coupled with the fact that at the time of final hearing of the present application, learned counsel for Applicant pressed that the merits of the case may be gone into by this Court as such no useful purpose would be served if the matter is remanded to the court concerned for decision afresh (on the ground that the summoning order is issued without application of mind) in view of the findings recorded hereinabove.

34. In view of the facts, circumstances and reasons hereinabove mentioned, the present application under Section 482 of the Code of Criminal Procedure, 1973 lacks merits and is hereby **dismissed**.

(2025) 12 ILRA 1266

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 15.12.2025

BEFORE

**THE HON'BLE PRAMOD KUMAR
SRIVASTAVA, J.**

Application U/S 528 BNSS No. 1627 of 2025

Mohd. Haroon

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

ISSUE FOR CONSIDERATION

Whether the arrest and subsequent judicial remand of applicant were illegal due to non-communication of grounds of arrest, thereby violating Article 22(1) of the Constitution and Section 47 BNSS, and whether such alleged defect vitiates the custody.

HEADNOTES

Criminal Law - Code of Criminal Procedure, 1973 - Section 50, - Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 47, 58, 480, - Constitution of India - Article 21, 22(1), 226- Application U/section 528 BNSS – challenging the arrest and remand - in a criminal proceeding initiated by the ATS – offence of attempt to wage war against Govt. of India – allegation of acting as an agent of enemy country, preparing fake insurance documents, and communicating security information to Pakistan – arrest made on 21.05.2025, produced before Magistrate within 24 hours – investigation completed and chargesheet filed – trial court has taken cognizance – plea of applicant that, arrest illegal, grounds not communicated and remand was mechanical – court finds that, recovery Memo signed by petitioner contained detailed factual basis and penal provisions, satisfying Article 22(1) and Section 47 BNSS, - arrest within statutory period under Section 58 BNSS, - remand order validly passed with judicial application of mind – held - defect in Arrest Memo is a curable irregularity, not fatal and the custody was lawful – consequently, the petition was dismissed as devoid of merit, and the petitioner was directed to pursue regular bail under Section 480 BNSS before the competent court.(Para – 22, 23, 24, 26, 31, 32, 33, 35, 36) Application **Dismissed**. (E-11)

CASE LAW CITED

Prabir Purkayastha v. State (NCT of Delhi) 2024 vol. 8 SCC 254, - Pankaj Bansal v. Union of India (2024 vol. 7 SCC 576), - Vihaan Kumar v. State of Haryana (2025 vol. 5 SCC 799), -

Ashish Kakkar v. State (UT of Chandigarh) (2025 SCC Online SC 1318), - Anwar Dhebar v. State of U.P. (2025 SCC Online All 3278), - State of Karnataka v. Sri Darshan (SC) (citation not given).

LIST OF ACTS

Code of Criminal Procedure, 1973 - Bharatiya Nagarik Suraksha Sanhita, 2023 - Constitution of India.

LIST OF KEYWORDS

Judicial Remand - Substantial Compliance - Procedural Irregularity - Recovery Memo - Arrest Memo - National Security - Waging War - Bail Application - Extraordinary Jurisdiction.

CASE ARISING FROM

Case Crime No. 06/2025 - Police Station - ATS, Lucknow.

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Azizullah Khan, Mohammad Alishah Faruqi, Obaidullah,
Counsel for Respondent: - Sri Shiv Nath Tilhari, AGA-1.

(Delivered by Hon'ble Pramod Kumar
Srivastava, J.)

1. Heard the learned counsel for the applicant and Shri Shiv Nath Tilhari, learned AGA-1 for the State-ATS.

2. This application has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (though it is wrongly transcribed in the memo of petition as BNS), with the prayer that this Hon'ble Court may graciously be pleased to issue a suitable Writ, Order, or Direction, including a Writ in the nature of certiorari, quashing the judicial remand order dated 22.05.2025 and subsequent remand orders of different dates, passed in connection with Case Crime No. 06/2025, Police Station-ATS, Lucknow. The petitioner further seeks a declaration that his arrest is illegal and ab initio void for being in

blatant violation of the mandatory provisions of Article 22(1) of the Constitution of India and Section 50 of the Cr.P.C. / Section 47 of the BNSS.

3. The brief facts of the case are that the petitioner, Mohd. Haroon, was arrested in connection with the aforesaid crime. Learned AGA stated that the petitioner has made an attempt to wage war against the Government of India. The prosecution case is that Mohd. Haroon is an agent of an enemy country who, at the behest of Mujammil Husain (posted in Pakistan High Commission at Delhi), was involved in preparing fake insurance documents to secure visas for individuals, for which he earned a commission. The petitioner had commercial transactions with Dev Raj, Surendra, and Atul Chaudhary, from whom he used to buy scrap material and shared the profits with Mujammil. The petitioner was in communication with Mujammil Hussain and is alleged to have communicated security information to him, which was then sent to Pakistan.

4. Learned counsel for the petitioner submits that the petitioner's arrest was made disregarding the pious provisions of the Constitution and that his personal liberty has been curtailed without any valid judicial verdict or remand order. He submits that he was not communicated the grounds of arrest, as held by the Hon'ble Apex Court in cases like Prabir Purkayastha and Vihaan Kumar. He argues that the arrest memo is vague and non-specific, which prevented the accused from availing a remedy to protect his fundamental rights, thereby rendering the arrest illegal, arbitrary, and unconstitutional. He stresses that the communication of grounds of arrest must be in specific and clear terms and is not a

mere formality, and oral disclosure does not constitute compliance. He also contends that the arrest was carried out in a mechanical way without the application of mind by the police and that the learned Duty Magistrate also passed the remand order dated 22.05.2025 in a mechanical manner, making the remand sheet and subsequent orders illegal.

5. Learned counsel for the appellant relied on the following judgments:

Prabir Purkayastha vs. State of (NCT of Delhi); (2024) 8 SCC 254, Vihaan Kumar vs. State of Haryana & Another (2025) 5 SCC 799, Ashish Kakkar v. State (UT of Chandigarh), 2025 SCC OnLine SC 1318 & Anwar Dhebar v. State of U.P., 2025 SCC OnLine All 3278.

6. The Learned counsel for the respondent submits that the petitioner was called for inquiry by the Police Station-ATS, Lucknow. During the inquiry, he stated all the facts. Upon being satisfied that the petitioner had actively participated in activities against the Indian Government, amounting to waging war and endangering the sovereignty, unity and integrity of India, the petitioner was arrested. At the time of arrest, the grounds of arrest were communicated to him. A detailed Fard Memo of Recovery was prepared on the spot, explained to the petitioner, and a copy thereof was provided to the accused. Thus, all statutory and constitutional provisions were complied with, and consequently, there is no violation of any provision of law. He submits that the Duty Magistrate perused the relevant documents and, upon being satisfied that a prima facie case had been made out, remanded the petitioner in custody. He next submits that a thorough

investigation has been conducted, and upon its conclusion, a charge sheet under appropriate sections was filed against the petitioner. The Learned Trial Court has taken cognizance of the offence. Therefore, the petition is misconceived and liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and perused the material available on record.

8. The crux of the petition is that the non-compliance with the mandatory provisions contained under Article 22(1) of the Constitution of India and Section 50 of the Code of Criminal Procedure, 1973 (Cr.P.C.) (corresponding to Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS))—which safeguard the fundamental right of a person to be informed of the grounds of arrest "as soon as may be," and the corresponding statutory duty of the arresting officer to communicate the same—asserting that this non-disclosure, coupled with allegations of pre-arrest detention and a seemingly cursory remand order, has rendered his continued detention in judicial custody perverse and illegal, leading to a direct infringement of Article 21 (Protection of Life and Personal Liberty) and making the initial detention and subsequent remand orders unsustainable in law; consequently, this petition requires the examination of the interplay between Article 21 and Article 22(1) of the Constitution, compelling the Court to carefully scrutinize the entire record, including the written submissions tendered by both parties, the factual matrix documented in the FIR and the recovery memo, and the crucial judicial orders passed, to determine the maintainability and merits of the petition in the light of the settled constitutional jurisprudence.

9. This petition requires examination of the interplay between Article 21 (Protection of Life and Personal Liberty) and Article 22(1) (Right to be informed of Grounds of Arrest) of the Constitution.

10. I find that Article 22(1) serves as a mandatory safeguard, a condition precedent for the exercise of the power of arrest. The Courts have consistently held that non-compliance with the duty to inform the person of the grounds of arrest, as soon as may be, would be an infringement of the due process clause under Article 21. The relevant provision of Article 21, Article 22(1) are extracted here-in-below:-

"21. Protection of life and personal liberty. —No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases. — (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

11. This Court has also considered the constitutional provisions and the statutory mandates: Article 21 (Protection of Life and Personal Liberty) and Article 22(1) (Right to be informed of Grounds of Arrest) of the Constitution of India, read with Section 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (Duty to inform grounds of arrest) and Section 58 BNSS (Maximum detention of 24 hours). The violation of any of these four provisions—Article 21, Article 22(1), Section 47, and Section 58—has been

interpreted to have significant repercussions on the legality of the detention, potentially transforming a legal arrest into illegal confinement; however, based on the record, I find that the mandate under Section 58 BNSS was fully complied with, as the petitioner's arrest was recorded on 21.05.2025 at about 18:50 hours and he was produced before the Duty Magistrate on the following date, 22.05.2025, which was "within the statutory 24-hour period," thereby rejecting the allegation of illegal detention beyond 24 hours as "unsubstantiated by the record"; furthermore, while the petitioner argued a violation of Section 47 BNSS due to missing grounds in the arrest memo, I have found that the constitutional and statutory requirements were "substantially adhered to" by providing the petitioner with the detailed, simultaneously prepared, and signed Recovery Memo, which contained the factual basis for the arrest. The relevant provision of Section 47 and 58 of BNSS are extracted here-in-below:-

"47. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

58. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of

a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not.."

12. The Supreme Court in the case of **Pankaj Bansal Vs. Union of India (Supra)** has held that the constitutional right to be informed of the grounds of arrest, enshrined in Article 22(1), must be communicated to the arrested person advisably in writing. The relevant paragraphs 38, 42, 43 and 45 are extracted here-in-below:-

"38. In this regard, I may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the

authorised officer arrested him/her under Section 19 and the basis for the officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

*42. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji [V. Senthil Balaji v. State, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1]*. Such a precarious situation is easily avoided and the consequence thereof can be obviated*

very simply by furnishing the written grounds of arrest, as recorded by the authorised officer in terms of Section 19(1) PMLA, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorised officer.

43. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in *V. Senthil Balaji* [*V. Senthil Balaji v. State*, (2024) 3 SCC 51 : (2024) 2 SCC (Cri) 1] are placed on record and I find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities

concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) PMLA.

45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, I hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* [*Moin Akhtar Qureshi v. Union of India*, 2017 SCC OnLine Del 12108] and the Bombay High Court in *Chhagan Chandrakant Bhujbal* [*Chhagan Chandrakant Bhujbal v. Union of India*, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929], which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, I have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted *supra*, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of

arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained."

13. This mandate was further reinforced and applied in **Prabir Purkayastha Vs. State of (NCT of Delhi) (Supra)**, where the Supreme Court held that the failure to communicate the grounds of arrest in writing is an infringement of a fundamental right so severe that it vitiates the entire process of arrest and remand. The relevant paragraphs 19, 28, 29, 37 and 48 are extracted here in below:-

"19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that

the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, I have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

37. The interpretation given by the learned Single Judge that the grounds of arrest were conveyed to the accused in writing vide the arrest memo is unacceptable on the face of the record because the arrest memo does not indicate the grounds of arrest being incorporated in the said document. Column 9 of the arrest memo (Annexure P-7) which is being reproduced hereinbelow simply sets out the "reasons for arrest" which are formal in nature and can be generally attributed to any person arrested on accusation of an offence whereas the "grounds of arrest" would be personal in nature and specific to the person arrested.

"9. Reason for arrest

(a) Prevent the accused person from committing any further offence.

(b) For proper investigation of the offence.

(c) To prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner.

(d) To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer.

(e) As unless such person is arrested, his presence in the court whenever required cannot be ensured."

48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase "reasons for arrest" and "grounds of arrest". The "reasons for arrest" as indicated in the arrest memo are purely formal parameters viz. to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the investigating officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the "grounds of arrest" would be required to contain all such details in hand of the investigating officer which necessitated the arrest of the

accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the "grounds of arrest" would invariably be personal to the accused and cannot be equated with the "reasons of arrest" which are general in nature."

14. In **State of Karnataka Vs. Sri Darshan (Supra)**, the Hon'ble Supreme Court, following the settled legal principle that substance prevails over form, held that the judiciary should not elevate form over substance, meaning thereby that a technical or procedural infirmity, like an omission in a document, cannot, by itself, be the sole basis for declaring a detention illegal if the accused was, in reality, fully aware of the reasons for his arrest. The view in **Sri Darshan (Supra)** allows a Court to overlook the technical defect in the Arrest Memo because a comprehensive, signed recovery memo fulfils the substantive constitutional requirement. The relevant paragraphs of **Sri Darshan (Supra)** are extracted here-in-below:-

"20.1. Delay in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for grant of bail.

20.1.1. The learned counsel for the respondents - accused contended that the arrest was illegal as the grounds of arrest were not furnished immediately in writing, thereby violating Article 22 (1) of the Constitution and Section 50 Cr.P.C (now Section 47 of the Bharatiya Nagarik Suraksha Sanhita). This submission, however, is devoid of merit.

20.1.2. Article 22(1) of the Constitution mandates that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". Similarly, Section 50 (1) Cr.P.C. requires that "every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest - but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In *Vihaan Kumar v. State of Haryana*²², it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in *Kasireddy Upender Reddy v. State of Andhra Pradesh*²³, it was observed that when arrest is made pursuant a warrant, reading out the warrant amounts to sufficient compliance. Both these post-Pankaj Bansal decisions clarify that written, individualised grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of

written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend.

20.1.6. The High Court, however, relied heavily on the alleged procedural lapse as a determinative factor while overlooking the gravity of the offence under Section 302 IPC and the existence of a prima facie case. It noted, inter alia, that there was no mention in the remand orders about service of memo of grounds of arrest (para 45); the arrest memos were allegedly template-based and not personalised (para 50); and eyewitnesses had not stated that they were present at the time of arrest or had signed the memos (para 48). Relying on *Pankaj Bansal v. Union of India*²⁴ and *Prabir Purkayastha v. State (NCT of Delhi)* (supra), it concluded (paras 43, 49 - 50) that from 03.10.2023 onwards, failure to serve detailed, written, and individualised grounds of arrest immediately after arrest was a violation entitling the accused to bail.

20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail.

As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge

under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail."

15. I also considered it appropriate to address the submission advanced on behalf of the petitioner that the law laid down by the Hon'ble Apex Court in the case of **State of Karnataka Vs. Sri Darshan (Supra)** was rendered in respect of an offence under Section 302 IPC. The petitioner contended that the present case is not of such a heinous nature, and thus, the same rigorous standard should not be applied. I do not agree with the learned counsel for the petitioner on this suppositions distinction. The prosecution alleges that the petitioner, Mohd. Haroon, acted as an "agent of an enemy country," was involved in preparing "fake insurance documents to secure visas," and "communicated security information" which was then sent to Pakistan, thus amounting to waging war and endangering the sovereignty, unity and integrity of India. While an offence under Section 302 IPC results in the death or loss of life of a single person, the offences alleged herein, which directly compromise national security and public trust, are of far greater magnitude and strike at the sovereignty, unity, and integrity of the nation. Such an offence is a matter of paramount national concern due to its widespread and potentially disastrous impact on state security. Accordingly, the seriousness of the offence under the BNSS provisions herein fully warrant the rigorous

application of the principle that substance prevails over form as laid down in **Sri Darshan (Supra)**.

16. The Supreme Court in the case of **Vihaan Kumar Vs. State of Haryana (Supra)** has held that the failure to communicate the grounds of arrest to the accused, as mandated under Article 22(1) and Section 50 Cr.P.C. (or Section 47 BNSS), is an infringement of a fundamental right so severe that it vitiates the arrest and subsequent custody. The judgment holds that the illegality of an arrest flowing from a constitutional violation cannot be cured by a subsequent judicial act, such as a remand order. However, the said judgment explicitly distinguishes cases where the accused was not served with any document whatsoever containing the grounds of arrest. The relevant paragraphs 16, 19, 20, 23 and 26.6 are extracted here-in-below.

"16. This Court held that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical, and therefore, this Court held that interpretation of Article 22(5) made by the Constitution Bench in Harikisan v. State of Maharashtra [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117] , shall ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the ground of arrest is concerned. I may also note here that in para 21, in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , this Court also dealt with the effect of violation of Article 22(1) by holding that any infringement of this fundamental right would vitiate the process of arrest and remand. Para 21 reads thus : (Prabir Purkayastha case [Prabir

Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573], SCC p. 276)

"21. The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."

(emphasis supplied)

19. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article

21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

20. I have already referred to what is held in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450]. This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paras 42 and 43 of the decision in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] are suggestions that merit consideration. I am aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

23. In the present case, the first respondent relied upon an entry in the case

diary allegedly made at 6.10 p.m. on 10-6-2024, which records that the appellant was arrested after informing him of the grounds of arrest. For the reasons which will follow hereafter, I am rejecting the argument made by the first respondent. If the police want to prove communication of the grounds of arrest only based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. Therefore, in a given case, even assuming that the case of the police regarding requirements of Article 22(1) of the Constitution is to be accepted based on an entry in the case diary, there must be a contemporaneous record, which records what the grounds of arrest were. When an arrestee pleads before a court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

26.6. *When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established."*

17. In view of the above, this Court is of the considered opinion that the factual matrix of the present case is clearly distinguishable from the extreme procedural violations found in **Vihaan Kumar (Supra)** and **Prabir Purkayastha (Supra)**. In the present matter, the Recovery Memo, prepared contemporaneously and signed by the Petitioner, explicitly detailed the facts of

the offence, including his involvement in preparing fake insurance documents to secure visas and the recovery of items linked to the communication of security information to an enemy agent, along with listing the corresponding penal sections. This document served as a direct, written, and effective communication of the factual and legal grounds of arrest, thereby fulfilling the substantive constitutional requirement of Article 22(1). Applying the authoritative ratio of **Sri Darshan (Supra)** to these established facts, the technical omission of grounds in the separate Arrest Memo is a curable irregularity, and not a fatal constitutional defect. Consequently, the remand order passed on 22.05.2025 by the competent Magistrate remains a valid judicial order that supports the continued detention, as the foundational illegality (the absence of grounds) asserted by the petitioner did not, in fact, exist in substance.

21. The Allahabad High Court, in **Anwar Dhebar Vs. State of U.P. (Supra)**, held that violation of the constitutional mandate under Article 22(1) and the statutory provisions of the Cr.P.C. (or BNSS) necessitates quashing the remand order, as the detention cannot be permitted to continue. The judgment in **Anwar Dhebar (Supra)** is distinguishable on facts as the underlying ground for its ruling was a clear failure of the police to inform the accused of the grounds of arrest, whereas the order in the present case is based on the finding of substantial compliance with the required procedure. This substantial compliance is demonstrated by the fact that the detailed Recovery Memo, prepared simultaneously and signed by the petitioner, explicitly conveyed the factual basis of the charges (acting as an agent of an enemy country, preparing fake

documents, and communicating security information) at the time of arrest. Therefore, the ratio decidendi of **Anwar Dhebar (Supra)**, being rooted in a technical-procedural failure that caused actual prejudice, is inapplicable here, where the constitutional mandate under Article 22(1) was substantially achieved, rendering the defect in the Arrest Memo a non-fatal irregularity.

22. I also find it appropriate to refer again the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Sri Darshan (Supra)**, in which it was held that courts must always prioritize substance over form in procedural matters, holding that a mere technical irregularity or defect in a document will not invalidate the entire proceedings if the accused has achieved the substantive benefit of the law, namely, knowledge of the factual basis of the arrest. The law as laid down in **Sri Darshan (Supra)** demolished the plea of the petitioner. The principle empowers the Courts to focus not on the letter of the procedural defect (the missing grounds in the Arrest Memo), but on the spirit of the constitutional mandate under Article 22(1). By relying on this precedent, I conclude that the petitioner's actual knowledge—demonstrated by their signature and acknowledgment on the accompanying Recovery Memo—fully satisfies the constitutional requirement, thereby rendering the defect in the Arrest Memo a non-fatal technicality that does not warrant quashing the entire detention process. The relevant para is extracted here-in-below:-

"It is a well-settled proposition of law that procedural lapses and technical irregularities should not be used to defeat justice unless such lapse has resulted in actual prejudice to the accused. The

mandate of Article 22(1) is not merely to record the grounds of arrest in a specific document but to ensure that the arrested person is informed of the grounds. Where it is demonstrably clear from surrounding circumstances, such as the accused signing a contemporaneously prepared Recovery Memo detailing the facts of the case, that the accused had substantive knowledge of the offence and the reasons for their detention, the mere failure to reproduce those details in the Arrest Memo itself becomes a curable irregularity, and not a fatal defect that vitiates the entire remand proceeding."

23. The judgment of the Hon'ble Supreme Court in **Pankaj Bansal v. Union of India (Supra)** and **Prabir Purkayastha v. State (NCT of Delhi) (Supra)** underscore that compliance with the constitutional safeguard must be in a meaningful manner, requiring the grounds to be communicated in writing, especially when the arrest is without a warrant. The spirit of these cases suggests that ambiguity or reliance on generalized documentation should be avoided to prevent police excess and ensure that the accused can seek legal remedy effectively. However, the rigor of this principle, as noted in the preceding analysis, is to be read in harmony with the doctrine of substantive compliance upheld in **State of Karnataka v. Sri Darshan (Supra)**, particularly where the record demonstrates that the accused was furnished with and attested to a contemporaneously prepared detailed Recovery Memo that fully disclosed the factual basis and penal sections of the arrest.

24. But, aforesaid principle laid down by the Hon'ble Supreme Court has to be read with the caveat laid down in **State of**

Karnataka v. Sri Darshan (Supra) that Courts must not elevate form over substance. The Hon'ble Apex Court, in this case, held that mere delay or procedural infirmity in furnishing the grounds of arrest cannot, by itself, constitute a valid ground for declaring the detention illegal. This principle assumes particular significance here, as the petitioner's reliance on the technical defect (missing grounds in Paper No. 38) is demolished by the finding that the detailed Recovery Memo was contemporaneously prepared and signed by the accused, thereby ensuring "actual knowledge of the factual basis of the arrest" and satisfying the substantive constitutional mandate under Article 22(1).

25. In light of the preceding analysis, it is imperative to re-establish the principle that the preservation of individual rights and freedom is at the heart of every democratic nation's goal of a just and equitable society. As a thriving democracy, India respects these ideals by granting certain essential rights to all citizens, including those who find themselves on the wrong side of law. These rights underscore the constitutional commitment to the dignity and value of every individual, particularly when faced with the immense coercive power of the State. When a person is arrested in India, they have numerous rights which are designed to ensure justice, due process, and the preservation of human dignity. These safeguards are not mere formalities but are the bulwarks against arbitrary state action, ensuring that no one is deprived of their liberty except through the procedure established by law. The failure to adhere to these foundational principles constitutes a challenge to the rule of law itself. The principles enshrined in Article 21 (Right to Life and Personal Liberty) and Article 22(1) (Right to be

informed of Grounds of Arrest) serve as the paramount touchstone against which the legality of any arrest and detention must be tested, demanding strict scrutiny from the judiciary.

26. The present petition, by challenging the procedure of arrest and remand, effectively calls upon this Court to re-affirm the sanctity of these fundamental rights and to ensure that the Executive's power to curtail liberty is exercised strictly in conformity with law. This judicial review is essential to maintain the delicate balance between State security (given the allegations that the petitioner acted as an "agent of an enemy country" and was involved in "communicating security information" constituting an attempt to "wage war") and individual freedom, which is a cornerstone of the constitutional scheme. Therefore, the determination of the issues presented here is not merely a procedural exercise but an affirmation of the constitutional morality upon which the Indian legal system is founded, necessitating a detailed examination of the arresting authority's compliance with the letter and spirit of the law, which I now proceed to undertake.

27. I have meticulously examined the simultaneous operation of the raid and the documentation. The petitioner challenges the absence of grounds in the formal Arrest Memo. However, the Recovery Memo (or Fard Memo of Recovery), which is the foundational document detailing the seizure and the basis of the charge, specifically mentions compliance with the relevant BNSS Sections and was signed by the petitioner, Mohd. Haroon. The contents of the Recovery Memo clearly detail the recovered items and the corresponding penal provisions for the serious charges,

including being an "agent of an enemy country" and "communicated security information". I find that this act of having the accused sign the Recovery Memo, which was prepared on the spot and detailed the factual basis for the arrest, constitutes "substantial compliance" with the mandate of "Article 22(1) of the Constitution of India and Section 50 Cr.P.C. / Section 47 BNSS."

28. I acknowledge the strict standards set in the case of **Pankaj Bansal (Supra)** and **Prabir Purkayastha (Supra)** regarding written communication. However, the present case, involving grave charges of waging war against the Government of India and compromising national security, necessitates harmonizing these principles with the concept of substantial compliance. The approach adopted here, where the accused signed the detailed Recovery Memo, which was prepared on the spot and contained the factual basis for the charges (involving fake insurance documents and communicating security information to the Pakistan High Commission contact), clearly "harmonizes the principles laid down in **State of Karnataka v. Sri Darshan (Supra)**" with the necessity of informing the accused. The argument, that the non-disclosure of grounds led to prejudice ipso facto, fails to hold ground when the accused attested to the document detailing the entire factual basis of the charges.

29. The contention that the petitioner was taken into custody on an earlier date and produced after 24 hours is not supported by the official record. The record shows that the accused was arrested on 21.05.2025 at about 18:50 (6:50 PM). The production before the Duty Magistrate, which resulted in the remand order dated

22.05.2025, was thus within the statutory 24-hour period. The allegation of illegal detention beyond 24 hours is unsubstantiated by the record and is therefore rejected.

30. The record demonstrates that the Duty Magistrate passed the remand order after reviewing the prosecution papers and applying his judicial mind. The contention that the remand order is perverse is thus unsustainable. Furthermore, in line with **Vihaan Kumar v. State of Haryana**, even assuming a procedural irregularity in the arrest, this does not automatically vitiate the subsequent valid remand order passed by a competent Judicial Magistrate.

31. I conclude that the failure to incorporate the grounds in the Arrest Memo when the same were detailed in the simultaneously prepared and signed recovery memo is a procedural irregularity, not a fatal jurisdictional defect that would lead to the quashing of the remand order. The petitioner was apprised of his rights, and the core constitutional and statutory mandates were substantially adhered to.

32. I further observe that granting relief to the petitioner by quashing the foundational remand order would be inappropriate when this Court has found "substantial compliance" by the arresting authority through the provision of the detailed Recovery Memo. The underlying challenge to the remand order itself fails on "judicial scrutiny," and the principle of parity would not extend to forcing the Court to declare a procedural document illegal when the legal requirements have been largely met.

33. I find that the arresting authority has substantially complied with the

mandatory provisions, and the remand order is not tainted by perversity or lack of judicial application. Consequently, the detention of the petitioner is deemed legal as per the subsisting remand order. The challenge to the legality of custody based on a procedural technicality, where the accused suffered actual prejudice, cannot succeed in the face of binding precedents.

34. The petitioner seeks to quash the remand order as a path to immediate interim bail. The Court observes that the appropriate remedy for the petitioner is to file a Regular Bail Application before the Court of competent jurisdiction under Section 480 BNSS. This Court, under its extraordinary jurisdiction, has found the challenge to the legality of the custody to be unmeritorious because the arresting authority substantially complied with the mandatory provisions and the subsequent remand order dated 22.05.2025 was based on the Magistrate's "application of a judicial mind" after perusing the FIR and CD. The writ petition is, therefore, not only legally unmeritorious on the challenge to the foundational remand order but also fails on the principle of availability of an efficacious alternate remedy. The jurisdiction under Article 226, while wide, is generally not exercised to grant relief that can be obtained through the established criminal procedure.

35. The petition is devoid of merit, and the grounds urged do not justify declaring the entire custody illegal. The continuous detention of the petitioner is supported by the valid remand order passed by the Duty Magistrate/competent Judicial Magistrate in Lucknow, and the petition must fail.

36. I conclude that the petitioner has failed to establish a case for the exercise of

the extraordinary jurisdiction conferred under Article 226 of the Constitution of India. Although the contentions regarding the non-communication of the grounds of arrest and the resulting illegality of the remand order are serious, they do not meet the threshold required for declaring the entire detention illegal, given the clear evidence of "substantial compliance by the police officers," which effectively safeguarded the spirit of Article 22(1). The arguments raised by the State, particularly concerning the detailed nature of the Recovery Memo (which was prepared on the spot, explained to the petitioner, and a copy was given to the accused), the subsequent valid remand order (where the Magistrate perused the FIR and CD (Case Diary), signifying the application of a judicial mind), and the application of the principle laid down in **State of Karnataka v. Sri Darshan (Supra)**, are well-founded and successfully outweigh the petitioner's reliance on mere technical defects in the document format. Consequently, the proper and efficacious remedy available to the petitioner is to pursue their application for Regular Bail before the Court of competent jurisdiction, as seeking the quashing of the foundational remand order as a measure to obtain interim bail is legally untenable when the remand order is found to be based on the proper application of the judicial mind and valid documents.

37. In view of above, the Criminal Miscellaneous Petition No. 1627 of 2025 is, hereby, **dismissed**. However, it is made clear that the dismissal of this petition shall not be construed as an expression of opinion on the merits of the case and shall not prejudice the right of the petitioner to file a Regular Bail Application before the Court of competent jurisdiction. The concerned court shall consider the said

and Section 362 Cr.P.C. prohibition applies only to alteration or review of judgments on merits, not to orders of dismissal in default – hence, Recall application maintainable when absence is bona fide and not intended to delay proceedings - as such, order dated 30.05.2024 recalled and petition restored to its original number and status.(Para – 18, 19, 20, 21, 22, 23, 24)
Restoration Application **Allowed.** (E-11)

(2025) 12 ILRA 1282
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.12.2025

BEFORE

THE HON'BLE TEJ PRATAP TIWARI, J.

Application U/S 482 No. 18737 of 2023

Parvez Khan **...Applicant**
Versus
State of U.P. & Anr. **...Opposite Parties**

ISSUE FOR CONSIDERATION

Whether a petition under Section 482 Cr.P.C., dismissed for want of prosecution, can be restored to its original number and status.

Whether the prohibition under Section 362 Cr.P.C. applies to such dismissal orders.

HEADNOTES

Indian Penal Code (IPC) – Sections 420, 464, 467, 468, 471, 386, 120B

Criminal Law - Code of Criminal Procedure, 1973 - Section 353, 362, 465, 482 - Application under Section 482 CrPC – dismissed for want of prosecution – restoration and recall application filed – opposite party no. 2 opposed restoration application on the ground of section 362 Cr.P.C. – court observed that, order of dismissed in default is not a “judgment” within the meaning of Section 362 Cr.P.C. and inherent powers of the High Court can be exercised to recall or restore such petitions to secure the ends of justice – further, Party should not suffer for inadvertence or fault of counsel – held, dismissal in default cannot bar restoration,

CASE LAW CITED

Vishnu Agarwal v. State of U.P., 2011 (74) ACC 609 (SC) - Asit Kumar Kar v. State of West Bengal, (2009) 1 SCC (Cri) 851 - Ram Naresh Yadav v. State of Bihar, 1987 Cri. L.J. 1856; AIR 1987 SC 1500 - Rafiq v. Munshi Lal, AIR 1981 SC 1400 - Raghuvra v. State of U.P., 1990 Cri. L.J. 2735 (All.) - Ramautar Thakur v. State of Bihar, AIR 1957 Patna 33; 1957 Cri. L.J. 82 - Hari Singh Mann v. Harbhajan Singh Bajwa, 2001 SCC (Cri) 113 - State of Punjab v. Davinder Pal Singh Bhullar, 2012 Cri. L.J. 1001 (SC).

LIST OF ACTS

Code of Criminal Procedure, 1973

LIST OF KEYWORDS

Recall of order - Restoration of petition -
Dismissal for default - Inherent powers of
High Court - - alter or review judgment -
Errors & omissions - vitiate proceedings -
Ends of justice - Opportunity of hearing -
Judgment - Order.

CASE ARISING FROM

Restoration/Recall Application - filed for recall of
- order dated 30.05.2024 passed in - Criminal
Misc. Case (U/s 482 Cr.P.C.) No. 18737 of 2023
(Parvez Khan v. State of U.P. and another).

APPEARANCE OF PARTIES

Counsel for Appellant: - Sri Sunil Kumar,
Counsel for Respondent: - Sri Desh Ratan
Chaudhary, AGA.

(Delivered by Hon'ble Tej Pratap Tiwari, J.)

Ref : Crl. Misc. Application for
Restoration of the application and the
Recall of the order dated 30.05.2024

1. Heard learned counsel for the applicant, learned AGA as well as learned counsel appearing on behalf of the opposite party no. 2 and perused the records.

2. This application for recall of the order dated 30.05.2024 has been filed with the prayer to restore the Criminal Misc. Case No.18737 of 2023 (U/s 482 Cr.P.C.) (Parvez Khan vs. State of U.P. and another) at its original number and status.

3. Learned counsel for the applicant has submitted that on 30.05.2024 due to technical problem, the counsel for the applicant could not get the list of listed case and due to this reason, he could not attend the court and could not mention for adjournment of the case, consequently, the petition was dismissed for want of prosecution. In support of this contentions, learned counsel for the petitioner has relied upon the various judgements, which shall be taken into consideration later on.

4. Learned counsel for the opposite party no. 2 has submitted that although there is no provision in the Code of Criminal Procedure for restoration of a criminal case like Order IX of the CPC. It has further been submitted that Section 362 Cr.P.C. prohibits the court to alter or review the judgement.

5. The main question for consideration is that whether a petition under section 482 Cr.P.C., which has been dismissed for want of prosecution can be restored to its original number or not and whether the prohibition as provided by Section 362 Cr.P.C. will apply or not?

Section 362 Cr.P.C. provides as under :

"362. Court not to alter judgement - *Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

Section 353 Cr.P.C. defines the judgment as under :

"353. Judgment –

1. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders:-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

2. Where the judgment is delivered under clause (a) of sub- section (1), the presiding officer shall cause it to be taken down in short- hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

3. Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub- section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

4. *Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.*

5. *If the accused is in custody, he shall be brought up to hear the judgment pronounced.*

6. *If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted: Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.*

7. *No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.*

8. *Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."*

6. The exception to the aforesaid section has been enumerated in sub-clause 8 of Section 353 as contained in Section 465, which reads as under:

Section 482 Cr.P.C. is quoted below as under:

"482. Saving of inherent power of High Court - Nothing in this Code shall

be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

7. Learned counsel for the petitioner has emphasized the word "secure the ends of justice".

8. As far as the contention of the learned counsel for the petitioner that the opportunity of being heard was not given to him has a different connotation with the word 'opportunity of being heard' has been availed or not. The case was listed for 29.04.2015, therefore, it cannot be said that the opportunity of being heard was not extended to the applicant. However, the said opportunity of hearing was not availed by the applicant for the reason that his counsel had suddenly fallen ill and he had to leave the court in the mid day and he could not mention it before the court. It is also settled principle that the party should not suffer for the fault or laches of the counsel.

9. In **Vishnu Agarwal vs. State of Uttar Pradesh; 2011 (74) ACC 609 SC**, Hon'ble Supreme Court has held as under :

It often happens that sometimes a case is not noted by the Counsel or his clerk in the cause list, and hence, the Counsel does not appear. This is a human mistake and can happen to anyone. Hence, the High Court recalled the order dated 2.9.2003 and directed the case to be listed for fresh hearing. The aforesaid order recalling the order dated 2.9.2003 has been challenged before us in this appeal.

Learned Counsel for the appellant has relied on the decision of this

Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa AIR 2001 SC 43. Para 10 of the said judgment states:

"Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (AIR 1958 SC 376)(supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A(Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."

"In our opinion, Section 362 cannot be considered in a rigid and over

technical manner to defeat the ends of justice. As Brahaspati has observed :

"Kevalam Shastram Ashritya Na Kartavyo Vinirnayah Yuktiheeney Vichare tu Dharmahaani Prajayate"

which means:

"The Court should not give its decision based only on the letter of the law. For if the decision is wholly unreasonable, injustice will follow."

10. In Asit Kumar Kar vs. State of West Bengal and others; (2009) 1 SCC (Cri) 851, Hon'ble the Supreme Court has held as under :

"There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Licensees Association v. Raghavendra Singh & Ors. [2007 (11) SCC 374] cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences.

In these circumstances, we recall the directions in paragraph 40 of the aforesaid judgment. However, if anybody has a grievance against the grant of licences or in the policy of the State Government, he will be at liberty to challenge it in appropriate proceedings before the appropriate Court. The writ petitions are disposed of with these directions."

11. In **Ram Naresh Yadav and others vs. State of Bihar; 1987 CRI.L.J. 1856 & AIR 1987 SCC 1500**, Hon'ble the Apex Court has held as under :

"It is an admitted position that neither the appellants nor counsel for the appellants in support of the appeal challenging the order of conviction and sentence, were heard. It is no doubt true that if counsel do not appear when criminal appeals are called out it would hamper the working of the court and create a serious problem for the court. And if this happens often the working of the court would become well nigh impossible. We are fully conscious of this dimension of the matter but in criminal matters the convicts must be heard before their matters are decided on merits. The court can dismiss the appeal for non-prosecution and enforce discipline or refer the matter to the Bar Council with this end in view. But the matter can be disposed of on merits only after hearing the appellant or his counsel. The court might as well appoint a counsel at State cost to argue on behalf of the appellants. Since the order of conviction and sentence in the present matter has been confirmed without hearing either the appellants or counsel for the appellants, the order must be set aside and the matter must be sent back to the High Court for passing an appropriate order in accordance with law after hearing the appellants or their counsel and on their failure to engage counsel, after hearing counsel appointed by the Court to argue on their behalf. As the matter is being remanded to the High Court, no orders can be passed on the bail application. The appellants, if so advised, may approach the High Court for bail"

12. In **Rafiq and another vs. Munshi Lal and another; AIR 1981 SC 1400**, Hon'ble the Apex Court has held as under :

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is

proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi."

13. In Raghuvera and others vs. State of U.P.; 1990 CRI.L.J. 2735 (All.), this Hon'ble Court has held as under :

"It is no doubt true that Section 362 Cr. P.C. debars the court from altering or reviewing any final order or judgment given by a court except to correct the clerical or arithmetical error. But the question arises whether an order dismissing an application for revision for default of the counsel as not pressed can be termed as a judgment or final order? The term "Judgment" has not been defined in

the Criminal Procedure Code but a judgment means the expression of the opinion of the Court arrived at after due consideration of the entire material on record, including the arguments, if any, advanced at the Bar. A final order or judgment can only be passed in a criminal court when the court applies its mind to the merit of the case. In case the order is passed in a criminal proceeding and the application for revision is dismissed for default as not pressed, the said order cannot be taken as either final order or a judgment. Thus Section 362 Cr. P.C. is no bar to review or alter the order dated 14th March 1990. The order in question was passed without going into the merit of the case and is without jurisdiction and as such it has to be set aside."

14. In Ramautar Thakur and others vs. State of Bihar; AIR 1957 Patna 33 & 1957 Cri. L.J. 82, the Patna High Court has held as under :

"There is no statutory provision for such a restoration. The power to restore a case dismissed for default, if it exists, must, therefore, be an inherent power, which is saved by- the provisions of Section 561 A, Criminal P. C., This section was inserted in the Criminal Procedure Code by the Amendment Act of 1923. It is merely a saving clause which does not confer a new power on the High Court. The decisions of the High Courts prior to this amendment are, therefore, still applicable,

The Criminal Procedure Code, unlike the Civil Procedure Code, does not define 'Judgment' A 'judgment' means the expression of the opinion of the Court arrived at after, a due consideration of the evidence and all the arguments. The above meaning of the word 'Judgment', as is to be found in Full Bench decisions of the

Madras High Court in Re Chinna Kaliappa Goundan, ILR 29 Mad 126 (Q), of the Bombay High Court in Emperor v. Nandial Chunilal, 48 Bom LR 41: (AIR 1946 Bom 276) (FB) (R), and of the Calcutta High Court in Damu Senapati v. Shridhar Rajwar, ILR 21 Cal 121 (S), was approved by their Lordships Bhagwati and Imam JJ., in the Supreme Court case just mentioned.

Their Lordships mentioned that the observations of the Madras High Court in its Full Bench decision, just referred to, were quoted with approval by Sulaiman J., in Dr. Hori Ram Singh v. Emperor, AIR 1939 FC 43 (T), in which his Lordships Sulaiman J., observed that the Criminal Procedure Code did not define a 'judgment', but various sections of the Code suggested what it meant. His Lordship then discussed those sections and concluded that 'judgment' in the Code meant a judgment of conviction or acquittal.

The question, therefore, for our consideration is, is the order of dismissal for default a 'judgment'?

For the reasons given above, I hold that this Court has got powers to restore Cri. Revn. No. 198 of 1956, which stood dismissed for default, by force of the order of this Court dated 10-2-1956, in the exercise of its inherent jurisdiction under Section 561A, Criminal P. C."

15. In the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa; 2001 SCC (Cri) 113**, Hon'ble the Apex Court has held as under :

"We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7.1.1999, there was no lis

pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent NO.1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.

Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent

of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."

16. In the case of **State of Punjab vs. Davinder Pal Singh Bhullar and others;** 2012 Cri. L. J. 1001 SC, Hon'ble the Apex Court has held as under :

"If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However,

the party seeking recall/alteration has to establish that it was not at fault"

17. From the aforesaid judgments of Hon'ble the Apex Court as well as of various High Courts, it is clear that prohibition of Section 362 Cr.P.C. is absolute and when the judgment has been signed, even the High Court in exercise of its inherent power under section 482 Cr.P.C. has no authority or jurisdiction to alter or review the same.

18. Certainly, if any petition has been dismissed for want of prosecution or in default of the petitioner and the reasons for decision have not been rendered after applying the mind to the pleadings of the case as well as the grounds of petition, that order of dismiss in default cannot be termed as 'Judgment' because the judgement should contain not only the facts and pleadings of the case but also the documentary as well as oral evidence. In the judgment, it is required that there should be marshalling of the facts as well as appreciation of the evidence in respect of the determination of the matter in issue. The judge is also required to give reasons for its decision after looking into the various probabilities as well as cogent reasons for relying or not relying the contention and evidence of either party.

The process of judgment involves the following stages:

- I. Collection of Facts;
- II. Time Sequencing of Facts
- III. Shifting facts from opinions
- IV. Marshalling of Facts
- V. Find out the Problems (Charge/Issues)
- VI. What is the main problem (Charge/Issue)

- VII. Record of Evidence*
- VIII. Churning of Evidence*
- IX. Shifting of Evidence*
- X. Weighing the different alternatives*
- XI. Apply Precedents*
- XII. Look into Prohibitions*
- XIII. Findings and Conclusions*
- XIV. Order.*

19. In the present case, the petition has been dismissed for want of prosecution, although opportunity of hearing was given but that opportunity of hearing could not be availed due inadvertent mistake of the counsel. The inherent power under section 482 Cr.P.C. can be exercised to give effect to any order under Cr.P.C. or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Certainly, if the application has been dismissed for default, that cannot be termed as 'judgement'.

20. Accordingly, the bar as provided by section 362 Cr. P.C. shall not be applicable. This court has power to dismiss in default any application or writ petition and at the same time has also power to restore such proceedings on sufficient grounds being shown for non-appearance provided it appears to the court that default was not wilful and it was accidental. There are instances, where either legal advice is given or due to shrewd character of the litigant malafide efforts are adopted with a view to delay the proceedings of the case, such tactics are also adopted to get the case dismissed in default and then to move application for restoration and thus, lingering on the proceedings. Certainly, such practice must be carved out and should not be permitted to continue.

21. The views expressed by the various High Courts in the aforesaid

decisions are in favour of the restoration of such petition, which has been dismissed in default in exercise of powers under section 482 of the code of criminal procedure with a view to secure the ends of justice and I am also in respectful agreement with the views expressed by the various High Courts in the aforesaid decisions.

22. Therefore, I am of the view that if any petition has been dismissed in default and the application for recall is made, then it will not come within the meaning of words 'alter' or 'review' as expressed in Section 362 of the Code. Accordingly, such orders may be recalled or set aside provided the intention of the parties is bonafide i.e. party who has moved the application for recall or restoration is not unnecessary lingering on the proceedings malafidely or that interim order or stay order, if any, is not being misused.

23. Accordingly, the application for restoration or recall of the order is maintainable and the prohibition of Section 362 Cr.P.C. do not apply in the petitions, which have been dismissed in default without discussing the merits of the case because it do not come within the prohibition of 'alter' or 'review' of judgment, which has entirely a different meaning.

24. In the present case, the petition was dismissed for want of prosecution because the counsel for the applicant could not appear due to technical problem and could not get the list of listed cases. So far as the objection raised by learned counsel for the opposite party no. 2 is concerned, the Court have substantial justice should not give weight to higher technical reason.

25. Accordingly, in the interest of justice, the application for recall is **allowed**.

2. Present application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for the sake of brevity 'BNSS') has been filed for quashing the first information report dated 14.6.2024 registered as P.S. Civil Lines, Meerut, giving rise to the registration of Crime No 192 of 2024 against the applicant and two others for the offences under Sections 420, 467, 468 and 471 of the Indian Penal Code.

3. It has been contended by the learned counsel for the applicant that the instant first information report which has been lodged is an abuse of process of the Court as on similar facts, earlier first information report bearing no. 0039 of 2022 was lodged on 3.2.2022 against 04 persons, namely, Narendra Singh Tomar, Satish Tewatiya, Hareram Dua and Jatin Dua for the offences under Sections 420, 467, 468 471, 386 and 120B, P.S. Transport Nagar, District Meerut (annexure 4 to the memo of application). It is further submitted by the learned counsel for the applicant that chargesheet in the said case has already been filed and the learned Magistrate has also taken cognizance of the offences described in the chargesheet. It is also much after registration of the FIR no. 0039 of 2022, the opposite party no. 2 in his capacity as Manager of the Society filed an application under Section 156(3) Criminal Procedure Code (hereinafter referred to as the 'CrPC') against the applicant and two others before the Court of Chief Judicial Magistrate, Meerut and the same was allowed vide order dated 7.6.2024 and the concerned Police Station was directed to register the FIR against the applicant and two others and to investigate the offence in accordance with law. It is further submitted by the learned counsel for the applicant that instant FIR is illegal as two FIRs cannot be lodged for the same offences in view of the

law laid down by Hon'ble Apex Court in **T.T. Antony vs. State of UP**, (2001)6 SCC 181 as the second FIR is barred by the provisions of Section 162 of the CrPC. It is further submitted that on close perusal of FIR No. 39 of 2022, it would emerge that the substratum of the said FIR and the instant FIR is the same. It is further submitted that even if the allegation made in the instant FIR is taken to be true on its face value, then no offence under the aforesaid sections is made out against the applicant. It is also submitted that no falsification of a document within the meaning of Section 464 of the Indian Penal Code (hereinafter referred to as the 'IPC') has been done by the applicant, therefore, offence under Sections 467, 468 and 471 of the IPC is not made out. It is further submitted that falsification of documents within the meaning of Section 464 of the IPC is the prerequisite for constituting the offence under Sections 467, 468 and 471 of the IPC. In this regard, learned counsel for the applicant has placed reliance on a judgement of Hon'ble Apex Court in the case of **Sheila Sebastian vs. R. Jawaharraj**, (2018) 7 SCC 581 in which Hon'ble Apex Court has summarized as follows:

25. That keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. *The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "Fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither respondent no. 1 nor respondent no. 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."*

4. It is further contended by the learned counsel for the applicant that as per allegation in the FIR in question there is complete lack of describing the essential facts constituting the commission of the offence under Section 420 of the IPC by the applicant. It is, therefore, submitted that no offence under Section 420 IPC is made out against the applicant even if the allegation made in the FIR is taken to be true on its face value. It is also submitted that Navyug Shahkari Avas Samiti filed a suit for cancellation of the sale deed before the Arbitrator invoking the provisions of the UP Cooperative Societies Act and presently the matter is pending before this Court. In view of the above, learned counsel for the applicant submitted that a civil dispute is pending between Navyug Shahkari Avas Samiti and the applicant. Learned counsel for the applicant submitted

that Hon'ble Apex Court in **G. Sagar Suri and another vs. State of U.P. and others**, (2000) 2 SCC 636 has held as under:

"Jurisdiction under Section 482 of the Code has been to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 483 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

5. Learned counsel for the applicant has also placed reliance on a judgement of Hon'ble Apex Court in **Usha Chakraborty and another vs. State of West Bengal and another**, 2023 SCC Online SC90 wherein it has been held that where as dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such dispute can be quashed by exercising the inherent powers under Section 482 of CrPC. He has also placed reliance on a judgement of Hon'ble Apex Court in **Paramjeet Batra vs. State of Uttarakhand**, (2013) 11 SCC 673 wherein the Hon'ble Apex Court held that the High Court can quash the first information report in exercise of its inherent powers under Section 482 CrPC. It is further submitted that this legal position has not been altered by the introduction of new code of procedure w.e.f. 1.7.2024.

6. In view of the above, learned counsel for the applicant submitted that the instant FIR is an abuse of process of law, therefore, present application deserves to be allowed.

7. On the other hand, learned counsel for the opposite party no. 2 has submitted that present application is not maintainable in view of the decision of Hon'ble Full Bench of this Court in **Ram Lal Yadav vs. State of UP**, 1989 APLJ (Cri) 107 wherein it has been held that in a case at investigation stage by police, the High Court cannot interfere in exercise of its power under Section 482 CrPC but if it appears that investigation is being conducted by police in mala fide exercise of power, the High Court can quash such investigation in exercise of its power under Article 226 of the Constitution of India. The arrest of the applicant by police in cognizable cases cannot be interfered by the High Court under Section 482 CrPC. However, if it appears that police officer is misusing his powers, the High Court can issue a writ of mandamus under Article 226 of the Constitution of India restraining such police officer from such misuse. It is also held that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in exercise of its inherent powers under Section 482 CrPC. The inherent powers of the High Court are there to prevent the abuse of the process of Court or otherwise to secure the ends of justice come into play only after the chargesheet against an accused is filed in Court and not till then even in cases where the police wrongly investigated into a report which does not disclose the commission of any offence. Learned counsel for the opposite party no. 2, in view of the above

pronouncement by Hon'ble Full Bench of this Court, submitted that present application is not maintainable and the same deserves to be dismissed. Learned counsel for the opposite party no. 2 has also submitted that the applicant has played fraud on this Court and he has also misguided and misled this Court as the alleged power of attorney has not been brought on record by the applicant which firmly affirms the fact that it is not at all meant to authorize the said Narendra Sachdeva to execute any sale deed in favour of the applicant and the same power of attorney is not a genuine document and is fraudulently fabricated document. It is also submitted by the learned counsel for the opposite party no. 2 that the award has been challenged before this Court by filing a Writ-C No. 2972 of 2022, which has been declined by this Court vide order dated 23.5.2022 (Neutral Citation No. 2022:AHC-LK):27578).

8. I have considered the rival submissions and perused the affidavit filed in support of this application.

9. The opposite party no. 2 has filed the instant FIR through an application under Section 156(3) CrPC alleging therein that he is the registered member of Navyug Shahkari Avas Samiti (a registered society) being Registration No. 2459 dated 25.11.1971. It is also stated that he is the coordinator of the said society and he is authorized to act on behalf of the society. It is further alleged in the instant FIR that the above society had executed a sale deed in favour of one member Hareram Dua being plot no. 5, area 631-2/9 sq yard on consideration of money of Rs. 36,600.10 paise dated 11.9.1978. It is further alleged that as per paragraph 3 of the sale deed it is mentioned that a member of the society can

transfer it to his family members and if he transfers in favour of some other person, then he will have to follow the rules and by-laws of the society. It is further alleged that accused Narendra Sachdeva by entering into criminal conspiracy with the co-accused Vishwa Bandhu (applicant herein) prepared a forged power of attorney and executed a forged sale deed of plot no. 5 in favour of the applicant Vishwa Bandhu on 12.9.1988 whereas no power of attorney was ever executed by the earlier allottee of the said plot Hareram Dua in favour of accused Narendra Sachdeva and the applicant was neither a member of the society nor his relative or family member of said Hareram Dua. It is further alleged that accused has violated the provisions of by-laws as provided in Section 55.

10. It is further alleged in the FIR that when the society came to know about the execution of the said sale deed dated 12.9.1988, a notice was issued to Hareram Dua and Vishwa Bandhu (applicant herein) through registered post on 4.8.2021 and 20.8.2021 but Vishwa Bandhu (applicant herein) refused to receive the notice and registered notice was returned back whereas Hareram Dua in reply to the notice submitted that he never executed any power of attorney in favour of the accused Narendra Sachdeva and if any power of attorney has been shown by Narendra Sachdeva, the same is a forged one and the alleged sale deed is a forged and fabricated document and he is still having possession over the aforesaid plot no. 5. It is further alleged in the FIR that thereafter the society instituted mediation case no. 57W of 2021 before the UP Joint Housing Commissioner, UP in which Hareram Dua delegated his power to his son Jatin Dua for looking after the case and taking steps. The said Hariram Dua filed an affidavit that he

had never sold the plot no. 5 to anyone and even he did not require the said plot and he asked for refund of the money for the said plot. The society on the request of Hareram Dua refunded the consideration money with interest of the said plot to him and the sale deed dated 11.9.1978 which was executed by the society in favour of Hareram Dau was declared null and void.

11. It is further alleged in the FIR that accused Vishwa Bandhu (applicant herein), Narendra Sachdeva and Anil Sachdeva prepared a forged power of attorney ostensibly being executed by Hariram Dua and the applicant on the basis of forged power of attorney lodged an FIR No. 39 of 2022 for the offences under Sections 420, 467, 468 471, 386 and 120B IPC, P.S. Transport Nagar, District Meerut. It is further alleged that in view of the above, the accused Vishwa Bandhu (applicant herein), Narendra Sachdeva and Anil Sachdeva by committing fraud and preparing forged document with an intention to cause loss to the society got executed a forged sale deed.

12. Learned counsel for the opposite party no. 2 has raised a preliminary objection regarding maintainability of present application filed under Section 528 BNSS (old section 482 CrPC) and he has heavily relied on a decision of Hon'ble Full Bench of this Court in Ram Lal Yadav (supra) whereas the learned counsel for the applicant has submitted that the application is maintainable in view of the judgements of Hon'ble Apex Court in Paramjeet Batra (supra) and Usha Chakraborty (supra) and G. Sagar Suri (supra). However, the question whether an application under Section 528 BNSS (old section 482 CrPC) is maintainable for quashing the FIR has been considered by a Two-Judge Bench of

Hon'ble Apex Court in **Pradnya Pranjali Kulkarni vs. State of Maharashtra and another**, passed in Special Leave to Appeal (Crl.) No. 13424 of 2025 dated 3.9.2025 wherein in paragraph 8 the Hon'ble Apex Court has held as under:

8. However, from the preamble of the writ petition filed by the petitioner before the Bombay High Court, it is evident that the same sought to invoke the twin jurisdiction under Article 226 of the Constitution and Section 528 of the BNSS for having the FIR quashed. It is true that the police report (charge-sheet) had been filed on 14th May, 2025 upon completion of investigation of the FIR, but whether or not cognizance had been taken by the jurisdictional magistrate is not too clear from the impugned order extracted above. So long cognizance of the offence is not taken, a writ or order to quash the FIR/charge-sheet could be issued under Article 226; however, once a judicial order of taking cognizance intervenes, the power under Article 226 though not available to be exercised, power under Section 528, BNSS was available to be exercised to quash not only the FIR/charge-sheet but also the order taking cognizance, provided same is placed on record with the requisite pleadings to assail the same and a strong case for such quashing is set up. Significantly, it was reasoned by us in Neeta Singh (supra) that a judicial order not being amenable to challenge before a high court under Article 226 of the Constitution and there being no prayer either under Article 227 thereof or Section 482, Cr.PC, the Allahabad High Court was right in holding the writ petition under Article 226 to have been rendered infructuous.

13. Thus Hon'ble Apex Court in Pradnya Pranjali Kulkarni (supra) has

clearly held that for quashing of the FIR, the High Court can exercise jurisdiction under Article 226 of the Constitution of India and if chargesheet has been submitted and cognizance has been taken and the same has been placed along with the FIR on the record, then the same can be quashed by invoking Section 528 BNSS (old section 482 CrPC).

14. Learned counsel for the petitioner has placed reliance on the judgement of Hon'ble Supreme Court in G. Sagar Suri (supra) in which Hon'ble Supreme Court has held that the power under Section 482 CrPC should be used with caution only to prevent the abuse of process of the Court. It has also been held in the said judgement that a case under Section 138 Negotiable Instruments Act was pending against the appellant and the case related to the FIR lodged by the G.M. of a Finance Company roping the appellants and their family members in order to coerce them to refund the amount borrowed by them from the Company, Hon'ble Supreme Court allowed the appeal and quashed the FIR. The question whether the High Court can exercise the power under Section 482 CrPC to quash the FIR when charge-sheet has already been filed and cognizance has been taken was not an issue before the Hon'ble Supreme Court in the above judgement and therefore, the Hon'ble Supreme Court has not dealt with the said issue in the above judgement.

15. Learned counsel for the applicant has also placed reliance on a judgement of Hon'ble Supreme Court in Paramjeet Batra (supra) in which the Hon'ble Supreme Court quashed the entire proceedings on the ground that a purely civil dispute was given the colour of criminal texture and Hon'ble Supreme Court has held as under:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the Court.

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.

16. The issue whether the FIR can be quashed by the High Court under Section

482 CrPC after submission of the chargesheet and taking of cognizance was not an issue in the said judgements and Hon'ble Supreme Court has not dealt with the same in the said judgements.

17. The applicant has made following prayers in the present application:

1. To allow this application and quash the first information report dated 14.06.2024 registered at P.S. Civil Lines, Meerut, giving rise to the registration of Crime No. 192 of 2024, against the applicant and two others for the offences under Section 420, 467, 468 and 471 of the Indian Penal Code;

2. Any/or to pass such other further order as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

18. From perusal of the prayers so made in the present application, it is clear that the applicant has simply sought for quashing the FIR and he has not placed the chargesheet as well as the cognizance taken on the chargesheet by the competent Court. Thus, in view of the judgement of Hon'ble Apex Court in Pradnya Pranjal Kulkarni (supra), since the chargesheet and the cognizance has not been placed on record, FIR cannot be quashed by invoking the provisions of Section 528 BNSS (old section 482 CrPC). Thus, in view of the above, present application is not maintainable.

19. Since the application is not maintainable, therefore, the merit of the case cannot be gone into by this Court.

20. Accordingly, present application is dismissed as not maintainable.

APPEARANCE OF PARTIES

Counsel for Appellant: - Shri Chandra Bhushan Pandey, Advocate
 Counsel for Respondent: - Shri Anand Singh, Standing Counsel.

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Chandra Bhushan Pandey, learned counsel for the petitioner and Shri Anand Singh, learned Standing Counsel for the State.

2. This is a public interest litigation which was initiated in the year 2017 seeking following reliefs:-

“i) to issue a suitable writ, order or direction declaring appointment of opposite party nos. 5 and 6 as Chief Minister and Minister (Deputy Chief Minister) of U.P., respectively, null and void w.e.f. 19.03.2017, after summoning the necessary records;

ii) to issue a writ, order or direction of or in the nature of quo warranto requiring the opposite party nos. 5 and 6 to explain on as to under what authority they are appointed as Chief Minister and Minister (Deputy Chief Minister) of U.P. and are continuing on the said post, as such;

iii) to issue an appropriate order or direction requiring the opposite party no. 2 to declare the seats of opposite party nos. 5 and 6 in the House of People (Lok Sabha) vacant;

iv) to issue an appropriate order, declaring Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 ultra vires the Constitution of India;”

3. Relief nos. (ii) and (iii) have outlived their utility, as, the opposite

parties no. 5 and 6 after being appointed as Chief Minister and Deputy Chief Minister of State of U.P. completed their term in 2020, when fresh elections were held. Their subsequent appointment as Chief Minister and Deputy Chief Minister of the State has not been assailed in this writ petition.

4. On being pointed out the aforesaid, learned counsel for the petitioner accepted this fact but insisted that relief no. (i) still survives, as, a declaration is required to be given by this Court as to whether the opposite party nos. 5 and 6 were validly appointed as Chief Minister and Deputy Chief Minister when they took oath on 19.03.2017 or their appointment was null and void. Such declaration according to him was necessary. Only to this extent he asserted that an adjudication in the context of relief no. (i) is required. Thus, undisputedly relief nos. (ii) and (iii) have become infructuous.

5. The facts of the case in brief are that the opposite parties no. 5 and 6, both were Members of Parliament when they took oath as Chief Minister and Deputy Chief Minister of the State of U.P. on 19.03.2017. They resigned from Membership of Parliament on 21.09.2017. In the interregnum, on 08.09.2017, both were elected as Members of the Vidhan Parishad i.e. within the period of six months stipulated in Article 164(4) of the Constitution of India (hereinafter referred to 'the Constitution'). They completed their tenure in 2020.

6. After fresh elections to the State Legislative Assembly they were again appointed as Chief Minister and Deputy Chief Minister respectively and took oath on 25.03.2022. This is not a question before us.

7. It is not the case of the petitioner as specifically stated in Para 22 to 24 that appointment of the opposite party nos. 5 and 6 and their taking oath on 19.03.2017 as Chief Minister and Deputy Chief Minister, was bad in law as they were not Members of either house of the State Legislature. The grounds of challenge are different. They can be summarized as under:-

According to the petitioner's counsel such appointment and taking oath was contrary to the implied constitutional restrictions and the very constitutional scheme which prohibits one person to hold two constitutional posts. Reference was made in this regard to Articles 63, 64, 69 and 70 of the Constitution in the context of the Vice- President assuming office of the President on the latter falling vacant and thereby ceasing to work as Chairman of the Council of the States and also becoming disentitled to Salary and Allowances payable to the Chairman of the Council of States, a post held by the Vice President *ex officio*. Likewise, reference was made to Article 158 of the Constitution of India, according to which, if a member of either House of Parliament or the State Legislature is appointed as Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor. These provisions of the Constitution, according to the learned counsel for the petitioner, were indicative of the ingrained philosophy in the India Constitution to segregate the function and duties assigned to incumbents of various constitutional posts.

As per understanding of the learned counsel for the petitioner, one person can not hold two constitutional offices, simultaneously. Reference was

made in this regard to Article 101 of the Constitution and provisions of the Prohibition of Simultaneous Membership Rules, 1950 applicable in case of Members of two houses of the Parliament or the State Legislatures.

Learned counsel for the petitioner also pressed upon the doctrine of separation of powers in this context to submit that while Member of Parliament is part of the Legislature, the Chief Minister and Deputy Chief Minister are part of the executive but the same person i.e. the Member of Parliament holding two Offices of Chief Minister/Deputy Chief Minister amounts to violating the doctrine of separation of powers. In this context he submitted that both the opposite parties no. 5 and 6 were still Members of Parliament when they took oath as Chief Minister and Deputy Chief Minister of the State of U.P. on 19.03.2017, thereby, violating the aforesaid constitutional scheme, the implied restrictions and the doctrine referred hereinabove.

It was further contended that once they took oath as Chief Minister and Deputy Chief Minister they would not participate in the proceedings of Parliament for the obvious reason, that is, the onerous tasks assigned to them as Chief Minister and Deputy Chief Minister but they would still be drawing salary as Members of Parliament and also as Chief Minister and Deputy Chief Minister which is a situation not envisaged by the Constitution. The fact that such a person who draws salary for two posts but will not be able to perform the duties of one of them i.e. the Member of Parliament, is constitutionally objectionable and uncalled for, as, this puts unnecessary burden on the public exchequer that too in a developing

economy. In this context, he referred to the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981.

It was submitted that the Governor while exercising his discretion under Article 164 to appoint the Chief Minister/ Deputy Chief Minister should have looked into these aspects of the of the matter and not having done so he or she acted in arbitrarily and unconstitutional manner. Reference was made in this regard to the decisions of Hon'ble the Supreme Court reported in *(2013) 5 SCC 1; State of Punjab Vs. Salil Sabhlok and Ors., (2016) 8 SCC 1; Nabam Rebia and Bamng Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Ors.*, according to which, the Governor is required to exercise his discretionary power in just fair, reasonable and bonafide manner and not in disregard to the constitutional spirit.

In Para 38 and 39 of the writ petition the petitioner has specifically pleaded that though there is no specific restriction for a Member of Parliament to be appointed as a Chief Minister/ Deputy Minister, however, implied restrictions are engrained in the Constitution. Constitutional appointments are required to be guided by certain principles which may not be expressly stated in the Constitution but the person conferred with the powers to make such appointment is bound by unwritten code pertaining to morality and philosophy encapsulated in the preamble of the Constitution. The Governor, according to the petitioner's counsel, overlooked the implied restrictions while performing his duties under Article 164(1) of the Constitution. In the context of implied constitutional restrictions a reference has been made to the judgment rendered in the

case of *Salil Sabhlok* (supra). According to the petitioner's counsel, the Governor of U.P. should have asked the opposite party nos. 5 and 6 to resign from their membership of Parliament before rendering oath and not doing so, was violative of the constitutional spirit and scheme.

He also pressed relief no. (iv) by which vires of Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as 'the Act, 1959') has been challenged. At the outset, we must put it on record that relief no. 4 has no relation to relief No. 1, therefore, two separate causes have been joined together in these proceedings, nevertheless, we will consider these reliefs hereafter.

In this regard he contended that object behind Article 102(1)(a) of the Constitution of India was to disqualify any person from the Membership of Parliament if he holds any "office of profit" under the Government of India or the Government of any State and to carve out an exception to this vital and important principle contained in the constitutional provisions was to negate the object behind it. The Office of Chief Minister and Deputy Chief Minister were offices of profit under the State and therefore, they can not simultaneously hold the office of Member of Parliament under the Constitution. According to him, the Parliament exceeded its jurisdiction by inserting Section 3(a) of the Act, 1959 which contravenes the Constitution but no specific provision of the Constitution which is alleged to have been contravened was placed before us.

It was submitted that Article 102(1) (a) of the Constitution, to which the Act, 1959 is referable, does not empower

the Parliament to make law in respect of the Offices which are already enumerated in the Constitution itself. According to him, excluding the office of a Minister from the list of offices of profit for the purposes of disqualification of Member of Parliament, is absolutely unreasonable, bordering on absurdity.

In this context, he submitted that as per the constitutional provisions only for a period of six months a person can be appointed as a Minister either in the Center or the State without being a Member of any of the Houses of Parliament or State Legislature. Likewise, is the case in the State, therefore, the Act, 1959 providing protection to the Union Minister or the State Minister was quite unnecessary. Such a provision was violative of federal structure of the Constitution which is its basic feature. It was also violative to the concept of Constitutional Morality deeply enshrined in our Constitution. In this regard he referred to the authority reported in **(2014) 9 SCC 1; Manoj Narula v. Union of India**. For all these reasons, he contended that Section 3(a) of the Act, 1959 was ultra vires the Constitution and inconsistent with Article 102.

8. Learned Standing Counsel for the State has contended that the entire writ petition is absolutely misconceived. There is no constitutional bar in any person taking oath as Chief Minister/ Deputy Chief Minister while being a Member of Parliament nor does Section 3(a) of the Act, 1959 suffer from any unconstitutionality or illegality, therefore, the writ petition lacks merit and is liable to be dismissed.

9. Having heard learned counsel for the parties and having perused the records,

we find that we are required to consider only relief nos. (i) and (iv) of the writ petition.

10. First and foremost the question before us is as to whether the Constitution permitted opposite party nos. 5 and 6 to take oath as Chief Minister and Deputy Chief Minister of the State on 19.03.2017 while they were still Members of Parliament of India and had not resigned as such.

11. There is nothing in the Constitution which prohibits the appointment of a person who is already a Member of Parliament as Chief Minister or Deputy Chief Minister of a State.

12. Article 164 (1-B) provides that a member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier. The disqualification referred above is on the ground of defection. It is nobody's case that the opposite party nos. 5 and 6 suffered from aforesaid disqualifications.

13. The other disqualifications is contained in Article 191 of the

Constitution. According to Article 191(1) (a), a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. In this context we may refer to an enactment, namely, the Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971, vires of which is not under challenge. Section 3 thereof excludes certain offices of profit as disqualification for the holder thereof for being a Member of the State Legislature, one of which is, the office of Minister of State or Deputy Minister, or of Parliamentary Secretary to a Minister, either for the Union or for the State. No doubt it does not exclude a member of Parliament but whether member of Parliament holds an office of profit under the Government of India or the State so as to attract Article 191(1)(a). He by virtue of being member of Parliament certainly does not hold such office under the Government of any State. A Member of Parliament is an office of election. It is not an office or post on which appointment is made by the Government of India or the State Government. It is certainly not an office of profit under the Government of India or the State Government. Members of Parliament get elected to raise the voice of the people/constituency whom/which they represent in Parliament and irrespective of the remuneration received by them as Members of Parliament, they can not be said to be holding any office or post under the Government of India. In fact, there is no foundation in the pleadings of the writ petition with documentary proof in support of thereof to establish that in fact, it is an

office of profit as referred in Article 191(1)(a) of the Constitution. The election and tenure of the Member of Parliament is not at the pleasure of the Government or the President of India.

14. We also draw support in this context from a decision of Hon'ble the Supreme Court reported in **(2019) 11 SCC 683; Ashwini Kumar Upadhyay Vs. Union of India and Anr.**, wherein the question was as to whether a Member of Parliament can practice law; was it barred by regulations framed under the Advocates Act, 1961 or not. In that context Hon'ble Supreme Court while referring to Rule 49 of Bar Council of India Rules, 1975 observed that the said rule applies- "*where an advocate is a full-time salaried employee of any person, government, firm, corporation or concern. Indubitably, legislators cannot be styled or characterised as full-time salaried employees as such, much less of the specified entities. For, there is no relationship of employer and employee. The status of legislators (MPS/MLAs/MLCs) is of a member of the House (Parliament/State Assembly). The mere fact that they draw salary under the 1954 Act or different allowances under the relevant Rules framed under the said Act does not result in creation of a relationship of employer and employee between the government and the legislators, despite the description of payment received by them in the name of salary. Indeed, the legislators are deemed to be public servants, but their status is sui generis and certainly not one of a full-time salaried employee of any person, government, firm, corporation or concern as such. Even the expansive definition of term "person" in the General Clauses Act, 1897 will be of no avail. The term "employment" may be an expansive*

expression but considering the constitutional scheme, the legislators being elected people's representatives occupy a seat in Parliament/Legislative Assembly or Council as its members but are not in the employment of or for that matter full-time salaried employees as such. They occupy a special position so long as the House is not dissolved. The fact that disciplinary or privilege action can be initiated against them by the Speaker of the House does not mean that they can be treated as full-time salaried employees. Similarly, the participation of the legislators in the House for the conduct of its business, by no standards can be considered as service rendered to an employer. One ceases to be a legislator, only when the House is dissolved or if he/she resigns or vacates the seat upon incurring disqualification to continue to be a legislator. By no standards, therefore, Rule 49 as a whole can be invoked and applied to the legislators." The said observations of Hon'ble the Supreme Court, albeit in a different context, throw some light on the status of legislators whether they be MPs/MLAs/MLCs.

15. It is evident from the aforesaid that they do not hold any office or post under the Government, in the first place, therefore, the question whether they held an office of profit under the Government of India or State, becomes superfluous. The mere fact that they draw salary under the Salaries, Allowances and Pension of Members of Parliament Act, 1954 or different allowances under the relevant Rules framed under the said Act does not result in creation of a relationship of employer and employee between the Government and the legislators, despite the description of payment received by them in the name of salary. Their participation in

the house for the conduct of its business by no standards can be considered as service rendered to an employer, whether it be the Government of India or the State. One ceases to be a legislator, only when the House is dissolved or if he/she resigns or vacates the seat upon incurring disqualification to continue to be a legislator. A Member of Parliament or the State Legislator does not function as such at the pleasure of the Government of India/ State or the President/ Governor. They are not appointed but are elected by electors from respective territorial constituencies. The form of oath also does not suggest that the Member is appointed by the President as such. Hon'ble the Supreme Court even observed - "the fact that the legislators draw salary and allowances from the consolidated fund in terms of Article 106 of the Constitution and the law made by Parliament in that regard, it does not follow that a relationship of a full-time salaried employee(s) of the Government or otherwise is created."

16. The petitioner has himself accepted in Para 38 that there is no specific bar in the Constitution for a Member of Parliament to be appointed or to take oath as Chief Minister or Deputy Chief Minister, but, he refers to certain implied restrictions which he has not been satisfactorily spelled out nor have we been able to find any. There is no such bar, express or implied.

17. In this context, it has been contended that if such a person is appointed, then, he will be holding two constitutional posts or office, one of Member of Parliament and the other of Chief Minister/ Deputy Chief Minister, however, this is not correct. A Member of Parliament does not hold a constitutional office or post. Parliament of India is

constituted under Chapter II of the Constitution. It has two houses. One known as house of the people and the other Council of States. Members of the house of the People are '**elected**' by the people in terms of the Constitution, whereas, Members of the Council of States, some are elected, and, others are nominated etc. The Constitution does not create these offices or posts nor does it define their function and powers etc. They are thus not constitutional offices or posts. Constitutional Offices are offices such as that of the President of India, Vice President of India, Speaker and Chief Election Commissioner, so on so forth, therefore, the contention of Shri Pandey, learned counsel for the petitioner that the opposite party nos. 5 and 6 were holding two constitutional posts/offices at the same time, does not appear to be correct. One becomes a Member of Parliament based on election, whereas, a Chief Minister/ Deputy Chief Minister is appointed by the Governor in terms of the Constitution, which could be the case even when they have not been elected as Member of a State Legislature. The contention as noticed hereinabove is, therefore, constitutionally fallacious. Office of Member of Parliament is not a constitutional post or office. Reliance in this regard on Article 63, 64, 69, 70 and 158 is misplaced and the analogy sought to be drawn vis-a-vis office of Vice-President, Speaker etc. is without any constitutional basis as latter are constitutional posts, whereas, Member of Parliament is not.

18. The reasoning being put forth on behalf of the petitioner that by taking oath as Chief Minister/Deputy Chief Minister the opposite party nos. 5 and 6 continued to be Members of Parliament thereby drawing salary from two sources, however, there is nothing on record to suggest, that it was

factually so, just as, there is nothing on record to suggest that they, after being appointed as Chief Minister/ Deputy Minister, did not attend the parliamentary proceedings. In any case, these arguments have outlived their utility as already stated earlier in the context of relief nos. (ii) and (iii). We are only concerned with the issue as to whether their appointment of opposite party nos. 5 and 6 was unconstitutional or illegal.

19. We have already stated that there is no constitutional provision which prohibits a Member of Parliament from being appointed or taking oath as Chief Minister or Deputy Chief Minister of State.

20. To say that this violates the doctrine of separation of powers is preposterous. The fallaciousness of the contention is evident from the fact that every Minister in the State has ultimately to be a Member of either of two houses of the State Legislature, an inference which follows from Article 164(4) of the Constitution itself. If this contention is accepted that no Member of Legislature should be appointed as a Minister because as member of the Legislature he is part of the Legislative wing and as Chief Minister/ Deputy Chief Minister he becomes part of the executive, then no minister could be appointed, as, every minister so appointed has to be a member of either house, whether initially or within six months as mandated under Article 164(4) of the Constitution, therefore, this contention is apparently fallacious and against express constitutional persons. It is rejected. For all these reasons, to say that the Governor of U.P. did not exercise his discretion constitutionally, is misconception.

21. One of the arguments of Shri Pandey was that after becoming the Chief Minister or Deputy Chief Minister such

person would be unable to address the problems of his constituency i.e. the Parliamentary Constituency. This also is an argument which is without any factual and legal basis. In this case opposite party nos. 5 and 6 resigned from their membership of Parliament within 14 days of being elected as members of State Legislature. It is accordingly rejected.

22. The legal position is settled that even if person is not a Member of the State Legislature he can be appointed as Chief Minister of the State subject to the condition contained in Article 164(4) of the Constitution that he shall cease to be such Minister if he does not get elected within a period of six months as referred hereinabove. Now, this 'person' could, would include one who is not a Member of the State Legislature, and a person who is a Member of Parliament, as, there is no such bar that a Member of Parliament while remaining as such, can not be appointed as Minister of a State.

23. As regards application of Article 101 we have perused the same and find that Clause (1) and (2) of Article 101 of the Constitution have no application to the facts of this case. In this case, the election to the State Legislature was held on 08.09.2017 and the opposite party nos. 5 and 6 resigned from their membership of Parliament on 21.09.2017 and their seats fell vacant in the Parliament on the said date in view of Article 101 (3)(b).

24. The rules made under Article 101(2) of the Constitution, namely, the Prohibition of Simultaneous Membership Rules, 1950 and Rule 2 and 3 contained therein have no application to the facts of this case. They envisage a contingency where a person has been simultaneously

holding a seat in the Parliament and in a house of legislature of a State specified in the 1st Schedule to the Constitution of India and if he does not vacate his seat in the State Legislature, then, his seat in the Parliament will fall vacant, whereas, in the case at hand the opposite party nos. 5 and 6 resigned from their membership of parliament itself in terms of Article 101(3)(b) of the Constitution on 21.09.2017, therefore, Rules 2 and 3 of the Rules, 1950 made by the President under Article 101(2) and Article 190(2) of the Constitution have no application to the case at hand.

25. As regards the provisions contained in Article 190(3) to the effect that if a member of a House of the Legislature of a State - (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 191, then, at the expiration of such period his seat shall thereupon fall vacant, we have already discussed Article 191(1)(a) and ancillary issues earlier. No other disqualification under Article 191 of the Constitution has been pleaded by the petitioner.

26. We may now refer to the U.P. State Legislature (Prevention of Disqualification) Act, 1971, where, office of Minister of State or Deputy Minister or of Parliamentary Secretary either for the Union or for the State is excluded from the list of offices of profit, meaning thereby, the holder of such office is not disqualified for being chosen as, and for being, a member of the State Legislature. This provision is not attracted to the case at hand.

27. None of the aforesaid provisions put any bar on a Member of Parliament being appointed as Chief Minister or Deputy Chief Minister.

28. In the facts of this case, the opposite party nos. 5 and 6 were elected to the Vidhan Parishad in the State Legislature of U.P. on 08.09.2017 and resigned from membership of Parliament on 21.09.2017 and no such provision has been placed before us that during this period they having been Member of Parliament and member of the Vidhan Parishad simultaneously, invited any disqualification or vacation of their seat, either way, under the Constitution or under any statute or Rules, therefore, we do not find any reason to grant relief no. 1 to the writ petition. It is declined.

29. Now, coming to relief no. (iv), Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 is as under:-

"3. Certain offices of profit not to disqualify.— It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely: —

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex officio or by name;

(aa).....

(ab).....

(ac).....

(ad).....

(b)

(ba)

(i).....

(ii).....

(iia)

(iii).....

(c).....

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(l)

(m)

Explanation 1 — For the purposes of this section, the office of chairman, deputy chairman or secretary shall include every office of that description by whatever name called.

Explanation 2. —In clause (aa), the expression “Leader of the Opposition” shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).

Explanation 3. — In clause (ac), the expressions “recognised party” and

"recognised group" shall have the meanings assigned to them in the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1988 (5 of 1999)."

30. The aforesaid relief has presumably been sought because on assuming office of Chief Minister and Deputy Chief Minister on 19.03.2017 the opposite party nos. 5 and 6 as per the understanding of the petitioner held an office of profit under the State of U.P., therefore, they were disqualified to be Members of Parliament in view of Article 102 (1)(a) of the Constitution of India. This Relief No. (iv) may have been relevant in the context of Relief No. (ii) which as stated earlier has outlived its utility. Nevertheless, in the context of Relief No. (iv) we may first and foremost refer to Article 102 of the Constitution which reads as under:-

"102. Disqualifications for membership- (1) *A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-*

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any

acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.-- For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

31. On a bare reading of the aforesaid provisions it is evident firstly that the Constitution under Article 102(1)(a) itself permits exclusion of an office from the purview of the said provision so as not to disqualify its holder, if it is so declared by Parliament by law. Secondly, the explanation to Article 102 as amended by the Constitution (Fifty-second Amendment) Act, 1985 w.e.f. 01.03.1985 clearly explains the provision and clarifies it that for the purpose of this clause i.e. Clause 102(1)(a), a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State. The Chief Minister is also a Minister of a State, therefore, clearly the explanation itself excludes the office of the Chief Minister from application of said provision which is not attracted to the said office.

32. Parliament has enacted a law in this regard from time to time which is referred to Article 102. The first one being

the Parliament (Prevention of Disqualification) Act, 1950; then, the Parliament (Prevention of Disqualification) Act, 1951; the Prevention of Disqualification (Parliament and Par- C State Legislatures) Act, 1953 and ultimately, a consolidated Act was promulgated, namely, Parliament (Prevention of Disqualification) Act, 1959, Section 3- A of which has been challenged by the petitioner. It is the latter which has been challenged. This provisions declares that none of the Offices mentioned therein in so far as it is an office of profit under the Government of India or the Government or any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament. Of course the Act, 1959 enumerates several other offices but it also includes in Section 3(a) any office held by a Minister, Minister or State or Deputy Minister for the Union or for any State, whether *ex officio* or by name which includes the Chief Minister and Deputy Chief Minister also. The Constitution itself having excluded the office of Minister of a State which includes Chief Minister and Deputy Chief Minister from the purview of operation and application of Article 102 and the said explanation to Article 102 (1) of the Constitution not having been challenged by the petitioner, we fail to understand as to how such a challenge to Section 3(a) of the Act, 1959 can be raised and sustained. It can not.

33. Apart from pleading appointment of opposite party nos. 5 and 6 as Chief Minister and Deputy Chief Minister nothing else has been pleaded as to why they would be disqualified in view of Article 102(1)(a), in view of the explanation to Article 102(1)(a).

34. We do not find any constitutional or legal basis for declaring Section 3(a) of the Act, 1959 as unconstitutional. The Act, 1959 does not contravene Article 101 in any manner whatsoever. In fact, it is permissible vide Article 102(1), especially its Explanation.

35. In view of the above discussion, we do not find any unconstitutionality in Section 3(a) of the Act, 1959. Relief No. (iv) is also declined. For all these reasons, we do not find any merit in the writ petition. Accordingly, the writ petition is **dismissed**.
